

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah State Government. The Department of Administrative Services, Division of Administrative Rules produces the *Bulletin* under authority of Section 63G-3-402.

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

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

Division of Administrative Rules, Salt Lake City 84114

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EXECUTIVE DOCUMENTS

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

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

Governor's Executive Order EO/013/2011: Establishing Effective Oversight Over State Agency Rulemaking

EXECUTIVE ORDER

Establishing Effective Oversight Over State Agency Rulemaking

WHEREAS, the public is best served by clear and concise administrative rules that protect public health, safety, and welfare; promote economic development; protect against officials' abuse of power; promote needed public programs; enhance public understanding of legal requirements; and facilitate the implementation of law; and

WHEREAS, state agencies promulgate administrative rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to execute statutory mandates; and

WHEREAS, the Legislature often mandates new administrative rules, or changes to existing administrative rules; and

WHEREAS, agencies' continual review of existing rules coupled with a process of careful consideration and assessment for new rules will improve state agencies' responsiveness to the public; and

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the laws of the State of Utah, do hereby order that:

All executive branch agencies implement the following procedures for promulgating administrative rules in accordance with and in addition to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1. An agency shall write administrative rules that are clear and concise. It shall not impose unnecessary burdens on the economy, on individuals, on public or private organizations, or on local governments. To achieve these objectives, an agency shall develop its administrative rules through a process which ensures that:

- a. there is full opportunity for public participation in the rulemaking process as prescribed by state law;
- b. the need for and purpose of each administrative rule is clearly established and articulated as part of the rule analysis submitted with each notice of proposed rule;
- c. the head of the agency and policy officials exercise effective oversight; and
- d. compliance costs, paperwork, and other burdens on the public are minimized.

2. In addition to the requirements of Section 63G-3-301, each agency shall include as part of the rule analysis the anticipated costs or savings in terms of the fiscal and non-fiscal impacts and burdens a rule may have directly or indirectly to state government, local government, small business, and persons other than small businesses, businesses, or local governmental entities, and shall review this analysis with any board or commission with rulemaking or advisory authority prior to submitting the rule filing;

3. Each cabinet level administrator, or other official of similar responsibility, who answers to the Governor shall designate an administrative rules coordinator and report that person's name to the Division of Administrative Rules as staff changes necessitate.

4. Each administrative rules coordinator, or designee, shall:

a. examine each administrative rulemaking action prepared by an agency within the coordinator's scope of responsibility prior to the action's submission to the Division of Administrative Rules to determine:

i. that the administrative rule contains language that is necessary, and fits within the scope of a rule as defined in Subsection 63G-3-102(16);

ii. that the administrative rule has been drafted using logical, understandable, and concise language to facilitate compliance and enforcement;

iii. that interested parties have been given opportunity to participate in the development of the administrative rule pursuant to Subsection 63G-3-301(3);

iv. that standards reflect consistent and sound public regulatory policies; and

v. that the rule is formatted as prescribed in the current edition of the Division of Administrative Rules' *Rulewriting Manual for Utah*;

b. work with administrators within the coordinator's scope of responsibility to see that written documents meeting the definition of a rule are promulgated as administrative rules pursuant to Utah Code Ann., Title 63G, Chapter 3;

c. assess enacted legislation by June 1 of each year to ensure that new regulatory obligations are discovered and met in a timely manner by appropriate rulemaking action;

d. send a copy of the notice of proposed rule and the rule analysis required by law to the Governor's Office of Economic Development;

e. recommend revised or, if necessary, new administrative rules to an agency head within the coordinator's scope of responsibility for the purpose of adequately supporting agency action, informing affected persons, and protecting the state and the public from unwarranted litigation and loss; and

f. notify the Division of Administrative Rules of staffing changes in agencies within the coordinator's scope of authority that affect who may file or authorize rules, and who the Division or the Governor's Office of Planning and Budget may contact with questions.

5. The Director of the Governor's Office of Planning and Budget, or the director's designee, shall:

a. review administrative rules for legal authority, policy, and budgetary impacts;

b. assist state entities in their role of defining public regulatory policy;

c. act as a liaison with members of the legislature on administrative rulemaking issues, and assist with the resolution of issues identified;

d. coordinate strategies to resolve regulatory questions;

e. receive and review the rule analysis required by law.

6. Each state agency may obtain assistance from:

a. the Attorney General to ensure that its rules meet legal and constitutional requirement as provided in Subsection 63G-3-201(9),

b. the Division of Administrative Rules for assistance with the rulemaking process as provided in Subsection 63G-3-402(1)(l), and

c. the Governor's Office of Planning and Budget for assistance determining and calculating fiscal and non-fiscal, direct and indirect impacts;

7. State agency directors and department heads shall cooperate with the Governor's Office of Planning and Budget as it conducts an executive review of rules; and the Division of Administrative Rules as it implements filing, publication, and hearing procedures pursuant to Title 63G, Chapter 3.

BE IT FURTHER ORDERED THAT this executive order supersedes executive orders concerning administrative rules issued on December 3, 1979, February 3, 1986, and March 22, 1988.

IN WITNESS, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the state of Utah. Done at the Capitol in Salt Lake City, Utah, this 6th day of December, 2011.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Greg Bell
Lieutenant Governor

EO/013/2011

End of the Executive Documents Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between December 02, 2011, 12:00 a.m., and December 15, 2011, 11:59 p.m. are included in this, the January 01, 2012 issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least January 31, 2012. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through April 30, 2012, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses and the agency must start the process over.

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

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

The Proposed Rules Begin on the Following Page

Corrections, Administration
R251-115
Contract County Jail Programming
Payment

NOTICE OF PROPOSED RULE

(New Rule)
 DAR FILE NO.: 35540
 FILED: 12/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The department is proposing this rule as a result of H.B. 153, County Correctional Facilities Funding, passed during the 2011 General Legislative Session. Within Section 64-13e-103, language was added requiring the department to establish a rule related to contract funding rates paid to county jails that provide programming services to state inmates housed in the jail facility.

SUMMARY OF THE RULE OR CHANGE: This rule outlines the procedures, requirements, and standards for the qualification and payment of 73% of the final state daily incarceration rate paid for by the department for approved programs for state inmates housed at contract jail facilities as funds are appropriated.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 64-13e-103

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This rule, and the associated statute, provides for payment at a higher rate to contract county jail facilities that provide programming, approved by the department, to state inmates. Funding at this higher rate is at the discretion of the legislature via appropriations. If funding is not allocated, the higher rate cannot be paid.
- ◆ **LOCAL GOVERNMENTS:** It is possible that county governments could be positively impacted by this rule, and the statutory language requiring the rule. If funds are available, and if the county provides department approved programming services to state inmates, the county would receive higher contract payment rates for those inmates housed and programmed.
- ◆ **SMALL BUSINESSES:** This rule will not pass any cost or result in any savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other entity will be impacted by this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated. If funds are available and appropriated, the higher payment rate would be paid where applicable.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will not have a fiscal impact on businesses. The rule allows for funds, if available, to flow to contract county jails that provide department approved programming to state inmates. It is conceivable there would be a positive impact on businesses if the contract county jail contracts with private vendors to provide approved programming.

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

CORRECTIONS
 ADMINISTRATION
 14717 S MINUTEMAN DR
 DRAPER, UT 84020-9549
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Michael Haddon by phone at 801-545-5913, by FAX at 801-545-5726, or by Internet E-mail at mhaddon@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2012

AUTHORIZED BY: Thomas Patterson, Executive Director

R251. Corrections, Administration.

R251-115. Contract County Jail Programming Payment.

R251-115-1. Authority and Purpose.

(1) This rule is authorized under Sections 64-13e-103(3)(b)(i) and 64-13-10 of the Utah Code.

(2) The purpose of this rule is to provide policy, procedures, requirements and standards for the qualification and payment of 73% of the final state daily incarceration rate paid for Utah Department of Corrections approved programs for state inmates housed at contract jail facilities as funds are appropriated.

R251-115-2. Definitions.

(1) "contract state inmate" means an inmate who has been sentenced to the Utah Department of Corrections and is transferred to a contracted county jail facility for housing.

(2) "BOPP" means the Utah Board of Pardons and Parole.

(3) "DOPL" means the Division of Occupational and Professional Licensing.

(4) "final state daily incarceration rate" as defined by Section 64-13e-102(5) of the Utah Code.

(5) "IPP" means the Inmate Placement Program within the Utah Department of Corrections.

(6) "screening committee" means Utah Department of Corrections employees assigned to screen inmate-specific treatment and continuing care programs for validity and department need.

(7) "UDC/department" means the Utah Department of Corrections.

R251-115-3. Programming Rate.

(1) Payment for UDC approved and legislatively funded substance abuse or sex offender programs in contract county facilities is pursuant to Section 64-13e-103 of the Utah Code. Establishing this rate is dependent upon the following conditions being met:

(a) the 73% rate will only be paid for beds dedicated for department approved treatment. If a contract county jail includes a mix of treatment and non-treatment beds, 73% will be paid for the beds dedicated to treatment and 70% will be paid for the beds not dedicated to treatment.

(b) the department has sufficient funds appropriated to pay this rate for those beds in contract county facilities for department approved program services; and

(c) the department can pay this programming rate without impacting the total number of contract county jail beds the department can access during the fiscal year.

R251-115-4. Program Requirements and Standards.

(1) The following is the information that must be submitted to the department from a provider requesting consideration/approval for payment to provide a substance abuse or sex offender program at a contract county facility:

(a) evidence the program therapist(s) hold a valid license through DOPL to provide treatment in a mental health profession in the State of Utah;

(b) documentation of program goals, objectives, curriculum outline and performance measures;

(c) a copy of any assessment instruments that will be used;

(d) the number of inmates anticipated to participate in program services at any given time; and

(e) the screening criteria requirements for inmates to enroll and participate.

(2) Pursuant to Section 64-13e-103 of the Utah Code, the program must be approved by the department, and approval is subject to the funds appropriated by the legislature.

(3) The department screening committee shall evaluate the information provided by a provider to determine its viability to assist the department in meeting its programming goals, based on the needs of the current inmate population.

R251-115-5. Program Provider Requirements.

(1) Potential providers for substance abuse or sex offender programs in contract county facilities shall:

(a) hold a valid license through DOPL to provide treatment in a mental health profession in the State of Utah;

(b) be pre-approved by the department if providing sex offender treatment;

(c) adhere to the requirements as outlined by the laws of the State of Utah and department policy

(d) appear in court or BOPP hearings, when there is reasonable notification, as needed without additional compensation; and

(e) provide reports as needed by the courts, BOPP or the department.

(2) County jail providers of sex offender treatment shall be in compliance with the UDC approved sex offender treatment program. Detailed structure/criteria of the UDC sex offender

treatment program will be made available to county jail providers upon request. Approved county jail sex offender treatment programs shall be subject to at least yearly peer reviews from the department's Sex Offender Treatment Program Director or designee.

(3) County jail providers of substance abuse treatment shall be in compliance with the UDC approved substance abuse treatment program. Detailed structure/criteria of the UDC substance abuse treatment program will be made available to county jail providers upon request. Approved county jail substance abuse treatment programs shall be subject to at least yearly peer reviews from the department's Substance Abuse Treatment Program Director or designee or by a representative from the Division of Substance Abuse and Mental Health.

R251-115-6. Program Compliance Review Process.

(1) UDC peer reviews shall be conducted at least yearly to review compliance with the UDC approved program curriculum and treatment protocols in accordance with the UDC sex offender treatment program or UDC substance abuse treatment program. Reviews shall include, but are not limited to:

(a) intake documents;

(b) discharge summaries;

(c) group and individual session notes; and

(d) confidential notes.

(2) A report showing the result of the peer review will be submitted in writing to the jail commander within ten (10) working days of the review.

(3) If any noncompliance is cited, the jail commander shall have ten(10) working days after receiving the report to submit a written plan to bring the program into compliance or to begin the appeal process.

R251-115-7. Program Noncompliance Appeal Process.

(1) The jail commander shall have ten (10) working days to submit a written plan to bring the program into compliance

(a) after receiving the result of the peer review citing noncompliance; or

(b) after a final decision is made on an appeal.

(2) The following is the appeal process for noncompliance:

(a) Within ten (10) working days of receiving the report, the jail commander may appeal any cited noncompliance to the Director of IPP.

(b) The Director of IPP has five (5) working days after receiving the written plan or appeal to review, make a determination and inform the jail commander in writing of the noncompliance status.

(c) If the Director of IPP denies the appeal or rejects the written plan, the jail commander may appeal the decision in writing to the UDC Programming Director within five (5) working days of receiving the response from the Director of IPP.

(d) The UDC Programming Director has five (5) working days after receipt of the appeal from the jail commander to review and respond in writing to the jail commander with a copy of the response provided to the sheriff.

(e) Should the contract facility sheriff not be satisfied with the findings and response the jail commander has received after utilizing the two (2) level review/appeal process, the sheriff may request a review by the Executive Director of Corrections.

This request shall:

(i) be in writing and be made within ten (10) working days of receipt of the decision received from the UDC Programming Director; and

(ii) specify why the responses provided in the first two (2) levels did not remedy the request.

(f) The Executive Director of Corrections has ten (10) working days to review the request from the sheriff and provide a final decision to the appeal. A copy of the Executive Director's decision will be distributed as appropriate.

R251-115-8. Program Appropriated Funds: Notice of Funding.

(1) Projections for the 73% contract county facility programming funding shall be evaluated by UDC monthly by using the previous month's payments, the current month's billings, the remaining appropriated funds and the department's programming needs.

(2) The UDC shall notify each participating contract county facility if all appropriated funds have been expended.

(3) If the department projects these funds will be exhausted during the following month, those funds remaining shall be dispersed proportionally across all participating contract county facilities.

KEY: jail programming, jail contracting

Date of Enactment or Last Substantive Amendment: 2012

Authorizing, and Implemented or Interpreted Law: 64-13e-102

Education, Administration
R277-102
 Adjudicative Proceedings

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 35534

FILED: 12/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Following a thorough review and discussion of this rule, it was determined that this rule should be repealed and reenacted. The reenacted rule simplifies the process and specifies how adjudicative proceedings are conducted under the Utah State Board of Education (Board).

SUMMARY OF THE RULE OR CHANGE: Changes to the rule are as follows: Section R277-102-3 is simplified in the reenacted rule and a specific licensing/privilege with competing applicants issue is removed; Section R277-102-5 in the reenacted rule is simplified and establishes different timelines for Board action; Sections R277-102-6, R277-102-7, R277-102-8, R277-102-9, and R277-102-10 are combined in the reenacted rule to simplify the processes; default language in Section R277-102-7 of the reenacted rule is simplified; and a new Section R277-102-8 is added to the reenacted rule that

provides for a recommendation from an adjudicative proceeding be provided to the Board.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 53A-1-401(3) and Section 63G-4-203

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. This rule and changes are procedural and do not have any costs or savings associated with it.

♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. This rule and changes apply specifically to adjudicative proceedings involving the Utah State Board of Education.

♦ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. This rule and changes apply to adjudicative proceedings involving the Utah State Board of Education and do not affect businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The changes to this rule simplify the process for adjudicative proceedings involving the Utah State Board of Education resulting in a more streamlined process for individuals.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. This rule and the change are procedural and do not have any compliance costs associated with it.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2012

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

R277. Education, Administration.

[R277-102. Adjudicative Proceedings.

R277-102-1. Definitions.

A. "Board" means the Utah State Board of Education, the State Board for Vocational Education, or a member of its staff authorized to administer a program or carry out duties under its jurisdiction.

B. "Presiding officer" means, in addition to the definition of 63G-4-103(h)(i), the Chair of the Board or any person designated to serve as the presiding officer.

C. "State Superintendent" means the State Superintendent of Public Instruction.

R277-102-2. Authority and Purpose.

A. This rule is authorized by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 63G-4-203 which directs agencies to make rules regarding adjudicative proceedings following the general designation of Board hearings as informal.

B. The purpose of this rule is to specify how adjudicative proceedings are conducted before the Board. All procedures shall be consistent with Title 63G, Chapter 4.

R277-102-3. Commencement of Adjudicative Proceedings.

A.(1) Any party to an initial determination made by the Board may initiate an adjudicative proceeding under the Administrative Procedures Act and this rule by filing a request for Board action on a form, Request for Board Action, provided by the Board, or by submitting in writing the information required on the form.

(2) the Board may initiate an adjudicative proceeding by filing a Notice of Board Action.

B. If the purpose of an adjudicative proceeding is to award a license or other privilege as to which there are multiple competing applicants, the Board may conduct, after written notice of such is given to all parties and without making an initial determination on the matter, a single adjudicative proceeding to determine the award of that license or privilege.

C. Each Notice of Board Action and Request for Board Action filed is assigned a number consisting of the year in which the notice or request is filed and another number showing its numerical position among the hearings filed during the year.

R277-102-4. Designation of Adjudicative Proceedings as Formal or Informal.

All proceedings conducted before the Board are initially designated as informal. The presiding officer designated for the proceeding may convert an informal proceeding to a formal proceeding and vice versa under Section 63G-4-202(3).

R277-102-5. Procedures for Informal Adjudicative Proceedings.

A. No answer or other pleading is required of a respondent in an informal adjudicative proceeding. The respondent may file with the presiding officer a written response containing the information required by Section 63G-4-204.

B. The Board shall only hold a hearing on the matter if a party to the matter requests a hearing within ten days of the date on which:

(1) the Request for Board Action is filed if the party requesting the hearing filed the request; or

(2) the Notice of Board Action or a Notice of Request for Board Action is mailed to the parties of record.

Prior to holding a hearing, the Board shall give all parties at least ten days notice of the hearing date, time, and place.

C. Intervention is prohibited unless required by a federal or state statute applicable to the matter.

D. Informal adjudicative proceedings may be handled by conference, correspondence, electronic means, or other methods which satisfy the requirements of Section 63G-4-202(1).

E. The Board shall maintain a record of all aspects of informal adjudicative proceedings.

F. The presiding officer shall issue a written order within 120 days of the Request for Board Action or Notice of Board Action.

R277-102-6. Procedures for Formal Adjudicative Proceedings -- Responsive Pleadings.

A. The response shall be filed either on a form, Responsive Pleading, provided by the Board or in a manner that provides for the information required by Section 63G-4-204.

B. The presiding officer may permit or require pleadings in addition to the Notice of Board Action, the Request for Board Action, and the response, if the presiding officer finds such will provide for the fair and efficient conduct of the adjudicative proceeding.

R277-102-7. Procedures for Formal Adjudicative Proceedings -- Discovery, Subpoenas, Motions, and Prehearing Conferences.

A.(1) The presiding officer may, upon written notice to all parties of record, hold a prehearing conference for the purpose of:

- (a) formulating or simplifying the issues;
- (b) obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (c) arranging for the exchange of proposed exhibits or prepared expert testimony and procedure at the hearing;
- (d) agreeing to other matters that may expedite the orderly conduct of the proceedings or the settlement; or
- (e) obtaining a settlement of the matter.

(2) agreements reached during a prehearing conference are recorded in an appropriate order unless the parties enter into a written stipulation on the matter or agree to a statement made on the record by the Board.

B. The presiding officer may permit or require parties to file motions, other pleadings, affidavits, briefs, or other materials relevant to the action in order to provide for the fair and efficient conduct of the adjudicative proceeding.

R277-102-8. Procedures for Formal Adjudicative Proceedings -- Hearings Procedure.

Prior to holding a hearing, the Board shall give all parties at least ten days notice of the hearing date, time, and place.

R277-102-9. Procedures for Formal Adjudicative Proceedings -- Intervention.

A. The request for intervention shall be filed on a form, Request for Intervention, provided by the Board, or

~~_____ B. A request may be made by submitting in writing the information in accordance with Section 63G-4-204.~~

~~R277-102-10. Procedures for Formal Adjudicative Proceedings – Orders.~~

~~_____ The presiding officer shall issue an order on the matter within 120 days after the date on which the Request for Board Action or the Notice of Board Action is filed.~~

~~R277-102-11. Default.~~

~~_____ A party to an informal adjudicative proceeding is deemed to have failed to participate if that party does not:~~

~~_____ (1) attend, either in person or by representation, any hearing, conference, or other meeting on the matter which the party has requested or which the party has been requested to attend;~~

~~_____ (2) respond within the specified time, when requested, to any correspondence or communication made in connection with the matter by the presiding officer or the Board.~~

~~R277-102-12. Board Review.~~

~~_____ A. Any party to, or any person initiating, an adjudicative proceeding may seek review by a Board order by petitioning the State Superintendent for review. The request for review shall be filed on a form, Request for Review provided by the Board, or by submitting in writing the information required by Section 63G-4-201(3). The State Superintendent appoints a qualified person to be the review officer. The review officer may take steps necessary to provide for the fair and efficient conduct of the review. This may include permitting or requiring the filing of briefs or other papers or the conduct of oral argument. Responses permitted under Section 63G-4-301(2) are filed with the review officer. An order on review is issued by the review officer within a reasonable time after the filing of any response, other filings, or oral argument, or if none, after the filing of the request for review.~~

~~_____ B. Enforcement of the order issued after an adjudicative proceeding is stayed during the pendency or review.~~

~~R277-102-13. Board Reconsideration.~~

~~_____ A party requesting a stay of its order or temporary remedy during the pendency of judicial review shall petition the State Superintendent for such. The State Superintendent shall, within a reasonable time, issue an order either granting or denying the stay. The order shall state the reasons for the grant or denial.~~

~~R277-102-15. Declaratory Orders.~~

~~_____ A. A request for a declaratory order shall be filed on a form, Request for a Declaratory Order, provided by the Board or by submitting the information required by Section 63G-4-201. If it appears to the Board upon the filing of the request that the matters requested in the petition are not within its jurisdiction or adjudicative powers, the Board need not take further action on the matter. It shall notify the petitioner of the reasons why the request is denied and of the procedures to obtain review and reconsideration of the Board decision. If it appears to the Board upon the filing of the request that the matters requested in the petition are within its jurisdiction or adjudicative power, the Board shall appoint a presiding officer for the matter.~~

~~_____ B. The presiding officer has the discretion to issue an order making any provision of Sections 63G-4-202 through 63G-4-~~

~~302 apply to the proceeding to issue the declaratory order. The presiding officer shall conduct the proceeding in a fair and efficient manner.~~

~~_____ C. The Board shall not issue a declaratory order in the following instances:~~

~~_____ (1) issuance of an order is not under circumstances in which both the public interest and the interests of the parties are protected;~~

~~_____ (2) the critical facts are not clear and may be altered by subsequent events;~~

~~_____ (3) the party making the request is unable to show real risk will be confronted if the intended course of conduct is taken;~~

~~_____ (4) the request is trivial, irrelevant, or immaterial.~~

~~_____ D. Parties which meet the requirements of Section 63G-4-208 may intervene in a declaratory action upon filing a petition to intervene within ten days of the filing of the request for declaratory action. Section 63G-4-208 and Section 9 of this rule govern intervention in proceedings to issue declaratory orders.~~

~~_____ E. Each Request for a Declaratory Order shall be numbered in accordance, and as part of, the number system described in Subsection 4(D) of this rule.~~

~~R277-102-16. Representation.~~

~~_____ Any party may be represented by counsel at any time in any proceeding before the Board.]~~

~~R277-102. Adjudicative Proceedings.~~

~~R277-102-1. Definitions.~~

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

~~_____ B. "Default" means the failure of a party to an administrative proceeding to meet the requirements or timelines of the proceeding.~~

~~_____ C. "Presiding officer" means, in addition to the definition of 63G-4-103(h)(i), the Chair of the Board or any person designated to serve as the presiding officer.~~

~~_____ D. "State Superintendent" means the State Superintendent of Public Instruction.~~

~~_____ E. "USOE" means the Utah State Office of Education.~~

~~R277-102-2. Authority and Purpose.~~

~~_____ A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 63G-4-203 which directs agencies to make rules regarding adjudicative proceedings following the general designation of Board hearings as informal.~~

~~_____ B. The purpose of this rule is to specify how adjudicative proceedings are conducted before the Board. All procedures shall be consistent with Title 63G, Chapter 4. This rule does not govern Board actions under Sections 63G-4-101(2)(a),(d),(g),(j),(l), and (p).~~

~~R277-102-3. Commencement of Adjudicative Proceedings.~~

~~_____ A. Any party to an initial determination made by the Board may initiate an adjudicative proceeding under the Administrative Procedures Act and this rule by filing a request for Board action on a form, Request for Board Action, provided by the Board, or by submitting in writing the information required on the form.~~

B. Each Notice of Board Action and Request for Board Action filed is assigned a number consisting of the year in which the notice or request is filed and another number showing its numerical position among the hearings filed during the year.

R277-102-4. Designation of Adjudicative Proceedings as Formal or Informal.

All proceedings conducted before the Board are initially designated as informal. The presiding officer designated for the proceeding may convert an informal proceeding to a formal proceeding and vice versa under Section 63G-4-202(3).

R277-102-5. Procedures for Informal Adjudicative Proceedings.

A. The Board may hold a hearing if a request for a hearing is received by the Board within 20 business days of Board action.

B. The Board shall make appropriate arrangements for the hearing including:

- (1) determining the date of the hearing;
- (2) designating a Board member, USOE employee or another individual as a hearing officer;
- (3) designating the hearing location and other necessary information; or
- (4) establishing timelines consistent with Section 63G-4-301.

C. The Board may delegate the hearing arrangements and procedures to a hearing officer.

D. The Board may, on a case by case basis, determine if an informal hearing may be held electronically.

E. The Board shall maintain a record of all aspects of an informal adjudicative proceeding.

F. The Board shall issue a decision no later than 120 days from the receipt of the Request for Agency Action and following the conclusion of an informal proceeding.

R277-102-6. Procedures for Formal Adjudicative Proceedings.

A. The Board may designate an adjudicative proceeding as formal following a Request for Board Action.

B. If the Board designates a proceeding as formal, the Board may add any of the following procedures, as appropriate, to the hearing procedures designated in R277-102-5:

- (1) responsive pleadings;
- (2) discovery for parties;
- (3) the right to subpoena witnesses;
- (4) intervention by third parties;
- (5) an electronic recording of the complete proceeding; and
- (6) a written final decision consistent with Section 63G-4-208(1).

C. For both informal and formal adjudicative proceedings, the Board-designated presiding officer or hearing officer shall have considerable discretion in managing and making procedural and evidentiary decisions throughout the hearing process.

R277-102-7. Default.

A. A presiding officer or hearing officer designated for a formal or informal hearing may recommend a default to the Board

consistent with deadlines set by the presiding officer and the provisions of Section 63G-4-209.

B. A defaulted party may seek to have a default set aside consistent with Section 63G-4-209(3) and timelines set by the presiding officer.

R277-102-8. Recommendation to Board.

A. A written hearing report, including findings of fact and conclusions of law, and presiding officer decision shall be submitted to the Board as a recommendation.

B. The Board's final decision following acceptance of written findings is the final administrative decision on the issue, subject to a Request for Reconsideration under Section 63G-4-302.

KEY: administrative procedures, rules and procedures

Date of Enactment or Last Substantive Amendment: [1988]2012

Notice of Continuation: February 13, 2009

Authorizing, and Implemented or Interpreted Law: 63G-4-101 through 63G-4-302; 63G-4-405; 63G-4-503; 53A-1-401(3); Art X Sec 3

**Education, Administration
R277-425
Budgeting, Accounting, and Auditing for
Utah School Districts**

**NOTICE OF PROPOSED RULE
(Amendment)**

**DAR FILE NO.: 35535
FILED: 12/14/2011**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to update reference materials and current guidance to local education agencies (LEAs) throughout the state.

SUMMARY OF THE RULE OR CHANGE: The amendments include adding new definitions, adding and updating reporting standards, and renumbering as necessary.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-1-402(1)(e)(iv)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. This amendment updates reference materials for use by LEAs but does not have any costs associated with it.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The updated reference materials will assist LEAs in reporting but do not have any costs associated with them.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This rule and the amendments apply to public education and do not affect businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The amendments to this rule apply to LEAs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The updated reference materials will assist LEAs in reporting.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2012

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

R277. Education, Administration.

R277-425. Budgeting, Accounting, and Auditing for Utah [School Districts] Local Education Agencies (LEAs).

R277-425-1. Definitions.

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

B. "Modified accrual basis of accounting" means a method under which expenditures other than accrued interest on general long-term debt are recorded at the time liabilities are incurred and revenues are recorded when they become measurable and available to finance expenditures of the current period.

C. "GAAP" means Generally Accepted Accounting Principles, as defined in the ["Codification of Governmental Accounting and Financial Reporting Standards,"] as published by the Governmental Accounting Standards Board.

D. "GAAS" means auditing standards established by the American Institute of Certified Public Accountants, generally referred to as Generally Accepted Auditing Standards.

E. "LEA" means local education agency which includes school districts and charter schools.

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

R277-425-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53A-1-402(1)(~~(f)~~)(e)(iv) which allows the Board to adopt rules regarding financial, statistical, and student accounting requirements, Section 53A-1-404 which allows the Board to approve auditing standards for school boards, Section 53A-1-405 which requires the Board to verify accounting procedures of school boards for the purpose of determining the allocation of Uniform School Funds, 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 uniform budgeting, accounting, and auditing procedures for ~~[school districts]~~ LEAs consistent with Generally Accepted Accounting Principles (GAAP) and Generally Accepted Auditing Standards (GAAS).

R277-425-3. [Procedures] Reporting Standards.

A. Each LEA's financial reporting shall be in accordance with GAAP which include GAAS.

B. Each LEA's financial reporting shall be provided in the modified accrual basis of accounting in accordance with GAAP.

C. [School districts] LEAs shall [aet] provide data and information consistent with [the Annual] School Finance [and Statistics Workshop Book] budgeting, accounting and auditing standards for Utah [School Districts, published by] LEAs provided online by the Utah State [Board] Office of Education, [April, 1979] October, 2011 and reviewed annually. The [Workshop Book] USOE School Finance website contains applicable Utah statutes, applicable Board rules, and uniform rules for:

- [A-](1) budgeting;
- [B-](2) financial accounting;
- [C-](3) student membership and attendance accounting;
- [D-](4) indirect costs and proration;
- [E-](5) financial audits;
- [F-](6) statistical audits; and
- [G-](7) compliance and performance audits.

[R277-425-4. Amendments.

The budgeting, accounting, and auditing standards for Utah school districts are amended as follows:

A. Each school district's financial reporting shall be in accordance with Generally Accepted Accounting Principles, (GAAP), which include Generally Accepted Governmental Auditing Standards.]

[B]D. Section 53A-19-103 allows [school districts] LEAs to have an undistributed reserve not to exceed five percent of the [district maintenance and operation-] LEA general fund budgeted expenditures. The purpose of the reserve is to meet unexpected and unspecified contingencies.

KEY: education finance

Date of Enactment or Last Substantive Amendment: [April 15, 1996] 2012

Notice of Continuation: February 13, 2009

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(f)(e); 53A-1-404; 53A-1-405; 53A-1-401(3)

Education, Administration
R277-426
Definition of Private and Non-Profit
Schools for Federal Program Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35536

FILED: 12/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to update terminology and remove required student count provisions that are contrary to the Individual with Disabilities Education Act (IDEA).

SUMMARY OF THE RULE OR CHANGE: The amendments provide updated terminology and language to make the rule consistent with the IDEA.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The amendments update terminology and language to make the rule consistent with the IDEA and do not result in a cost or savings.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The amendments update terminology and language to make the rule consistent with the IDEA and do not result in a cost or savings.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This rule and the changes apply to public education and do not affect businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The amendments update terminology and language to make the rule consistent with the IDEA and do not result in a cost or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. This change updates terminology and language to make the rule consistent with the IDEA and does not result in compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:

I have reviewed this rule and I see no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2012

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

R277. Education, Administration.

R277-426. Definition of Private and Non-Profit Schools for Federal Program Services.

R277-426-1. Definitions.

"Board" means the Utah State Board of Education.

R277-426-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board, Section 53A-1-402(3)[~~U.C.A. 1953,~~] which allows the Board to administer federal funds and to distribute them to eligible applicants, and Section 53A-1-401(3)[~~U.C.A. 1953,~~] which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to define requirements that private, non-public, and non-profit schools must meet to receive services under federal laws requiring the public education system to serve students in these schools.

R277-426-3. Qualifications.

For the purposes of receiving services under federal programs which permit such:

- A. "Private or non-public school" means a school which:
- (1) is owned and operated by an individual, a religious institution, a partnership, or a corporation other than the State, a subdivision of the State, or by the Federal government;
 - (2) is supported primarily by other than public funds;
 - (3) vests the operation and determination of its program with other than publicly-elected or appointed officials;
 - (4) teaches the required subjects on each grade level as designated by the Board for the same length of time as students must be taught in the public schools;
 - (5) is properly licensed if so required by the appropriate governmental jurisdiction;

(6) complies with any state and local ordinances and codes pertaining to the operation of that type facility or institution; and

~~[(7) has enrolled in the school no fewer than ten students eligible for participation in the federal program.~~

~~](7) is not a charter school.~~

B. "Non-profit school" means a school which:

(1) is not a part of the public school system;

(2) is operated with no intention of making a profit;

(3) does not exist to provide educational services to students enrolled in for profit residential programs;

([3]4) possesses a State of Utah Tax Exemption number and a United States Internal Revenue Service [Tax Exemption number]Employer Identification Number (EIN) and a favorable Exempt Organization Determination Letter;

([4]5) teaches the required subjects on each grade level as designated by the Board for the same length of time as students must be taught in the public schools;

([5]6) is properly licensed if so required by the appropriate governmental jurisdiction; and

([6]7) complies with any state and local ordinances and codes pertaining to the operation of that type facility or institution[; and

~~_____ (7) has enrolled in the school no fewer than ten students eligible for participation in the federal program].~~

KEY: education finance, private schools

Date of Enactment or Last Substantive Amendment:
~~[1987]2012~~

Notice of Continuation: October 5, 2007

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

Education, Administration **R277-703** Centennial Scholarship for Early Graduation

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35537

FILED: 12/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to update terminology.

SUMMARY OF THE RULE OR CHANGE: The rule is updated throughout to include charter school-related language.

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The amendments to this rule update terminology and do not result in any costs or savings.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The amendments to this rule update terminology and do not result in any costs or savings.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This rule and the amendments apply to public education and do not affect businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The amendments to this rule provide updated terminology and do not result in any costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The amendments to this rule update terminology and do not involve any compliance issues.

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

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

EDUCATION

ADMINISTRATION

250 E 500 S

SALT LAKE CITY, UT 84111-3272

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2012

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

R277. Education, Administration.

R277-703. Centennial Scholarship for Early Graduation.

R277-703-1. Definitions.

A. "ATC" means Applied Technology Center.

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

[D]C. "Centennial Scholarship" means the amount awarded to an early graduating student designated in Section 53A-15-102.

[E]D. "SEOP" means student education/occupational plan.

R277-703-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, Section 53A-1-402(1) which authorizes the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements, Section 53A-15-101(5) and (6) which direct the Board to provide an early graduation option to students and to develop, implement and evaluate the early graduation program, and Section 53A-1-401(3) which authorizes the Board to adopt rules in accordance with its responsibilities.

B. This rule designates the Early Graduation Centennial Scholarship Certificate for use by public schools, allows for graduation to be flexible and appropriate to meet individual students' needs, and outlines the early graduation procedure. If a student graduates any time following the eleventh grade year and enters a Utah post-secondary institution, the school district/charter school shall receive a reimbursement designated for the public high school from which the student graduated early. The post-secondary institution shall receive an Early Graduation Centennial Scholarship Certificate signed by the high school principal/director entitling the early graduate to a partial tuition scholarship following the date of graduation according to the schedule established by this rule.

R277-703-3. Curriculum Options for Accelerating a Secondary School Student's Education Program.

A. A student shall complete the courses of study and credit mandated by the Board and by the local board of education/local charter board.

B. Options for earning additional credit may include but are not limited to:

(1) Courses:

(a) High school summer school;

(b) High school or ATC early morning or after school classes;

(c) Courses completed at the student's own rate based on performance (the local board of education/local charter board is responsible for assessment of mastery, R277-700-6);

(d) College courses numbered 101 and above from fully accredited institutions (concurrent enrollment, extension division, or continuing education classes);

(e) ~~Local~~ School district/charter school approved high school or college level correspondence courses;

(f) Equivalency ratio of higher education hours to high school credits: five (5) quarter or three (3) semester hours equal one (1) unit of high school credit.

(2) Demonstrated proficiency by assessment (amount of credit to be determined by the local board of education/local charter board, R277-700-6):

(a) Advanced Placement Examination as approved by the local board of education/local charter board;

(b) ACT or SAT scores that meet or exceed a level set by the local board of education/local charter board;

(c) Utah state or school district/charter school secondary end-of-course tests;

(d) Demonstrated proficiency in a subject, as assessed by the local board of education/local charter board;

(e) College Level Examination Program (CLEP) tests.

(3) Approved work experience, as assessed by the local board of education/local charter board.

(4) Demonstrated mastery in an experimental program that has received prior approval from the Board (local board of education/local charter board seeks approval from the Board);

(5) Increased credit for courses that are combined into a time frame that ordinarily accommodates a lesser number of classes, as approved by the local board of education/local charter board;

(6) Independent study: a student may be allowed credit for an independent research project or independent reading relevant to a course of study;

(7) Credit for experience gained during travel relevant to a specific course. Prior approval shall be obtained from and credit awarded by the local board of education/local charter board.

R277-703-4. Early Graduation Student Education Plan.

A. In consultation with the student's parent or guardian and school advisor, each student shall indicate to the secondary principal/director the intent to complete early graduation at the beginning of the ninth grade year or as soon thereafter as the intent is known.

B. To be eligible for early graduation, a student shall have a current SEOP on file at the student's high school under provisions of R277-700-8.

R277-703-5. Local Education Requirements.

A. Requirements relating to semesters in membership are inapplicable to students who have been approved under Section R277-703-4 for graduation following the eleventh grade year.

B. Local academic and citizenship credit requirements for graduation which exceed Board requirements shall include provisions that permit students to graduate early.

R277-703-6. Funding Provisions.

A. A school district/charter school shall receive a payment designated for each high school from which students graduated before the end of the twelfth grade year.

B. Payment provisions:

(1) School ~~[D]~~districts/charter schools shall receive payment for one-half of the designated Centennial Scholarship amount for each student reported as having graduated at the conclusion of the eleventh grade year on the S-3 report in the fiscal year following the student's graduation.

(2) School ~~[D]~~districts/charter schools shall receive payment based on a percentage of the Centennial Scholarship amount for each student reported as graduating during the twelfth grade year. These students shall also be listed on the S-3 report and payment shall be made to the school district designated for the schools/charter school in the fiscal year following the students' graduation. School ~~[D]~~districts/charter schools shall receive payment for schools operating on the quarter or trimester system for each early graduating student according to the following schedule:

(a) End of first quarter of 12th grade year: 75 percent of one-half of the Centennial Scholarship amount;

(b) End of second quarter of 12th grade year: 50 percent of one-half of the Centennial Scholarship amount;

(c) End of third quarter of 12th grade year: 25 percent of one-half of the Centennial Scholarship amount;

(d) End of first trimester of 12th grade year: 67 percent of one-half of the Centennial Scholarship amount;

(e) End of second trimester of 12th grade year: 33 percent of one-half of the Centennial Scholarship amount.

C. A student who graduates from high school at the conclusion of the eleventh grade year or during the twelfth grade year shall be entitled to a partial tuition scholarship in the form of the Early Graduation Centennial Scholarship Certificate to be used at a Utah public college, university, community college, applied technology center, or any other institution in Utah accredited by the Northwest Accreditation Commission that offers post-secondary courses. The post-secondary institution shall complete the Early Graduation Centennial Scholarship Certificate and submit it to the Utah State Office of Education. Upon receipt of the Early Graduation Centennial Scholarship Certificate, the Utah State Office of Education shall verify the information, and reimburse the institution an amount set forth in the following schedule in the fiscal year during which the student enrolls in a post-secondary institution. To be eligible for the scholarship, the student must enroll in an eligible post-secondary institution within one calendar year of graduation.

(1) The student who graduates at the end of the eleventh grade year shall receive a full Centennial Scholarship.

(2) The student who graduates at the end of the first quarter of the twelfth grade year shall receive 75 percent of the Centennial Scholarship amount.

(3) The student who graduates at the end of the second quarter of the twelfth grade year shall receive 50 percent of the Centennial Scholarship amount.

(4) The student who graduates at the end of the third quarter of the twelfth grade year shall receive 25 percent of the Centennial Scholarship amount.

(5) The student who graduates at the end of the first trimester of the twelfth grade year shall receive 67 percent of the Centennial Scholarship amount.

(6) The student who graduates at the end of the second trimester of the twelfth grade year shall receive 33 percent of the Centennial Scholarship amount.

KEY: graduation requirements, curricula

Date of Enactment or Last Substantive Amendment: ~~1994~~2012

Notice of Continuation: September 6, 2007

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1); 53A-1-401(3); 53A-15-101(5) and (6)

Education, Administration
R277-730
Alternative High School Curriculum

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 35538

FILED: 12/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is repealed because the standards and procedures in this rule are outdated and are no longer applicable.

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

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The standards and procedures in this rule are no longer applicable so there is no cost associated with repealing the rule.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The standards and procedures in this rule are no longer applicable so there is no cost associated with repealing the rule.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This rule applies to public education and does not affect businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The standards and procedures in this rule are no longer applicable so there is no cost associated with repealing the rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The standards and procedures in this rule are no longer applicable so there is no compliance cost associated with repealing the rule.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2012

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

R277. Education, Administration.**[R277-730. Alternative High School Curriculum.****R277-730-1. Definitions.**

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

~~_____~~ B. "Alternative high school" means a non-standard high school, other than a home school, for students with special needs, interests, or learning styles, which meets all of the following criteria:

~~_____~~ (1) the local school has been officially designated as a high school by the local board of education;

~~_____~~ (2) a principal or coordinator and staff are assigned to the school;

~~_____~~ (3) extra costs are associated with the school such as counseling staff, library, and other supporting costs;

~~_____~~ (4) students have access to an approved vocational education program;

~~_____~~ (5) the school is primarily for youth in continuous education who have not graduated from high school but are working toward graduation. Its programs qualify students as candidates for graduation.

~~_____~~ C. "Home study/drop-in program" means an education program in which a student independently completes assignments away from the school and comes to the school on a periodic basis to submit or discuss the assignments with a designated counselor or instructor.

R277-730-2. Authority and Purpose.

~~_____~~ A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1) which directs the Board to adopt minimum standards for public schools, 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 curriculum standards for alternative high schools.

R277-730-3. Curriculum and Graduation Requirements.

~~_____~~ A. An alternative high school must provide instruction in the subjects which are required for student graduation.

~~_____~~ B. A student education plan shall be developed, and reviewed at least annually, by each alternative high school student, the student's parent, and designated school personnel. The plan shall be guided by the general program of studies, graduation requirements, and individual student interests and goals. The plan

~~_____~~ shall identify an area of concentration in a cluster related to the student's post-secondary goal.

~~_____~~ C.(1) Candidates for graduation must demonstrate mastery of the general core subjects and be formally assessed on mastery of the core courses during or at the conclusion of grades 10 and 12.

~~_____~~ (2) If a student has a condition which precludes the successful demonstration of mastery, the student education plan team may modify the competency demonstration to accommodate the condition.

R277-730-4. Awarding Credit.

~~_____~~ A. Units of credit in alternative high schools are awarded on the same basis as in regular high schools. Credit shall be awarded only once for a specific required course with the same content during the secondary school experience.

~~_____~~ B. Credit may be earned by any of the following methods:

~~_____~~ (1) satisfactory completion of a course that meets state course standards;

~~_____~~ (2) demonstrated proficiency via preassessment;

~~_____~~ (3) demonstrated mastery in approved courses completed outside of the school day or year;

~~_____~~ (4) concurrent enrollment in approved post-secondary institutions;

~~_____~~ (5) demonstrated mastery in approved correspondence or extension courses; and

~~_____~~ (6) upon application, demonstrated mastery in special experimental programs.

~~_____~~ C. Assessment of mastery is the responsibility of local boards of education.

~~_____~~ D. A maximum of three units of home study/drop-in credit may be transferred to qualify for high school graduation. A minimum of nine hours of student/teacher interaction is required for each quarter unit of credit awarded for a home study/drop-in program.

~~_____~~ E. Make-up credit offered through an alternative high school program must be approved by the high school from which the student intends to graduate. The course work prescribed must be on the same academic level as that in which the student is deficient. For example, general math credit will not substitute for algebra or geometry credit.

R277-730-5. Operation Procedures Related to Curriculum.

~~_____~~ A. Home study/drop-in programs in alternative high schools must be approved by the Board or by the respective board of education if the school is operated by a district.

~~_____~~ B. Alternative high school teachers must hold a Basic or Standard Teaching Certificate endorsed in one or more subjects required in the core curriculum approved by the Board. In addition, they must have completed not fewer than nine quarter hours of state approved college or in-service course work in each of the subject areas to which they are assigned.

~~_____~~ C. Curriculum and teaching strategies shall be designed to meet the individual needs of the student. A written course description shall be available for all classes taught.

~~_____~~ D. Students shall have access to a media center containing books, film strips, videos, tapes, and equipment.

~~E. The alternative high school must have an outreach program in place to contact enrolled students who are not attending the school.~~

~~KEY: alternative school, education~~

~~Date of Enactment or Last Substantive Amendment: 1987~~

~~Notice of Continuation: January 8, 2008~~

~~Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1); 53A-1-401(3)]~~

Education, Administration
R277-751
 Special Education Extended School
 Year

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35539

FILED: 12/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide updated definitions, define extended school year (ESY) eligibility and programs in alignment with the Individuals with Disabilities Education Act (IDEA) and the Utah State Board of Education Special Education Rules, and remove outdated requirements.

SUMMARY OF THE RULE OR CHANGE: The amendments provide new and revised definitions, new and revised language for determining eligibility, new and revised language for ESY program standards, and new and revised language for responsibilities.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The amendments to this rule provide updated language to make the rule consistent with IDEA and special education rules which do not result in a cost or savings.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The amendments to this rule provide updated language to make the rule consistent with IDEA and special education rules which do not result in a cost or savings.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This rule and the amendments apply to public education and do not affect businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other

than small businesses, businesses, or local government entities. The amendments to this rule provide updated language to make the rule consistent with IDEA and special education rules which do not result in a cost or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The amendments to this rule provide updated language to make the rule consistent with IDEA and special education rules which do not involve any compliance issues.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2012

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

R277. Education, Administration.

R277-751. Special Education Extended School Year (ESY).

R277-751-1. Definitions.

[G]A. "Board" means the Utah State Board of Education.
~~[] B. "Academic year" means the period of a year, which may not be less than the period required by state statute, during which the regular day school is maintained.~~

[] B. "ESY" means extended school year.

[F]C. "ESY program" means the individualized education[an] program provided by the school to a student with a disability during the ~~[extended school year]~~ESY.

[A]D. "ESY services" means ~~[extended school year services]~~special education and related services ~~[which]that~~ are provided to ~~[eligible]~~a student[s] with a disability ~~[during the period of time between the close of one academic year and the beginning of the succeeding academic year]~~beyond the normal school year of the LEA, in accordance with the student's IEP, at no cost to the student's parents, and meet the standards of the USOE.

E. "FAPE" means a free appropriate public education which includes special education and related services that are provided at public expense, under public supervision and direction,

and without charge; meet the standards of the USOE and Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401(3), include preschool, elementary school and secondary school education in Utah; and are provided in conformity with an IEP that meets the requirements of Part B of the IDEA and Utah State Board of Education Special Education Rules.

F. "IEP" means a written statement of an individualized education program by an IEP team and developed, reviewed, and revised in accordance with Utah State Board of Education Special Education Rules and the Part B of the IDEA.

G. "IEP team" means a group of individuals that is responsible for developing, reviewing, and revising an IEP for a student with a disability.

H. "LEA" means a local education agency which includes school boards/public school districts, charter schools, and, for the purposes of this rule, the Utah Schools for the Deaf and the Blind.

I. "Procedural Safeguards" means the procedural rights designed to protect the rights of students with disabilities and their parents. Requirements are defined in IDEA and Utah State Board of Education Special Education Rules, and include the parent's right to participate in meetings, review educational records, request an independent educational evaluation, receive written prior notice of actions proposed or refused by the LEA, and consent to evaluations and special education services. Procedural Safeguards also describe dispute resolution options.

[C]J. "Regression" means reversion to a lower level of functioning, evidenced by a decrease in the level of basic behavioral or academic patterns, or both, or skills, which occurs as a result of an interruption in educational programming. These behaviors or skills are specified on a student's current IEP.

[D]K. "Recoupment" means recovery of basic behavioral or academic patterns, or both, or skills, specified on the IEP, to a level demonstrated prior to the interruption of educational programming.

L. "Student with a disability" means a student who meets eligibility criteria for special education and related services, as defined in the Utah State Board of Education Special Education Rules.

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

[E]N. "Self-sufficiency" means specific skills and behaviors which a student must master to achieve an appropriate level of functioning in view of the student's disability. Each instructional area in the IEP is analyzed to determine its relationship to self-sufficiency in view of the student's needs. The IEP team determines what is an appropriate level of functioning.

[F]O. "Multidisciplinary team" means an evaluation team, each member of which is qualified in a specialty area related to student evaluation, which includes members from a variety of disciplines. The team must include at least one teacher, or other professional, knowledgeable in the area of the student's disability.

[G]P. "MD" means multi-disabilities: concomitant impairments of two or more disabilities, each one of which prevents or interferes with normal functioning to the extent that special education intervention is needed.

R277-751-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(c) which directs the

Board to adopt rules regarding services to students with disabilities 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 standards for the special education [~~extended school year~~]ESY.

R277-751-3. Determining Eligibility.

A. Students eligible for ESY services are:

(1) [~~those classified with MD~~]students who have been determined as eligible under Utah State Board of Education Special Education Rules and Part B of the IDEA; and

(2) [~~those classified as students with severe disabilities under Section 53A-17a-112(3)~~]students whose IEP team has determined, based upon a review of multiple data sources and factors, on an individual basis, an ESY is required to receive FAPE[?].

[~~_____~~](3) those requiring an extended school year to remain in their current least restrictive environment placement;

[~~_____~~](4) those for whom attainment of their expected level of self-sufficiency and independence is unlikely, in view of their disabilities, without ESY services.

B. The multidisciplinary team must document that a delay or break in the provision of special education and related services would result in an education program of little benefit to the student. Despite the lack of definitive documentation, a student with severe disabilities may not be denied ESY services if the IEP team determines the need for such services.

] B. The student's IEP shall reflect the IEP team's decision regarding need for ESY services.

(1) Parents shall be provided with written prior notice of proposal or refusal to provide ESY services.

(2) If determined as eligible for ESY services, the IEP team shall determine the appropriate ESY program, based on the student's individual needs.

(3) ESY eligibility decisions and written prior notice of ESY programs shall be provided to parents in sufficient time to permit accessing dispute resolution options of the Procedural Safeguards, in the event of a dispute.

[~~_____~~C. The multidisciplinary team shall meet to determine recommendations for eligibility for ESY services.

[~~_____~~](1) if a student is recommended as eligible, the multidisciplinary team takes necessary steps to convene the IEP team to develop the student's ESY program. If the need is documented, the ESY program may be written into the student's regular IEP;

[~~_____~~](2) if a student is recommended as ineligible, the multidisciplinary team notifies the student's parents in writing of the decision;

[~~_____~~](3) both the written recommendation of ineligibility and the scheduling of the IEP must be accomplished in sufficient time to permit any party to exhaust administrative remedies prior to the beginning of the ESY program. Parents shall be informed of their rights and of procedures through which they may challenge the decision of the multidisciplinary or the IEP team.

R277-751-4. ESY Program Standards.

A. The primary goal[s] for a[H] student[s] requiring ESY services [are]is to [become as functionally independent as possible within the limits of their disabilities and to be maintained in the

least restrictive environment appropriate to their needs. A program of special education and related services designed to maintain, in the appropriate least restrictive environment, the current level of the student's academic and functional skills and behavior in areas identified as crucial in reaching self-sufficiency shall be developed by the student's IEP team in order to provide FAPE.

A. The type and length of the program which a student requires is determined on an individual basis.

B. New goals and objectives may not be added to a student's IEP for implementation in the ESY program. Programs shall consist of activities developed to maintain self-sufficiency skills identified on the IEP developed for the academic year.

C. Related services shall be provided when required for the student's skills to be maintained.

D. The least restrictive environment available during summer programming must be considered for ESY programs.

B. LEAs may not:

(1) limit ESY to particular categories of disabilities or particular ages or grade levels of students.

(2) unilaterally limit the type, amount, or duration of ESY services provided for students.

(3) limit data consideration by IEP teams to only an analysis of regression and recoupment.

C. LEAs shall ensure that:

(1) ESY student programs are provided in the least restrictive environment.

(2) ESY teachers and paraprofessionals meet IDEA's highly qualified requirements.

R277-751-5. Division of Responsibilities.

A. The duties of the Utah State Office of Education shall include:

(1) monitoring ESY compliance through:

(a) ~~district~~ LEA program administrative reviews, such as Utah Program Improvement Planning System (UPIPS) monitoring;

(b) making on-site reviews of LEA plans and district special education policies and procedures;

(c) providing technical assistance; and

(d) requiring student attendance and membership accountability.

(2) providing technical assistance to ~~districts~~ LEAs;

(3) collecting data on:

(a) the number, disabilities, and levels of students served;

(b) the types of program delivery models used;

(c) costs of the ESY program in LEAs;

(d) program effectiveness.

(4) developing guidelines for LEAs.

B. The duties of ~~local school districts~~ LEAs shall include:

(1) establishing ~~district~~ LEA procedures which are in accordance with Board rules;

(2) providing ~~in-service workshops~~ professional development and on-site visits to assure that Board and ~~district~~ LEA procedures are appropriately understood and implemented;

(3) establishing timelines to accomplish the purposes of this rule;

(4) analyzing ~~district-wide~~ LEA needs, reported by professionals, for ESY services for individual, eligible students;

(5) determining ~~district~~ LEA ESY program parameters based upon data received from educators on individual, eligible students. The parameters shall include the personnel required to provide special education and related services, location of services, and budget specifications;

(6) ensuring parents and professionals have received information about ~~due process and grievance~~ dispute resolution procedures for the appeal of ~~ESY~~ eligibility ~~determinations~~ decisions and ESY program parameters;

(7) implementing processes to collect program effectiveness data.

C. The duties of LEA representatives shall include:

(1) establishing multidisciplinary team timelines and programming level procedures in accordance with Board and district rules and policies:

(a) setting collection timelines for gathering regression and recoupment data;

(b) identifying students who are potentially eligible for ESY services;

(c) scheduling multidisciplinary team meetings required to summarize data and make recommendations regarding eligibility;

(d) scheduling IEP team meetings to determine eligibility for ESY services and to develop appropriate ESY programs.

(2) transmitting relevant information to the district.

D. The duties of multidisciplinary teams shall include:

(1) reviewing current IEPs for students identified as potentially eligible for ESY services. The team shall identify goals and objectives that are related to areas of self-sufficiency such as:

(a) areas essential for minimal independence:

(i) muscular control;

(ii) toileting;

(iii) feeding and eating;

(iv) dressing;

(b) physical mobility;

(c) areas necessary for community living:

(i) personal hygiene;

(ii) impulse control;

(iii) basic communication;

(iv) stable relationships as shown by interaction with peers and adults.

(2) reviewing data and input collected from educators, other professionals, and parents;

(3) recommending from existing information student eligibility for ESY services;

(4) setting dates for eligible students' IEP team meetings;

(5) notifying, in writing, the parents of ineligible students of the recommendation of ineligibility, informing them of their rights, and informing them of procedures through which the recommendation may be challenged. The written notice must be sent in accordance with district timelines;

(6) reviewing data collection procedures.

E. The duties of educators shall include:

(1) identifying students potentially eligible for ESY services and verifying the list of students identified as potentially eligible for ESY services;

(2) identifying IEP goals and objectives related to an area of self-sufficiency which is required to maintain current placement. This may be done at the time the IEP is developed for the academic year;

~~(3) indicating known or reported conditions or behaviors that may be exhibited in the educational environment or elsewhere, that, if not provided for in an appropriate educational environment or pro-active educational program, may cause regression. The regression, which must threaten the physical well-being of the student or others or must damage property, must jeopardize the least restrictive environment placement;~~

~~(4) establishing and implementing on-going data collection processes for continuous monitoring of student progress, including data to provide information about the following:~~

~~(a) how often a review of previously introduced material is required;~~

~~(b) whether the student demonstrates inconsistency in the mastery retention of skills;~~

~~(c) critical stages reached by the student in mastery of skills related to areas of self-sufficiency;~~

~~(d) whether the student requires a more intense rate of instruction than similar students with a similar disabilities in order for progress to take place;~~

~~(e) regression and recoupment periods for a student based on a consensus of input from parents, advocates, and professionals:~~

~~(i)(AA) a reasonable recoupment period for a break planned by the educational agency of eight to twelve weeks is 20 instructional days, of three to four weeks is five to seven instructional days, or two weeks is three instructional days;~~

~~(BB) exceptions to the number of days constituting a reasonable recoupment period may be granted on a case-by-case basis by the IEP team, consistent with the individualized needs of the student.~~

~~(ii) sources of data for documenting regression and recoupment periods may include:~~

~~(AA) achievement of goals on successive IEPs;~~

~~(BB) progress reports maintained by educators, therapists, and others having direct contact with the student before and after interruptions in the education program;~~

~~(CC) reports by parents of negative changes in adaptive behaviors over break periods;~~

~~(DD) medical and other agency reports indicating degenerative-type difficulties which become exacerbated during breaks in educational programming;~~

~~(EE) observations of educators and others;~~

~~(iii) techniques to collect data for documentation may include:~~

~~(AA) daily monitoring;~~

~~(BB) behavior checklists, student self-assessments, parent assessments, and professional assessments;~~

~~(CC) documented observation of the student;~~

~~(DD) specific professional assignment evaluations;~~

~~(f) the role of a student's parent or guardian in at-home follow-up of education programs which are related to areas of self-sufficiency, including the following:~~

~~(i) the complexity of the program to be carried out at home;~~

~~(ii) the level of expertise required to maintain skills at home;~~

~~(iii) the amount of time required;~~

~~(5) retrieving, at specified intervals, data related to acquired skills and regression and recoupment;~~

~~(6) evaluating data in multidisciplinary team conferences;~~

~~(7) reviewing and summarizing, with the multidisciplinary team, data results in a format required by the district;~~

~~(8) meeting with the IEP team to review regression and recoupment of skills in areas of self-sufficiency.~~

~~F. The duties of the IEP team shall include:~~

~~(1) reviewing data and documentation related to extended school-year eligibility;~~

~~(2) reviewing the recommendations of the multidisciplinary team and determining eligibility;~~

~~(3) developing an extended school-year program for eligible students.~~

~~G. The duties of a parent of a student approved for the ESY services shall include:~~

~~(1) meeting with the members of the student's IEP team to formulate the IEP and identify goals and objectives related to areas of self-sufficiency;~~

~~(2) completing parent questionnaires as appropriate;~~

~~(3) following through with the educational program, as agreed to, at home in concert with school team efforts.~~

~~KEY: exceptional children, extended school year~~

~~Date of Enactment or Last Substantive Amendment: [1987]2012~~

~~Notice of Continuation: March 3, 2008~~

~~Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(c); 53A-1-401(3); 53A-17a-112(3)~~

Environmental Quality, Air Quality R307-220-3 Section II, Hospital, Medical, Infectious Waste Incinerators

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 35531

FILED: 12/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: On 09/15/2009, the EPA issued final revisions to the September 1997 new source performance standards (NSPS) and emission guidelines to control emissions from existing hospital, medical, and infectious waste incinerators (HMIWI). EPA also recalculated the Maximum Achievable Control Technology (MACT) floors for existing and new HMIWI and developed new emission limits. Utah's Designated Facilities Plan for HMIWI has been amended to incorporate the changes to the federal rule. This proposed change incorporates Section II of Utah's Designated Facilities Plan into the state rules.

SUMMARY OF THE RULE OR CHANGE: Section II of Utah's Designated Facilities Plan is being amended to incorporate amendments to 40 CFR Part 60, Subpart Ce.

Currently, Section R307-220-3 incorporates the 11/12/1998 version of Section II of the Designated Facilities Plan. The proposed amendment to this rule incorporates the Designated Facilities Plan that will be effective as of 03/07/2012.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(3)(q)

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Utah Plan for Designated Facilities: Section II, Hospital, Medical, Infectious Waste Incinerator, published by Utah Division of Air Quality, March 7, 2012

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Because there is only one source in Utah subject to Section II of the Designated Facilities Plan being incorporated into this rule, there are no anticipated savings or costs to the state budget.
- ◆ **LOCAL GOVERNMENTS:** The single source in Utah that is subject to this rule is state permitted, and the rule does not affect local government; therefore, there is no anticipated costs or savings to local governments.
- ◆ **SMALL BUSINESSES:** The one source in Utah subject to Section II of the Designated Facilities Plan, which is being incorporated into this rule, is not a small business; therefore, there are no anticipated costs or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is only one source in Utah subject to Section II of the Designated Facilities Plan, which is incorporated into this rule. Therefore, there are no anticipated costs or savings to persons other than small business, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Rule R307-222, required by 40 CFR Part 60, Subpart Ce and Section II of the Designated Facilities Plan, regulates emissions from existing incinerators for hospital, medial, or infectious waste or any combination of them. Rule R307-222 will increase the stack testing requirements for the one existing source in Utah. The source will now be required to conduct annual stack tests for nine pollutants. The exact cost to conduct these stack tests is unknown. The source may also need to install new control equipment, which, depending on the equipment needed to meet the new standards, could range in price from between \$50,000 to \$1,000,000.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rule R307-222, required by 40 CFR Part 60, Subpart Ce and Section II of the Designated Facilities Plan, regulates emissions from existing incinerators for hospital, medial, or infectious waste or any combination of them. Rule R307-222 will increase the stack testing requirements for the one existing source in Utah. The source will now be required to conduct annual stack tests for nine pollutants. The exact cost

to conduct these stack tests is unknown. The source may also need to install new control equipment, which, depending on the equipment needed to meet the new standards, could range in price from between \$50,000 to \$1,000,000.

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

ENVIRONMENTAL QUALITY
AIR QUALITY
FOURTH FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/10/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 02/07/2012 01:30 PM, Multi Agency State Office Building, 195 N 1950 W, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 03/07/2012

AUTHORIZED BY: Bryce Bird, Director

**R307. Environmental Quality, Air Quality.
R307-220. Emission Standards: Plan for Designated Facilities.
R307-220-3. Section II, Hospital, Medical, Infectious Waste Incinerators.**

Section II, Hospital, Medical, Infectious Waste Incinerators, as most recently adopted by the Air Quality Board on [~~November 12, 1998~~] March 7, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, landfills, incinerators, electric generating units

Date of Enactment or Last Substantive Amendment: [~~May 9, 2007~~] March 7, 2012

Notice of Continuation: February 8, 2008

Authorizing, and Implemented or Interpreted Law: 19-2-104(3)(q)

Environmental Quality, Air Quality
R307-222
Emission Standards: Existing
Incinerators for Hospital, Medical,
Infectious Waste

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35530

FILED: 12/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: On 09/15/2009, the Environmental Protection Agency issued final revisions to the September 1997 new source performance standards (NSPS) and emission guidelines to control emissions from existing hospital, medical, and infectious waste incinerators (HMIWI). EPA also recalculated the Maximum Achievable Control Technology (MACT) floors for existing and new HMIWI and developed new emission limits. This proposed rule incorporates the new emission guidelines as established in 40 CFR Part 60, Subpart Ce.

SUMMARY OF THE RULE OR CHANGE: Language was added to define to whom the rule applies, i.e., each incinerator for hospital, medical, or infectious waste or any combination of them for which construction commenced on or before 06/20/1996; for which modification was commenced on or before 03/16/1998; for which construction was commenced after 06/20/1996 but no later than 12/01/2008; or for which modification was commenced after 03/16/1998 but no later than 04/06/2010. In Utah, this new federal rule only applies to one source. EPA also changed emission limits to large, medium and small incinerators found in Table 2A and Table 2B in 40 CFR Part 60, Subpart Ce. References to these tables are added in the rule. The source to whom this rule applies is already subject to the federal requirement. Adopting the federal requirement into the state rule gives Utah primacy for this program.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 40 CFR 60, published by National Archives and Records Administration's Office of the Federal Register, July 1, 2011

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** As there is only one source in Utah subject to this rule, there are no anticipated savings or costs to the state budget.
- ◆ **LOCAL GOVERNMENTS:** The sources that fall under this rule are state permitted, and the rule does not affect local government; therefore, there is no anticipated cost or savings to local governments.
- ◆ **SMALL BUSINESSES:** The one source in Utah subject to this rule is not a small business; therefore, there are no anticipated costs or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule regulates emissions from existing incinerators for hospital, medical, or infectious waste or any combination of

them. Therefore, there are no anticipated costs or savings to persons other than small business, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule will increase the stack testing requirements for existing sources. Sources will now be required to conduct annual stack tests for nine pollutants. The exact cost to conduct these stack tests is unknown. Sources may also need to install new control equipment, which, depending on the equipment needed to meet the new standards, could range in price from between \$50,000 to \$1,000,000.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will increase the stack testing requirements for existing sources. Sources will now be required to conduct annual stack tests for nine pollutants. The exact cost to conduct these stack tests is unknown. Sources may also need to install new control equipment, which, depending on the equipment needed to meet the new standards, could range in price from between \$50,000 to \$1,000,000.

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

ENVIRONMENTAL QUALITY
AIR QUALITY
FOURTH FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2012

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.

R307-222. Emission Standards: Existing Incinerators for Hospital, Medical, Infectious Waste.

R307-222-1. Purpose and Applicability.

(1) R307-222 regulates emissions from existing incinerators for hospital, medical, or infectious waste or any combination of them. The purpose of R307-222 is to reduce the emissions of particulate matter, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans from incinerators burning hospital, medical or infectious waste. Reductions are required by 42 U.S.C. 7411(d) and 7429 and 40 CFR Part 60, [s]Subpart Ce, published at 62 FR 48348, September 15, 1997, 40 CFR Part 60, Subpart Ce as amended on October 6, 2009, and by the Plan for Incinerators for

Hospital, Medical, and Infectious Waste which is incorporated by reference at R307-220-3.

(2) Except as set forth in R307-222(2)(a) through R307-222(2)(g) R307-222 applies to each incinerator for hospital, medical, or infectious waste or any combination of them [for which construction was commenced on or before June 20, 1996, except as set forth below] for which construction commenced on or before June 20, 1996; for which modification was commenced on or before March 16, 1998; for which construction was commenced after June 20, 1996 but no later than December 1, 2008; or for which modification is commenced after March 16, 1998 but no later than April 6, 2010.

(a) A combustor is not subject to R307-222 during periods when only pathological waste, low-level radioactive waste, chemotherapeutic waste or any combination of them as defined in 40 CFR 60.51c is burned, provided the owner or operator of the combustor:

(i) Notifies the executive secretary of an exemption claim; and

(ii) Keeps records on a calendar quarter basis of the periods of time when only pathological waste, low-level radioactive waste, chemotherapeutic waste or any combination of them is burned.

(b) Any co-fired combustor as defined in 40 CFR 60.51c is not subject to this subpart if the owner or operator of the co-fired combustor:

(i) Notifies the executive secretary of an exemption claim;

(ii) Provides an estimate of the relative weight of wastes to be combusted, including hospital, medical or infectious waste or any combination of them, and other fuels and wastes; and

(iii) Keeps records on a calendar quarter basis of the weight of hospital, medical, or infectious waste or any combination of them which was combusted, and the weight of all other fuels and wastes combusted at the co-fired combustor.

(c) Any combustor required to have a permit under R315-306 is not subject to R307-222.

(d) Any combustor which meets the applicability requirements under [s]Subpart Cb, Ea, or Eb of 40 CFR Part 60 is not subject to R307-222.

(e) Any pyrolysis unit as defined in 40 CFR 60.51c is not subject to R307-222.

(f) Any cement kiln firing hospital, medical, or infectious waste or any combination of them is not subject to R307-223.

(g) Physical or operational changes made to an existing hospital, medical or infectious waste incinerator unit solely for the purpose of complying with emission guidelines under R307-222[3] are not considered a modification and do not result in an existing hospital, medical or infectious or any combination waste incinerator unit becoming subject to the provisions of R307-210.

(3) Beginning September 15, 2000, [A]ny facility subject to R307-222 [also is]is also required to obtain an operating permit under R307-415[no later than September 15, 2000].

R307-222-2. Definitions and References.

(1) The following definitions apply only to R307-222. Definitions found in 40 CFR 60.31e, effective as of the date referenced in R307-101-3, and 40 CFR 60.51c, effective as of the

date referenced in R307-101-3, are adopted and incorporated by reference, with the following substitutions.

(a) Substitute "executive secretary" for all federal regulation references to "Administrator."

(b) Substitute "State of Utah" for all federal regulation references to "State agency" or "State regulatory agency."

(c) Substitute "Rule R307-222" for all references to "this subpart."

(d) Substitute "40 CFR Part 60" for all references to "this part."

(e) Substitute "40 CFR" for all references to "This title."

R307-222-3. All Incinerators.

Each incinerator subject to R307-222 must comply with the requirements of 40 CFR 60.52c(b) for emission limits, 40 CFR 60.53c for operator training and qualification, 40 CFR 60.54c for siting requirements, 40 CFR 60.55c for a waste management plan, 40 CFR 56c for compliance and performance testing, 40 CFR 60.57c for monitoring requirements, and 40 CFR 60.58c(b) excluding (b)(2)(ii) and (b)(7) for recordkeeping, and 40 CFR 60.58c(c) through (f) for reporting. These provisions, effective as of the date referenced in R307-101-3, are adopted and incorporated by reference.

R307-222-4. Large, Medium and[Urban] Small Incinerators.

Except as provided in Section R307-222-5, each incinerator must comply with the emissions limitations of Table 1A and Table 1B in 40 CFR Part 60, Subpart Ce;[;] 40 CFR 60.57c;[;] and 40 CFR 60.56c, excluding 56c(b)(12) and 56c(c)(3), effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference.

R307-222-5. Small Rural Incinerators.

(1) A small rural incinerator is a small incinerator as defined in Section R307-222-2 that:

(a) is located more than 50 miles from the boundary of the nearest Standard Metropolitan Statistical Area listed in OMB bulletin No. 93-17 entitled "Revised Statistical definitions for Metropolitan Areas," June 30, 1993; and

(b) burns less than 2000 pounds per week of hospital, medical or infectious waste or any combination of them. The 2000 pounds per week limitation does not apply during performance tests.

(2) Each small rural incinerator must comply with the emission limits of Table 2A and Table 2B in 40 CFR Part 60, Subpart Ce, effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference.

(3) Each small rural incinerator must comply with the inspection requirements of 40 CFR 60.36e(a)(1) and (a)(2), effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference. An inspection meeting these requirements must be conducted within one year after federal approval of the Plan incorporated by reference in R307-220-3, and annually no more than 12 months following the previous annual inspection.

(4) Each small rural incinerator must comply with the compliance and performance testing requirements of 40 CFR 60.37e(b)(1) through (b)(5), effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference.

(5) Each small rural incinerator must comply with the monitoring requirements of 40 CFR 60.37e(d)(1) through (d)(3), effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference.

(6) Each small rural incinerator must comply with the recordkeeping and reporting requirements of 40 CFR 60.38e(b)(1) and (b)(2), effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference.

KEY: air pollution, hospitals, medical incinerators, infectious waste

Date of Enactment or Last Substantive Amendment: [~~February 8, 2008~~]**2012**

Notice of Continuation: February 8, 2008

Authorizing, and Implemented or Interpreted Law: 19-2-104

**Environmental Quality, Air Quality
R307-415-2
Authority**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 35529
FILED: 12/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify which version of the Code of Federal Regulations (CFR) that Rule R307-415 incorporates by reference throughout the rule.

SUMMARY OF THE RULE OR CHANGE: Language was added in Section R307-415-2 that states all references to 40 CFR in Rule R307-415, except when otherwise specified, are effective as of the date referenced in Section R307-101-3. Section R307-101-3 is the rule that specifies which version of the CFR is incorporated throughout Title R307 rules.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104 and Section 19-2-109

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Because this amendment only clarifies which version of the CFR is incorporated into the rule, there are no anticipated costs or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Because this amendment only clarifies which version of the CFR is incorporated into the rule, there are no anticipated costs or savings to local government.

◆ **SMALL BUSINESSES:** Because this amendment only clarifies which version of the CFR is incorporated into the rule, there are no anticipated costs or savings to local government.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because this amendment only clarifies which version of the CFR is incorporated into the rule, there are no anticipated costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons as all of these rules are currently in effect and sources are already subject to any of the costs that may result.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no appreciable costs for business as this rule simply clarifies which version of the CFR is being incorporated into the rule.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2012

AUTHORIZED BY: Bryce Bird, Director

**R307. Environmental Quality, Air Quality.
R307-415. Permits: Operating Permit Requirements.
R307-415-2. Authority.**

(1) R307-415 is required by Title V of the Act and 40 Code of Federal Regulations (CFR) Part 70, and is adopted under the authority of Section 19-2-104.

(2) All references to 40 CFR in R307-415, except when otherwise specified, are effective as of the date referenced in R307-101-3.

KEY: air pollution, greenhouse gases, operating permit, emission fees

Date of Enactment or Last Substantive Amendment: [~~January 1, 2011~~]**2012**

Notice of Continuation: July 13, 2007

Authorizing, and Implemented or Interpreted Law: 19-2-109.1; 19-2-104

Insurance, Administration
R590-142
Continuing Education Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35543

FILED: 12/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes to this rule are being made to comply with requirements in H.B. 128, Health Reform Amendments, which was passed in the 2011 General Session. The bill requires that a rule be adopted to explain the continuing education (CE) requirements in the defined contribution arrangement market and the Utah Health Exchange.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule require a producer in the defined contribution arrangement market to take a minimum of two hours of continuing education every two years on the use of the Utah Health Exchange and premium assistance programs.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 31A-23a-202 and Section 31A-26-206 and Section 31A-30-209 and Section 31A-35-401.5

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The department has seen a very small increase in workflow from CE providers seeking approval for new courses. So far four non-profit organizations have applied to provide the training required in H.B. 128. These however were non-profit providers and were not required to pay an annual licensing fee of \$270.

◆ **LOCAL GOVERNMENTS:** This rule and its changes will have no fiscal impact on local government since it relates only to the relationship between the department and its licensees.

◆ **SMALL BUSINESSES:** The change to this rule has opened the door for CE providers to create new courses for those insurance producers required to take them. So far two of the four CE providers offering these courses are not charging for this training and two are. Providers have the freedom to determine what they will charge for their courses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Since the total number of CE hours has not changed, the changes to this rule will have no fiscal impact on producers that are a part of the Health Exchange. Consumers will only be affected in that the producer providing information on the Health Exchange and premium assistance programs will be better educated and better able to direct them to the coverage right for the consumer.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Producers will not be financially impacted since the total number of CE hours has not changed. Consumers will only be affected in that the producer providing information on the Health Exchange and premium assistance programs will be better educated and better able to direct them to the coverage right for the consumer. CE providers so far have had no cost to become CE providers for this training and only two of the four providers are charging students who take their courses. It is not expected that there will be very many more CE providers apply to give this training. Those already providing training are also the ones that assisted with the creation of the Health Exchange and premium assistance programs and so are most knowledgeable about them.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes may have a small impact on CE providers who have or will create CE courses and charge an attendance fee.

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

INSURANCE
 ADMINISTRATION
 ROOM 3110 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2012

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-142. Continuing Education Rule.
R590-142-1. Authority.

This rule is promulgated pursuant to:

(1) Subsection 31A-2-201(3) that authorizes the commissioner to adopt rules to implement the provisions of the Utah Insurance Code;

(2) Subsection 31A-23a-202(1) that authorizes the commissioner to adopt a rule to prescribe the continuation requirements for a producer and a consultant;

(3) Subsection 31A-23a-202(5) that authorizes the commissioner to adopt a rule to prescribe the processes and procedures for continuing education provider registration and course approval;

(4) Subsection 31A-26-206(1) that authorizes the commissioner to adopt a rule to prescribe the continuing education requirements for an adjuster; ~~and~~

(5) Subsection 31A-35-401.5 that authorizes the commissioner to adopt a rule to implement the continuing education requirement for renewal of a bail bond producer license; and

(6) Subsection 31A-30-209 that authorizes the commissioner to adopt a rule to implement the continuing education requirements for the defined contribution market.

R590-142-2. Purpose and Scope.

(1) The purpose of this rule is to implement the continuing education requirements of Sections 31A-23a-202, 31A-26-206, and 31A-35-401.5.

(2) This rule applies to all continuing education providers and individual producer, consultant, and adjuster licensees under Sections 31A-23a-202, 31A-26-206, 31A-30-209, and 31A-35-401.5.

R590-142-3. Definitions.

For the purpose of this rule the Commissioner adopts the definitions as set forth in Sections 31A-1-301, 31A-23a-102, 31A-26-102, 31A-35-102, and the following:

(1) "Classroom course" means:

(a) a course of study that:

(i) is taught on-site by a live instructor at the same

location;

(ii) requires monitoring of a student; and

(iii) may require examination of course content to be performed by a student; or

(b) an interactive course of study that:

(i) is taught by a live instructor from a separate location;

(A) is delivered to a student via:

(I) computer;

(II) teleconference;

(III) webinar; or

(IV) some other method acceptable to the commissioner;

or

(ii) is not taught by a live instructor;

(A) is delivered to a student via computer; or

(B) some other method acceptable to the commissioner;

(iii) requires two-way interaction between a student and the instrument of instruction;

(iv) requires monitoring of a student; and

(v) requires examination of course content to be performed by a student.

(2) "Credit hour" means one 50-minute period of insurance related instruction consisting of:

(a) a classroom course;

(b) a home study course; or

(c) some other method acceptable to the commissioner;

(3) "Designated internet site" means an internet site that is designated by the commissioner for a provider to submit a student's course completion information.

(4) "Home-study course" means a non-interactive course of study that:

(a) is not taught by a live instructor;

(b) is completed by a student via:

(i) computer;

(ii) video recording, if the video is professionally produced;

(iii) text book; or

(iv) some other method acceptable to the commissioner;

(c) does not require two-way interaction between a student and the instrument of instruction;

(d) does not require monitoring of a student; and

(e) requires examination of course content to be performed by the student.

(5) "Insurance related instruction" means that amount of time that is assigned by the commissioner to a course of study to satisfy the requirements of continuing education credit hours under this rule, in which assignment of value shall be made on the basis of:

(a) content;

(b) presentation; and

(c) format.

(6) "Monitoring of a student" means a person or system in place who verifies participation in and completion of a course.

(7) "Nonprofit provider" means an organization that fits the definition of nonprofit corporation as defined in Subsection 16-6a-102(34).

(8) "Provider" means a person who offers a course of study or program for credit to an applicant to satisfy the continuing education requirements of this rule.

R590-142-4. Continuing Education Requirements.

A producer, consultant, and adjuster licensee shall comply with, and a continuing education provider shall be familiar with, the following continuing education requirements:

(1) the number of credit hours of continuing education insurance related instruction required to be completed biennially as a prerequisite to license renewal shall be in accordance with Sections 31A-23a-202, 31A-26-206, and 31A-35-401.5;

(2) a licensee may obtain continuing education credit hours at any time during the two-year licensing period;

(3) not more than half of the total credit hours required shall be satisfied by courses provided by insurers;

(4) upon renewal of a license, no continuing education credit hours in excess of the number required to renew the license may be carried over or applied to any subsequent licensing period;

(5) a licensee shall attend a course in its entirety in order to receive credit for the course;

(6) a licensee may repeat a course for credit but will not be permitted to take a course for credit more than once in a license continuation period;

(7) a nonresident licensee who satisfies the licensee's home state's continuing education requirement is considered to have satisfied Utah's continuing education requirement; and

(8) a licensee with a professional designation may use the continuing education credit hours required to maintain the designation to satisfy the requirement of the commissioner if:

(a) the hours are sufficient to meet the current continuing education requirement described in Sections 31A-23a-202 and 31A-26-206; and

(b) the professional designation consists of one or more of the following:

(i) Accredited Customer Service Representative (ACSR);

(ii) Accredited Financial Examiner (AFE) or Certified Financial Examiner (CFE);

(iii) Accredited Insurance Examiner (AIE) or Certified Insurance Examiner (CIE);

(iv) Certified Financial Planner (CFP);

(v) Certified Insurance Counselor (CIC);

(vi) Certified Risk Manager (CRM);

(vii) Registered Employee Benefits Consultant (REBC);

(viii) Chartered Property Casualty Underwriter (CPCU) with completion of the Continuing Professional Development (CPD) program; or

(ix) Certified Life Underwriter (CLU), Chartered Financial Consultant (ChFC) or Registered Health Underwriter (RHU) with completion of the Professional Achievement in Continuing Education (PACE) recertification program.

(9) A producer who solicits or sells a defined contribution plan in accordance with Section 31A-30-209 shall complete a minimum of two hours of defined contribution continuing education that includes training on use of the Utah Health Exchange and premium assistance programs:

(a) prior to soliciting or selling a defined contribution plan; and

(b) during each subsequent two-year licensing period that the producer solicits or sells a defined contribution plan.

R590-142-5. Experience Credit.

(1) Continuing education credit hours may be granted to a licensee for experience credit at the discretion of the commissioner, including credit for experience such as the authoring of an insurance book, course or article.

(2) Membership by a producer or consultant in a state or national professional producer or consultant association is considered to be a substitute for two credit hours for each year during which the producer or consultant is a member of the association, except as provided in (3) below.

(3) No more than two hours of continuing education credit shall be granted per year during the two-year license continuation period, regardless of the number of professional associations of which the producer or consultant is a member.

(4) An approved continuing education course taught by an approved instructor holding a Utah producer, consultant, or adjuster license shall receive twice the number of credit hours allocated by the commissioner for the course, except as provided in Subsection (5) below.

(5) Credit for instruction of a course shall be granted no more than once per license renewal period for each course taught.

(6) Continuing education experience credit shall not be granted for committee service.

R590-142-8. Provider Requirements.

(1) A provider or a state or national professional producer or consultant association may:

(a) offer a qualified course for a license type or line of authority on a geographically accessible basis; and

(b) collect a reasonable fee for funding and administration of a continuing education program, subject to the review and approval of the commissioner.

(2) A person must register with the commissioner as a provider prior to acting as a provider in Utah.

(3) To initially register as a provider, a person must:

(a) electronically submit a completed provider registration form;

(b) submit a course outline that includes information regarding the course content and the number of credit hours requested for the course; and

(c) pay an initial registration fee, as identified in Rule R590-102, except as provided in Subsection (4) below.

(4) A nonprofit provider is not required to pay a registration fee.

(5) To renew a provider registration, a provider, other than a non-profit provider, must pay an annual renewal fee, as identified in Rule R590-102, prior to the annual renewal date.

(6) To renew a non-profit provider registration, electronic notification must be submitted to the commissioner prior to the annual renewal date, of the intent to renew the registration.

(7) Prior to a course being taught, a provider shall:

(a) post the course offering to a designated internet site;

(b) provide the commissioner with the name and resume of the instructor or instructors who will be teaching the course; and

(c) include identifying information as to any insurance license previously or currently held by the instructor or instructors who will be teaching the course.

(8) A provider shall report to the commissioner:

(a) an administrative action taken against the provider in any jurisdiction; and

(b) a criminal prosecution taken against the provider in any jurisdiction.

(9) The report required by Subsection (8) shall:

(a) be filed:

(i) at the time of submitting the initial provider registration; and

(ii) within 30 days of the:

(A) final disposition of the administrative action; or

(B) initial appearance before a court; and

(b) include a copy of the complaint or other relevant legal documents related to the action or prosecution described in Subsection (8).

(10) The commissioner may prohibit any person from acting as a provider or instructor in Utah if the commissioner determines that:

(a) the person is not competent and trustworthy; or

(b) the person or course of study fails to meet the qualifying standards.

KEY: insurance continuing education

Date of Enactment or Last Substantive Amendment: [~~August 23, 2011~~2012]

Notice of Continuation: January 26, 2007

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-202; 31A-26-206; 31A-35-401.5

Natural Resources, Wildlife Resources

R657-5

Taking Big Game

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 35520
FILED: 12/13/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the big game rule.

SUMMARY OF THE RULE OR CHANGE: The proposed revision to the above listed rule amends the Youth General Any Bull Elk hunt to include antlerless elk.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment only adds opportunity to harvest an elk to those youth who draw the Youth General Any Bull Elk tag, it does not increase workload for the agency therefore, the Division of Wildlife Resources (DWR) determines that this amendment does not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** Since this amendment only adds opportunity to harvest an elk to those who draw the Youth General Any Bull Elk tag it does not place additional requirements on individual hunters or the local governments, the division finds that this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment increases opportunity to harvest for those youth who are successful in drawing the tag, it does not have the potential to generate a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment increases opportunity to harvest for those youth who are successful in drawing the tag, it does not have the potential to generate a cost or savings impact to sportsmen or the other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that this amendment will not create additional costs for those who participate in wildlife related activities in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not have a potential to create an impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2012

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-5. Taking Big Game.

R657-5-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking big game.

R657-5-31. Youth General Any Bull Elk Hunt.

(1)(a) For purposes of this section "youth" means any person 18 years of age or younger on the opening day of the youth any bull elk season published in the guidebook of the Wildlife Board for taking big game.

(b) A youth may apply for or obtain a youth any bull elk permit.

(c) A youth may only obtain a youth any bull elk permit once during their youth.

(2) The youth any bull elk hunting season and areas are published in the guidebook of the Wildlife Board for taking big game.

(3)(a) A youth who has obtained a youth general any bull elk permit may take any bull elk, including ~~a spike bull~~ antlerless elk, on a general any bull elk unit. Spike bull elk units are closed to youth general any bull elk permittees.

(b) A youth who has obtained a youth general any bull elk permit may use any legal weapon to take any bull elk as specified on the permit.

(4) A youth who has obtained a youth general any bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-33(3).

(5) Preference points shall not be awarded or utilized when applying for, or in obtaining, youth general any bull elk permits.

KEY: wildlife, game laws, big game seasons

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

Notice of Continuation: November 1, 2010

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-16-5; 23-16-6

**Public Service Commission,
Administration
R746-100
Practice and Procedures Governing
Formal Hearings**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35508

FILED: 12/06/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Several subsections of this rule have been updated to reflect the most current information and technologies. The result will be rules that are more user-friendly and clear.

SUMMARY OF THE RULE OR CHANGE: Committee of Consumer Services with the Department of Commerce name has been changed to Utah Office of Consumer Services. Format in which pleadings need to be filed with the commission have been updated to reflect current technologies. Format in which confidential documents are filed has been changed from paper copy only to paper and electronic format. Some nonsubstantive, as well as grammatical changes have been made in the process.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-1-1 and Section 54-1-3 and Section 54-1-6 and Section 54-3-21 and Section 54-4-1 and Section 54-4-1.5 and Section 54-4-2 and Section 54-7-17 and Title 63G, Chapter 4

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule does not affect state budget. The rule was reviewed to update technological changes to be consistent with today's technology, other grammatical changes were made in the process. No measurable monetary effects.

◆ **LOCAL GOVERNMENTS:** This rule does not affect local government. The rule was reviewed to update technological changes to be consistent with today's technology, other grammatical changes were made in the process. No measurable monetary effects.

◆ **SMALL BUSINESSES:** This rule does not affect small businesses. The rule was reviewed to update technological changes to be consistent with today's technology, other grammatical changes were made in the process. No measurable monetary effects.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule does not affect other persons. The rule was reviewed to update technological changes to be consistent with today's technology, other grammatical changes were made in the process. No measurable monetary effects.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs for affected persons. The rule was reviewed to update technological changes to be consistent with today's technology, other grammatical changes were made in the process. No measurable monetary effects.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because this rule was reviewed to update technological changes to be consistent with today's technology and other grammatical changes the rule will not have a fiscal impact. The Public Service Commission has carefully reviewed this rule and desires to update references to current usage of document retention technology. The changes update the way in which confidential or highly sensitive documents can be handled now, reflecting the Commission's new ability to store and segregate them electronically.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ David Clark by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at drexclark@utah.gov
◆ Melanie Reif, by FAX at 801-530-6511, or by Internet E-mail at mreif@utah.gov
◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2012

AUTHORIZED BY: David Clark, Legal Counsel

R746. Public Service Commission, Administration.
R746-100. Practice and Procedures Governing Formal Hearings.

R746-100-2. Definitions.

A. "Applicant" is a party applying for a license, right, or authority or requesting agency action from the Commission.

B. "Commission" is the Public Service Commission of Utah. In appropriate context, it may include administrative law judges or presiding officers designated by the Commission.

~~C. "Committee" is the Committee of Consumer Services, Department of Commerce.~~

~~]~~[D]. "Complainant" is a person who complains to the Commission of an act or omission of a person in violation of law, the rules, or an order of the Commission.

D[E]. "Consumer complaint" is a complaint of a retail customer against a public utility.

E[F]. "Division" is the Division of Public Utilities, Utah State Department of Commerce.

F[G]. "Ex Parte Communication" means an oral or written communication with a member of the Commission, administrative law judge, or Commission employee who is, or may be reasonably expected to be, involved in the decision-making process, relative to the merits of a matter under adjudication unless notice and an opportunity to be heard are given to each party. It shall not, however, include requests for status reports on a proceeding covered by these rules.

G[H]. "Formal proceeding" is a proceeding before the Commission not designated informal by rule, pursuant to Section 63G-4-202.

H[I]. "Informal proceeding" is a proceeding so designated by the Commission.

I[J]. "Party" is a participant in a proceeding defined by Subsection 63G-4-103(1)(f).

J[K]. "Interested person" is a person who may be affected by a proceeding before the Commission, but who does not seek intervention. An interested person may not participate in the proceedings except as a public witness, but shall receive copies of notices and orders in the proceeding.

K[L]. "Intervenor" is a person permitted to intervene in a proceeding before the Commission.

L. "Office" is the Office of Consumer Services, State of Utah Department of Commerce.

M. "Person" means an individual, corporation, partnership, association, governmental subdivision, or governmental agency.

N. "Petitioner" is a person seeking relief other than the issuance of a license, right, or authority from the Commission.

O. "Presiding officer" is a person conducting an adjudicative hearing, pursuant to Subsection 63G-4-103(1)(h)(i), and may be the entire Commission, one or more commissioners acting on the Commission's behalf, or an administrative law judge, presiding officer, or hearing officer appointed by the Commission. It may also include the Secretary of the Commission when performing duties identified in Section 54-1-7.

P. "Proceeding" or "adjudicative proceeding" is an action before the Commission initiated by a notice of agency action, or request for agency action, pursuant to Section 63G-4-201. It is not an informal or preliminary inquiry or investigation undertaken by the Commission to determine whether a proceeding is warranted; nor is it a rulemaking action pursuant to Title 63G, Chapter 3, the Utah Administrative Rulemaking Act.

Q. "Public witness" is a person expressing interest in an issue before the Commission but not entitled or not wishing to participate as a party.

R. "Respondent" is a person against whom a notice of agency action or request for agency action is directed or responding to an application, petition or other request for agency action.

R746-100-3. Pleadings.

A. Pleadings Enumerated -- Applications, petitions, complaints, orders to show cause, and other traditional initiatory pleadings may be filed with the Commission. Traditional pleadings will be considered requests for agency action, pursuant to Section 63G-4-201, concerning adjudicative proceedings. Answers, protests, and other traditional responsive pleadings may be filed with the Commission and will be considered responses, subject to the requirements of Section 63G-4-204.

1. The following filings are not requests for agency action or responses, pursuant to Sections 63G-4-201 and 63G-4-204:

- a. motions, oppositions, and similar filings in existing Commission proceedings;
- b. informational filings which do not request or require affirmative action, such as Commission approval.

B. Docket Number and Title --

1. Docket number -- Upon the filing of an initiatory pleading, or upon initiation of a generic proceeding, the Commission shall assign a docket number to the proceeding which shall consist of the year in which the pleading was filed, a code identifying the public utility appearing as applicant, petitioner, or respondent, or generic code designation and another number showing its numerical position among the filings involving the utility or generic proceeding filed during the year.

2. Headings and titles -- Pleadings shall bear a heading substantially as follows:

TABLE

Name of Attorney preparing or Signer of Pleading
Address
Telephone Number

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the)
Application, petition,) Docket Number
etc.-- for complaints,)
names of both complainant) Type of pleading
and respondent should)
appear)

C. Form of Pleadings -- With the exception of consumer complaints, pleadings shall be double-spaced and in a

~~font~~[typewritten, which may include a computer or word processor, if the type is easily legible and in the equivalent] of at least 12 points[~~type~~]. Pleadings shall be presented for filing on paper 8-1/2 x 11 inches, shall include the docket number, if known, and shall be dated and time stamped upon receipt by the Commission. Pleadings shall also be presented as an electronic word processing document, an exact copy of the paper version filed, and may be transmitted electronically to the e-mail address the Commission designates for such purposes or presented in[~~on~~] a electronic media (i.e.,[3-1/2" floppy disk or] compact disc (CD)), using a Commission-approved format. PDF documents are not acceptable. Pleadings over five pages shall be double sided and three-hole punched. A filing is not complete until all the required copies -- both original and electronic -- are provided to the Commission in the form described.

D. Certificate of Service -- a Certificate of Service must be attached to all pleadings filed with the Commission, certifying that a true and correct copy of the pleading was served upon each of the parties in the manner and on the date specified.

E. Pleadings Containing Confidential and Highly Confidential Information --

1. Pleadings, including all accompanying documents, containing information claimed to be confidential or highly confidential, as described in R746-100-16, shall be filed in accordance with R746-100-3(C) and shall conform to the following additional requirements:

a. The paper version of a pleading containing confidential information shall be filed on yellow paper with the confidential portion of the pleading denoted by shading, highlighting, or other readily identifiable means.

b. The paper version of a pleading containing highly confidential information shall be filed on pink paper with the highly confidential portions of the pleadings denoted by shading, highlighting, or other readily identifiable means.

c. Both the paper and the electronic versions presented for filing shall be designated confidential in accordance with R746-100-16(A) (1)(b). All copies of this version shall be clearly labeled as "Non-Confidential - Redacted Version."

F[D]. Amendments to Pleadings -- The Commission may allow pleadings to be amended or corrected at any time. Initiatory pleadings may be amended without leave of the Commission at any time before a responsive pleading has been filed or the time for filing the pleading has expired. Defects in pleadings which do not affect substantial rights of the parties shall be disregarded.

G[E]. Signing of Pleadings -- Pleadings shall be signed by the party, or by the party's attorney or other authorized representative if the party is represented by an attorney or other authorized representative, and shall show the signer's address. The signature shall be considered a certification by the signer that he has read the pleading and that, to the best of his knowledge and belief, there is good ground to support it.

H[F]. Consumer Complaints --

1. Alternative dispute resolution, mediation procedures -- Before a proceeding on a consumer complaint is initiated before the Commission, the Commission shall try to resolve the matter through referral first to the customer relations department, if any, of the public utility complained of and then to the Division for investigation and mediation. Only after these resolution efforts have failed will the Commission entertain a proceeding on the matter.

2. Request for agency action -- Persons requesting Commission action shall be required to file a complaint in writing, requesting agency action. The Commission shall not act on illegible or incomplete complaints and shall return those complaints to the complainant with instructions for correction or completion.

3. The Division of Public Utilities may participate in a consumer complaint proceeding as determined by the Division or as requested by the Commission.

I[G]. Content of Pleadings --

1. Pleadings filed with the Commission shall include the following information as applicable:

a. if known, the reference numbers, docket numbers, or other identifying symbols of relevant tariffs, rates, schedules, contracts, applications, rules, or similar matter or material;

b. the name of each participant for whom the filing is made or, if the filing is made for a group of participants, the name of the group, if the name of each member of the group is set forth in a previously filed document which is identified in the filing being made;

c. if statute, rule, regulation, or other authority requires the Commission to act within a specific time period for a matter at issue, a specific section of the pleading, located after the heading or caption, entitled "Proceeding Time Period," which shall include: reference or citation to the statute, rule, regulation, or other authority; identification of the time period; and the expiration date of the time period identified by day, month, and year

d. the specific authorization or relief sought;

e. copies of, or references to, tariff or rate sheets relevant to the pleading;

f. the name and address of each person against whom the complaint is directed;

g. the relevant facts, if not set forth in a previously filed document which is identified in the filing being made;

h. the position taken by the participant filing a pleading, to the extent known when the pleading is filed, and the basis in fact and law for the position;

i. the name, address, and telephone number of an individual who, with respect to a matter contained in the filing, represents the person for whom the filing is made;

j. additional information required to be included by Section 63G-4-201, concerning commencement of adjudicative proceedings, or other statute, rule, or order.

J[H]. Motions -- Motions may be submitted for the Commission's decision on either written or oral argument, and the filing of affidavits in support or contravention of the motion is permitted. If oral argument is sought, the party seeking oral argument shall arrange a hearing date with the Commission's Law and Motion calendar and provide at least five days written notice to affected parties, unless the Commission determines a shorter time period is needed.

K[H]. Responsive Pleadings --

1. Responsive pleadings to applications, petitions, or requests for agency action shall be filed in accordance with Section 63G-4-204.

2. Response and reply pleadings may be filed in pleadings other than applications, petitions or requests for agency action.

R746-100-4. Filing and Service.

A. Filing of Pleadings -- ~~[Originals of]~~ Pleadings~~[pleadings]~~ shall be filed with the Commission in the format described in R746-100-3(C), ~~and~~~~[together with]~~ the number of original and electronic copies shall be as specified at <http://www.psc.utah.gov/filingrequirements.html>~~[designated by the secretary of the Commission].~~

B. Notice -- Notice shall be given in conformance with Section 63G-4-201.

C. Required Public Notice -- When applying for original authority or rate increase, the party seeking authority or requesting Commission action shall publish notice of the filing or action requested, in the form and within the times as the Commission may order, in a newspaper of general circulation in the area of the state in which the parties most likely to be interested are located.

D. Times for Filing -- Responsive pleadings to requests for agency action shall be filed with the Commission and served upon opposing parties within 30 days after service of the request for agency action or notice of request for agency action, which ever was first received. Motions directed toward initiatory pleadings shall be filed before a responsive pleading is due; otherwise objections shall be raised in responsive pleadings. Motions directed toward responsive pleadings shall be filed within ten days of the service of the responsive pleading. Response or reply pleadings to other than applications, petitions or requests for agency action shall be filed within 15 calendar days and 10 calendar days, respectively, of the service date of the pleading or document to which the response or reply is addressed. Absent a response or reply, the Commission may presume that there is no opposition.

E. Computation of Time -- The time within which an act shall be done shall be computed by excluding the first day and including the last, unless the last day is Saturday, Sunday, or a state holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, nor a state holiday.

R746-100-5. Participation.

Parties to a proceeding before the Commission, as defined in Section 63G-4-103, may participate in a proceeding including the right to present evidence, cross-examine witnesses, make argument, written and oral, submit motions, and otherwise participate as determined by the Commission. The Division and Office~~[Committee]~~ shall be given full participation rights in any case.

R746-100-8. Discovery.

A. Informal discovery -- The Commission encourages parties to exchange information informally. Informational queries termed "data requests" which have been typically used by parties practicing before the Commission may include written interrogatories and requests for production as those terms are used in the Utah Rules of Civil Procedure. Informal discovery is appropriate particularly with respect to the clarification of pre-filed testimony and exhibits before hearing so as to avoid unnecessary on-the-record cross-examination. The Commission may require an informal exchange of information as it judges appropriate. The Commission, on its own motion or the motion of a party, may require the parties to participate in an informal meeting to exchange

information informally and otherwise simplify issues and expedite the proceeding.

B. Formal Discovery -- Discovery shall be made in accordance with Rules 26 through 37, Utah Rules of Civil Procedure, with the following exceptions and modifications.

C. Exceptions and Modifications --

1. If no responsive pleading is required in a proceeding, parties may begin discovery immediately upon the filing and service of an initiatory pleading. If a responsive pleading is required, discovery shall not begin until ten days after the time limit for filing the responsive pleading.

2. Rule 26(b)(4), Utah Rules of Civil Procedure, restricting discovery shall not apply, and the opinions, conclusions, and data developed by experts engaged by parties shall be freely discoverable.

3. At any stage of a proceeding, the Commission may, on its own motion or that of a party, convene a conference of the parties to establish times for completion of discovery, the scope of, necessity for, and terms of, protective orders, and other matters related to discovery.

4. Formal discovery shall be initiated by an appropriate discovery request served on the party or person from whom discovery is sought. Discovery requests, regardless of how denominated, discovery responses~~[to]~~, and transcripts of depositions shall not be filed with the Commission unless the Commission orders otherwise.

5. In the applicable Rules of Civil Procedure, reference to "the court" shall be considered reference to the Commission.

R746-100-9. Prehearing Conference and Prehearing Briefs.

A. Prehearing Conferences -- Upon the Commission's motion or that of a party, the presiding officer may, upon written notice to parties of record, hold prehearing conferences for the following purposes:

1. formulating or simplifying the issues, including each party's position on each issue;

2. obtaining stipulations, admissions of fact, and documents which will avoid unnecessary proof;

3. arranging for the exchange of proposed exhibits or prepared expert or other testimony, including a brief description of the evidence to be presented and issues addressed by each witness;

4. determining procedures to be followed at the hearing;

5. encouraging joint pleadings, exhibits, testimony and cross-examination where parties have common interests, including designation of lead counsel where appropriate;

6. agreeing to other matters that may expedite the orderly conduct of the proceedings or of a settlement. Agreements reached during the prehearing conference shall be recorded in an appropriate order unless the participants stipulate or agree to a statement of settlement made on the record.

B. Prehearing Briefs -- The Commission may require the filing of prehearing briefs which shall conform to the format described in R746-100-3(C) and may include:

1. the issues, and positions on those issues, being raised and asserted by the parties;

2. brief summaries of evidence to be offered, including the names of witnesses, exhibit references and issues addressed by the testimony;

3. brief descriptions of lines of cross-examination to be pursued.

C. Final prehearing conferences -- After all testimony has been filed, the Commission may at any time before the hearing hold a final prehearing conference for the following purposes:

1. determine the order of witnesses and set a schedule for witnesses' appearances, including times certain for appearances of out-of-town witnesses;
2. delineate scope of cross-examination and set limits thereon if necessary;
3. identify and prenumber exhibits.

R746-100-10. Hearing Procedure.

A. Time and Place -- When a matter is at issue, the Commission shall set a time and place for hearing. Notice of the hearing shall be served in conformance with Sections 63G-4-201(2) (b) and 63G-4-201(3)(e) at least five days before the date of the hearing or shorter period as determined by the Commission.

B. Continuance -- Continuances may be granted upon good cause shown. The Commission may impose the costs in connection with the continuance as it judges appropriate.

C. Failure to Appear -- A party's default shall be entered and disposed of in accordance with Section 63G-4-209.

D. Subpoenas and Attendance of Witnesses -- Commissioners, the secretary to the Commission, and administrative law judges or presiding officers employed by the Commission are delegated the authority to sign and issue subpoenas. Parties desiring the issuance of subpoenas shall submit them to the Commission. The parties at whose behest the subpoena is issued shall be responsible for service and paying the person summoned the statutory mileage and witness fees. Failure to obey the Commission's subpoena shall be considered contempt.

E. Conduct of the Hearing --

1. Generally -- Hearings may be held before the full Commission, one or more commissioners, administrative law judges or presiding officers employed by the Commission as provided by law and as the Commission shall direct. Hearings shall be open to the public, except where the Commission closes a hearing for the presentation of proprietary, trade secret or confidential material. Failure to obey the rulings and orders of the presiding officer may be considered contempt.

2. Before commissioner or administrative law judge -- When a hearing is conducted before less than the full Commission, before an administrative law judge or presiding officer, the presiding officer shall ensure that the taking of evidence and subsequent matters proceed as expeditiously as practicable. The presiding officer shall prepare and certify a recommended decision to the Commission. Except as otherwise ordered by the Commission or provided by law, the presiding officer may schedule and otherwise regulate the course of the hearing; recess, reconvene, postpone, or adjourn the hearing; administer oaths; rule on and receive evidence; cause discovery to be conducted; issue subpoenas; hold conferences of the participants; rule on, and dispose of, procedural matters, including oral or written motions; summarily dispose of a proceeding or part of a proceeding; certify a question to the Commission; permit or deny appeal of an interlocutory ruling; and separate an issue or group of issues from other issues in a proceeding and treat the issue or group of issues as a separate phase

of the proceeding. The presiding officer may maintain order as follows:

- a. ensure that disregard by a person of rulings on matters of order and procedure is noted on the record or, if appropriate, is made the subject of a special written report to the Commission;
- b. if a person engages in disrespectful, disorderly, or contumacious language or conduct in connection with the hearing, recess the hearing for the time necessary to regain order;
- c. take appropriate action, including removal from the proceeding, against a participant or counsel, if necessary to maintain order.

3. Before full Commission -- In hearings before the full Commission, the Commission shall exercise the above powers and any others available to it and convenient or necessary to an orderly, just, and expeditious hearing.

F. Evidence --

1. Generally -- The Commission is not bound by the technical rules of evidence and may receive any oral or documentary evidence; except that no finding may be predicated solely on hearsay or otherwise incompetent evidence. Further, the Commission may exclude non-probative, irrelevant, or unduly repetitious evidence. Testimony shall be under oath and subject to cross-examination. Public witnesses may elect to provide unsworn statements.

2. Exhibits --

a. Except as to oral testimony and items administratively noticed, material offered into evidence shall be in the form of an exhibit. Exhibits shall be premarked, ~~and Parties~~ ~~parties~~ offering exhibits shall, before the hearing begins, provide copies of their exhibits to the presiding officer, other participants or their representatives, and the original to the reporter, if there is one, otherwise to the presiding officer. If documents contain information the offering participant does not wish to include, the offering party shall mark out, excise, or otherwise exclude the extraneous portion on the original. Additions to exhibits shall be dealt with in the same manner.

b. Exhibits shall be premarked, by the offering party, in the upper right corner of each page by identifying the party, the witness, docket number, and a number reflecting the order in which the offering party will introduce the exhibit.

c. Exhibits shall conform to the format described in R746-100-3(C) and be double sided and three-hole punched. They shall also be adequately footnoted and if appropriate, accompanied by either narrative or testimony which adequately explains the following: Explicit and detailed sources of the information contained in the exhibit; methods used in statistical compilations, including explanations and justifications; assumptions, estimates and judgments, together with the bases, justifications and results; formulas or algorithms used for calculations, together with explanations of inputs or variables used in the calculations. An exhibit offered by a witness shall also be presented as an electronic document, an exact copy of the paper version, ~~filed on a 3-1/2" floppy disk or CD,~~ using a format previously approved by the Commission.

3. Administrative notice -- The presiding officer may take administrative or official notice of a matter in conformance with Section 63G-4-206(1)(b)(iv).

4. Stipulations -- Participants in a proceeding may stipulate to relevant matters of fact or the authenticity of relevant documents. Stipulations may be received in evidence, and if received, are binding on the participants with respect to any matter stipulated. Stipulations may be written or made orally at the hearing.

5. Settlements --

a. Cases may be resolved by a settlement of the parties if approved by the Commission. Issues so resolved are not binding precedent in future cases involving similar issues.

b. Before accepting an offer of settlement, the Commission may require the parties offering the settlement to show that each party has been notified of, and allowed to participate in, settlement negotiations. Parties not adhering to settlement agreements shall be entitled to oppose the agreements in a manner directed by the Commission.

G. Prefiled Testimony -- If a witness's testimony has been reduced to writing and filed with the Commission before the hearing, in conformance with R746-100-3(C), at the discretion of the Commission, the testimony may be placed on the record without being read into the record; if adverse parties shall have been served with, or otherwise have had access to, the prefiled, written testimony for a reasonable time before it is presented. Except upon a finding of good cause, a reasonable amount of time shall be at least ten days. The testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness. To aid in the identification of text and the examination of witnesses, written testimony shall have each line of written ~~text~~[test] numbered consecutively throughout the entire written testimony. Internal charts, exhibits or other similar displays included within or attached to written testimony need not be included within the document's internal line numbering. If admitted, the testimony shall be marked and incorporated into the record as an exhibit. Parties shall have full opportunity to cross-examine the witness on the testimony. Unless the Commission orders otherwise, parties shall have witnesses present summaries of prefiled testimony orally at the hearing. Witnesses may be required to reduce their summaries to writing and either file them with their prefiled testimony or deliver them to parties of record before or at the hearing. At the hearing, witnesses shall read their summaries into the record. Opposing parties may cross-examine both on the original prefiled testimony and the summaries.

H. Joint Exhibits -- Both narrative and numerical joint exhibits, detailing each party's position on each issue, shall be filed with the Commission before the hearing. These joint exhibits shall:

- a. be updated throughout the hearing;
- b. depict the final positions of each party on each issue at the end of the hearing; and
- c. be in conformance with R746-100-3(C).

I. Recording of Hearing and Transcript -- Hearings may be recorded by a shorthand reporter licensed in Utah; except that in non-contested matters, or by agreement of the parties, hearings may be recorded electronically.

1. Unless otherwise ordered by the Commission, scheduling conferences and technical conferences will not be recorded.

2. If a party requests that a scheduling conference or technical conference be recorded, the Commission may require that party to pay some or all of the costs associated with recording.

J. Order of Presentation of Evidence -- Unless the presiding officer orders otherwise, applicants or petitioners, including petitioners for an order to show cause, shall first present their case in chief, followed by other parties, in the order designated by the presiding officer, followed by the proposing party's rebuttal.

K. Cross-Examination -- The Commission may require written cross-examination and may limit the time given parties to present evidence and cross-examine witnesses. The presiding officer may exclude friendly cross-examination. The Commission discourages and may prohibit parties from making their cases through cross-examination.

L. Procedure at Conclusion of Hearing -- At the conclusion of proceedings, the presiding officer may direct a party to submit a written proposed order. The presiding officer may also order parties to present further matter in the form of oral argument or written memoranda.

R746-100-16. Use of Information[~~information~~] Claimed to Be Confidential in Commission Proceedings.

A. Information, documents and material submitted or requested in or relating to any Commission proceeding which is claimed to be confidential will be treated ~~[as]~~as follows: [;]

1.a. Nature of Confidential Information. A person (Providing Party) required or requested to provide documents, data, information, studies, and other materials of a sensitive, proprietary or confidential nature (Confidential Information) to the Commission or to any party in connection with a Commission proceeding may request protection of such information in accordance with the terms of this rule. Confidential treatment shall be requested only to the extent a good faith reasonable basis exists for claiming that specific information constitutes a trade secret or is otherwise of such a highly-sensitive or proprietary nature that public disclosure would be inappropriate. Confidential treatment shall be requested narrowly as to only that specific information for which protection is reasonably required.

b. Identification of Confidential Information. All documents, data, information, studies and other materials filed in conjunction with a Commission proceeding, made available to proceeding participants, furnished, or whether made available pursuant to any interrogatories, or requests for information, subpoenas, depositions, or other modes of discovery or otherwise, that are claimed to be Confidential Information, shall be furnished pursuant to the terms of this rule or any superseding Protective Order, and shall be treated by all persons accorded access thereto pursuant to this rule or Protective Order, and shall neither be used nor disclosed by any recipient thereof except for the purpose of the proceeding in which it was obtained and solely in accordance with this rule or superseding Protective Order. All material claimed to be Confidential Information shall be so marked by the person producing it by stamping or noting the same with ~~[the—]~~a designation substantially as follows: "CONFIDENTIAL - - SUBJECT TO UTAH PUBLIC SERVICE COMMISSION RULE 746-100-16"[;] or "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" or "CONFIDENTIAL - - SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. XX-XXX-XX (reflecting the appropriate docket number).]" All copies of documents so marked will be made on yellow paper.

c. Parties shall ensure that line numbering in any redacted version of a document shall conform to and retain the general

formatting and line numbering used in the unredacted version of the document. Individuals providing electronic documents to the Commission should file both a confidential and non-confidential version each clearly marked as such. For purposes hereof, notes made pertaining to or as the result of a review of Confidential Information shall be considered Confidential Information and subject to the terms of this rule.

d[e]. Use of Confidential Information and Persons Entitled to Review. The Commission, Division of Public Utilities, and Office of Consumer Services shall be provided with Confidential Information and may use the Confidential Information as these agencies deem necessary to perform their statutory functions, provided they shall protect the confidentiality of the information as required by Utah law. Other than these state agencies, all Confidential Information made available pursuant to this rule shall be given solely to counsel for the participants (which may include counsels' paralegals, administrative assistants and clerical staff to the extent reasonably necessary for performance of work on the matter), and shall not be used nor disclosed except for the purpose of the proceeding in which they are provided and in accordance with this rule; provided, however, that access to any specific Confidential Information may be authorized by counsel, solely for the purpose of the proceeding, to those persons indicated by the participants as being their experts in the matter (including such experts' administrative assistants and clerical staff, and persons employed by the participants, to the extent reasonably necessary for performance of work on the matter). Persons designated as experts shall not include persons employed by the participants who could use the information in their normal job functions to the competitive disadvantage of the person providing the Confidential Information. The Commission, the Division of Public Utilities, and the Office of Consumer Services, and their respective counsel and staff, under and pursuant to the applicable provisions of Title 54, Utah Code Ann., the Rules of Civil Procedure and the Rules of the Commission, may have access to any Confidential Information made available pursuant to this rule or Protective Order and shall be bound by the terms of this rule, except as otherwise stated herein and except for the requirement of signing a nondisclosure agreement. Further, nothing herein shall prevent disclosure as required by law pursuant to interrogatories, administrative requests for information or documents, subpoena, civil investigative demand or similar process, provided, however, that the person being required to disclose Confidential Information shall promptly give prior notice by telephone and written notice of such requirement of disclosure by electronic mail facsimile and overnight mail to the person that provided such Confidential Information, addressed to the providing person and attorneys of record for such person, so that the person that provided the Confidential Information may seek appropriate restrictions on disclosure or an appropriate protective order. The disclosing person will not oppose action by, and will cooperate with the person that provided the Confidential Information to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

e[d]. Nondisclosure Agreement. Prior to giving or obtaining access to Confidential Information, as contemplated in (1) (b)[+-b-] above, counsel or any experts shall agree in writing to comply with and be bound by this rule and any Protective Order. Confidential Information shall not be disclosed to any person who

has not signed a Nondisclosure Agreement in the form which is provided below or referenced in the Protective Order. The Nondisclosure Agreement shall require the person to whom disclosure is to be made to read a copy of this rule and any applicable Protective Order and to certify in writing that he or she has reviewed the same and has consented to be bound by the terms. The agreement shall contain the signatory's full name, permanent address and employer, and the name of the person with whom the signatory is associated. Such agreement shall be delivered to the providing person and counsel for the providing person prior to the expert gaining access to the Confidential Information.

The Nondisclosure Agreement may be in the following form:

"Nondisclosure Agreement. I have reviewed Public Service Commission of Utah Rule 746-100-16 and/or the Protective Order entered by the Public Service Commission of Utah in Docket No. XX-XXX-XX with respect to the review and use of confidential information and agree to comply with the terms and conditions of the rule and/or Protective Order." Thereafter there shall be lines upon which shall be placed the individual's signature, the typed or printed name of the individual, identification or name of the individual's employer or firm employing the individual (if any), the business address for the individual, identification or name of the party in the proceeding with which the individual is associated, and the date the nondisclosure agreement is executed by the individual.

f[e]. Additional protective measures. To the extent a Providing Party reasonably claims that additional protective measures, beyond those required under this rule for Confidential Information, are warranted for certain highly proprietary, highly sensitive or highly confidential material (Highly Confidential~~[Sensitive]~~ Information), the Providing Party shall promptly inform the requester (Requesting Party) of the claimed highly sensitive nature of identified material and the additional protective measures requested by the Requesting[Requested] Party. If the Providing Party and Requesting Party are unable to promptly reach agreement on the treatment of Highly Confidential~~[Sensitive]~~ Information, the Providing Party shall petition the Commission for an order granting additional protective measures. The Providing Party shall set forth the particular basis for: the claim, the need for the specific, additional protective measures, and the reasonableness of the requested, additional protection. A Requesting Party and any other party may respond to the petition and oppose or propose alternative protective measures to those requested by the Providing Party. Disputes between the parties shall be resolved by the Commission.

g. Identification of Highly Confidential Information. All documents, data, information, studies and other materials filed in conjunction with a Commission proceeding, made available to proceeding participants, furnished, or whether made available pursuant to any interrogatories, or requests for information, subpoenas, depositions, or other modes of discovery or otherwise, that are claimed to be Highly Confidential, shall be furnished pursuant to the terms of this rule or any superceding Protective Order, and shall be treated by all persons accorded access thereto, pursuant to this rule or Protective Order, and shall neither be used nor disclosed by any recipient thereof except for the purpose of the proceeding in which it was obtained and solely in accordance with this rule or superceding Protective Order. All material claimed to be

Highly Confidential shall be so marked by the person producing it by stamping or noting the same with a designation substantially as follows: "HIGHLY CONFIDENTIAL--SUBJECT OF UTAH PUBLIC SERVICE COMMISSION RULE 746-100-16," "HIGHLY CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER," or "HIGHLY CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. XX-XXX-XX (reflecting the appropriate docket number)." All copies of documents so marked will be made on pink paper.

2.a. Challenge to Confidentiality or Proposed Additional Protective Measures. This rule establishes a procedure for the expeditious handling of Confidential Information; it shall not be construed as an agreement, or ruling on the confidentiality of any document.

b. In the event that persons are unable to agree that certain documents, data, information, studies, or other matters constitute Confidential Information, ~~or[are]~~ Highly[highly] Confidential[sensitive] ~~[documents and]Information [information]~~ referred to in (A)(1)(c)~~[A.1.e.]~~ above, or in the event that persons are unable to agree on the appropriate treatment of Highly Confidential~~[Sensitive]~~ Information, the person objecting to the classification as Confidential Information or the person claiming Highly[highly] Confidential[sensitive] ~~[documents and]Information [information]~~ and the need for additional protective measures shall forthwith submit the disputes to the Commission for resolution.

c. Any person at any time upon at least ten (10) days prior notice, when practicable, may seek by appropriate pleading, to have documents that have been designated as Confidential Information, or which were accepted into the sealed record in accordance with this rule or a Protective Order, removed from the protective requirements of this rule or the Protective Order, or from the sealed record and placed in the public record. If the confidential, or proprietary nature of this information is challenged, resolution of the issue shall be made by the Commission after proceedings camera which shall be conducted under circumstances such that only those persons duly authorized to have access to such confidential matter shall be present. The record of such camera hearings shall be marked substantially as follows "CONFIDENTIAL--SUBJECT TO RULE 746-100-16" ~~[OR]~~ "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER," or "CONFIDENTIAL-- SUBJECT TO PROCTIVE ORDER IN DOCKET[CASE] NO. XX-XXX-XX (reflecting the appropriate docket number)[-]" unless the Commission determines, and so provides by order, that such marking need not occur. It shall be transcribed only upon agreement by the parties, or order of the Commission, and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this rule or Protective Order, unless and until released from the restrictions of this rule or Protective Order, either through agreement of the parties, or after notice to the parties and hearing, pursuant to an order of the Commission. In the event the Commission should rule in response to such a pleading that any information should be removed from the protective requirements of this rule or Protective Order, or from the protection of the sealed record, such order of the Commission shall not be effective for a period of ten (10) days after entry of the order.

3.a. Receipt into Evidence. At least ten (10) days prior to the use of or substantive reference to any Confidential Information as evidence, if practicable, the person intending to use such

Confidential Information shall make that intention known to the providing person. The requesting person and the providing person shall make a good faith effort to reach an agreement so that the Confidential Information can be used in a manner which will not reveal its trade secret, confidential or proprietary nature. If such efforts fail, the providing person shall separately identify, within five (5) business days, which portions, if any, of the documents to be offered or referenced on the record containing Confidential Information shall be placed in the sealed record. Only one (1) copy of documents designated by the providing person to be placed in a sealed record shall be made and only for that purpose. Otherwise, persons shall make only general references to Confidential Information in any proceedings.

b. Seal. While in the custody of the Commission, Confidential Information provided pursuant to this rule or a Protective Order shall be marked substantially as follows: "CONFIDENTIAL--SUBJECT TO PUBLIC SERVICE COMMISSION OF UTAH RULE 746-100-16," "CONFIDENTIAL--SUBJECT TO [OR]PROTECTIVE ORDER," or "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET[CASE] NO. XX-XXX-XX (reflecting the appropriate docket number)."~~[-]~~

c. In Camera Hearing. Any Confidential Information that must be orally disclosed to be placed in a sealed record of a proceeding shall be offered in an icamera hearing, attended only by persons authorized to have access to the Confidential Information under this rule or Protective Order. Similarly, cross-examination on or substantive reference to Confidential Information, as well as that portion of the record containing references thereto, shall be similarly marked and treated.

d. Appeal. Sealed portions of the record in any proceeding may be forwarded to any court of competent jurisdiction on appeal in accordance with applicable rules and regulations, but under seal as designated herein, for the information and use of the court.

e. Return. Unless otherwise ordered, Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this rule or Protective Order, and shall be returned to the providing person or counsel for the providing person within 30 days after final settlement, or conclusion of the matters in which they were used, including administrative or judicial review thereof. Alternatively, a person receiving Confidential Information pursuant to the terms of this rule or Protective Order may certify, within 30 days after final order, settlement, or other conclusion of the matter including administrative or judicial review thereof, that the Confidential Information has been destroyed. Counsel who are provided access to Confidential Information pursuant to the terms of this rule or Protective Order may retain the Confidential Information, their notes, work papers or other documents as their attorneys' work product created with respect to their use and access to Confidential Information in the matter. An expert witness, accorded access to Confidential Information pursuant to this rule or Protective Order, shall provide to counsel for the person on whose behalf the expert was retained or employed, the expert's notes, work papers or other documents pertaining or relating to any Confidential Information. Counsel shall retain these experts' documents with counsel's documents. In order to facilitate their ongoing responsibility, this

provision shall not apply to the Commission, the Division of Public Utilities or the Office of Consumer Services, which may retain Confidential Information obtained under this rule or Protective Order subject to the other terms of this rule or Protective Order. Any party that intends to use or disclose Confidential Information obtained pursuant to this rule or a Protective Order in any subsequent Commission dockets or proceedings, shall do so in accordance with the terms of this rule or any applicable protective orders issued in such other subsequent Commission dockets or proceedings and only after providing notice of such intent to the providing person along with an identification of the original source of the Confidential Information.

4. Use in Proceedings. Where reference to Confidential Information is required in pleadings, cross-examinations, briefs, arguments, or motions, it shall be by citation of title, or exhibit number, or by some other nonconfidential description. Any further use of, or substantive references to Confidential Information shall be placed in a separate section of the pleading, brief, or document and submitted under seal. This sealed section shall be served only on counsel of record (one copy each), who have signed a Nondisclosure Agreement and counsel for the Division of Public Utilities and Office of Consumer Services. All the protections afforded in this rule apply to materials prepared and distributed under this paragraph.

5. Use in Decisions and Orders. The Commission will attempt to refer to Confidential Information in only a general, or conclusionary form and will avoid reproduction in any decision of Confidential Information to the greatest possible extent. If it is necessary for a determination in a proceeding to discuss Confidential Information other than in a general, or conclusionary form, it shall be placed in a separate section of an Order, or Decision, under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed a Nondisclosure Agreement and counsel for the Division of Public Utilities and Office of Consumer Services. Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission once they have signed a Nondisclosure Agreement.

6. Segregation of Files. Those parts of any writing, depositions reduced to writing, written examination, interrogatories and answers thereto, or other written references to Confidential Information in the course of discovery, if filed with the Commission, will be sealed by the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this rule or Protective Order, unless such Confidential Information is released from the restrictions of this rule or Protective Order, either through agreement of the parties, or after notice to the parties and hearing, pursuant to an order of the Commission and/or final order of a court having jurisdiction.

7. Preservation of Confidentiality. All persons who may be entitled to receive, or who are afforded access to any Confidential Information by reason of this rule or Protective Order shall neither use, nor disclose the Confidential Information for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of Commission proceedings, and then solely as contemplated herein, and shall take reasonable precautions to keep the Confidential Information secure

in accordance with the purposes and intent of this rule or a Protective Order.

8. Reservation of Rights. Persons affected by the terms of this rule or a Protective Order retain the right to question, challenge, and object to the admissibility of any and all data, information, studies and other matters furnished under the terms of this rule or a Protective Order in response to interrogatories, requests for information, other modes of discovery, or cross-examination on the grounds of relevancy or materiality. This rule or a Protective Order shall in no way constitute any waiver of the rights of any person to contest any assertion by another person or finding by the Commission that any information is a trade secret, confidential, or privileged, and to appeal any assertion or finding.

KEY: government hearings, public utilities, rules and procedures, confidential information

Date of Enactment or Last Substantive Amendment: ~~[September 23, 2009]~~2012

Notice of Continuation: December 3, 2007

Authorizing, and Implemented or Interpreted Law: 54-1-1; 54-1-3; 54-1-6; 54-3-21; 54-4-1; 54-4-1.5; 54-4-2; 54-7-17; 63G-4

**Public Service Commission,
Administration
R746-310-1
General Provisions**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 35505
FILED: 12/06/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the change is to correct a typographical error in the current version of Subsection R746-310-1(A)(2). The reference to "R746-100-16" should be to "R746-100-15."

SUMMARY OF THE RULE OR CHANGE: Changes the reference from "R746-100-16" to "R746-100-15" in Subsection R746-310-1(A)(2).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-3-1 and Section 54-3-7 and Section 54-4-1 and Section 54-4-14 and Section 54-4-23 and Section 54-4-8

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** Amendment does not affect state budget, Public Service Commission (PSC) only changed a typographical error in the rule.

♦ **LOCAL GOVERNMENTS:** Amendment does not affect local government, PSC only changed a typographical error in the rule.

♦ **SMALL BUSINESSES:** Amendment does not affect small businesses, PSC only changed a typographical error in the rule.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Amendment does not affect persons other than small businesses, businesses or local government entities, PSC only changed a typographical error in the rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No costs involved with this amendment, PSC only changed a typographical error in the rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The PSC identified a typo in Section R746-310-1. The reference to "R746-100-16" in Subsection R746-310-1(A)(2) needs to be changed to reflect the correct rule, "R746-100-15", that addresses "Deviations from Rules". This change will not affect businesses except to eliminate any confusion caused by the incorrect citation.

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

PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ David Clark by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at drexclark@utah.gov
♦ Melanie Reif, by FAX at 801-530-6511, or by Internet E-mail at mreif@utah.gov
♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2012

AUTHORIZED BY: David Clark, Legal Counsel

**R746. Public Service Commission, Administration.
R746-310. Uniform Rules Governing Electricity Service by Electric Utilities.**

R746-310-1. General Provisions.

A. 1. Scope and Applicability -- The following rules apply to the methods and conditions for service employed by utilities furnishing electricity in Utah.

2. A utility may petition the Commission for an exemption from specified portions of these rules in accordance with R746-100-15[6], Deviation from Rules.

B. Definitions --

1. "Capacity" means load which equipment or electrical system can carry.

2. "CFR" means the Code of Federal Regulations, 1998 edition.

3. "Commission" means the Public Service Commission of Utah.

4. "Contract Demand" means the maximum amount of kilowatt demand that the customer expects to use and for which the customer has contracted with the utility.

5. "Customer" means a person, firm, partnership, company, corporation, organization, or governmental agency supplied with electrical power by an electric utility subject to Commission jurisdiction, at one location and at one point of delivery.

6. "Customer's Installation" means the electrical wiring and apparatus owned by the customer and installed by or for the customer to facilitate electric service and which is located on the customer's side of the point of delivery of electric service.

7. "Customer meter" or "meter" means the device used to measure the electricity transmitted from an electric utility to a customer.

8. "Demand" means the rate in kilowatts at which electric energy is delivered by the utility to the customer at a given instant or averaged over a designated period of time.

9. "Electric service" means the availability of electric power and energy at the customer's point of delivery at the approximate voltage and for the purposes specified in the application for electric service, electric service agreement or contract, irrespective of whether electric power and energy is actually used.

10. "Energy" means electric energy measured in kilowatt-hours--kWh. For billing purposes energy is the customer's total use of electricity measured in kilowatt-hours during any month.

11. "FERC" means the Federal Energy Regulatory Commission.

12. "Month" means the period of approximately 30 days intervening between regular successive meter reading dates.

13. "National Electrical Safety Code" means the 2007 edition of the National Electrical Safety Code, C2-2007, as approved by the American National Standards Institute, ISBN 07-7381-4893-8, incorporated by reference.

14. "Point of delivery" means the point, unless otherwise specified in the application for electric service, electric service agreement or contract, at which the utility's service wires are connected with the customer's wires or apparatus. If the utility's service wires are connected with the customer's wire or apparatus at more than one point, each connecting point shall be considered a separate point of delivery unless the additional connecting points are made by the utility for its sole convenience in supplying service. Additional service supplied by the utility at a different voltage or phase classification shall also be considered a separate point of delivery. Each point of delivery shall be separately metered and billed.

15. "Power" means electric power measured in kilowatts--kw. For billing purposes, power is the customer's maximum use of electricity shown or computed from the readings of the utility's kilowatt meter for a 15-minute period, unless

otherwise specified in the applicable rate schedule; at the option of the utility it may be determined either by periodic tests or by permanent meters.

16. "Power factor" means the percentage determined by dividing customer's average power use in kilowatts, real power, by the average kilovolt-ampere power load, apparent power, imposed upon the utility by the customer.

17. "Premises" means a tract of land with the buildings thereon or a building or part of a building with its appurtenances.

18. "Rated capacity" means load for which equipment or electrical system is rated.

19. "Service line" means electrical conductor which ties customer point of delivery to distribution network.

20. "Transmission line" means high voltage line delivering electrical energy to substations.

21. "Utility" means an electrical corporation as defined in Section 54-2-1.

22. "Year" means the period between the date of commencement of service under the application for electric service, electric service agreement or contract and the same day of the following calendar year.

KEY: public utilities, utility regulation, electric utility industries

Date of Enactment or Last Substantive Amendment: [November 26, 2007]2012

Notice of Continuation: December 5, 2007

Authorizing, and Implemented or Interpreted Law: 54-3-1; 54-3-7; 54-4-1; 54-4-8; 54-4-14; 54-4-23

Public Service Commission, Administration

R746-342

Rule on One-Way Paging

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 35509

FILED: 12/07/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Commission regulates "public telecommunications service" which by statute requires two-way transmission of information. The purpose of the existing rule is to make clear the Commission does not have jurisdiction over one-way paging services. The rule is unnecessary because one-way paging services do not fall within the statutory definition of "public telecommunications service." Also, the rule addresses a technology that is outdated and is now rarely used, if at all.

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-4-1

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Repeal will not affect the state budget because the Commissions' statutory authority is clear and the rule is unnecessary.

◆ **LOCAL GOVERNMENTS:** Repeal will not affect the local government because the Commissions' statutory authority is clear and the rule is unnecessary.

◆ **SMALL BUSINESSES:** Repeal will not affect small businesses because the Commissions' statutory authority is clear and the rule is unnecessary.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Repeal will not affect other persons because the Commissions' statutory authority is clear and the rule is unnecessary.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Repeal will not create or reduce compliance costs because the Commission's statutory jurisdiction remains unchanged.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:

The rule dates to a time before wireless services when pagers were in prominent use. It may have been helpful to the general public then to emphasize that Commission jurisdiction over telecommunications services does not extend to one-way communications devices. The limits of the Commission's jurisdiction, however, are clear in the enabling statutes. The rule is unnecessary. Additionally, one-way paging services have been supplanted by cell phone services.

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

PUBLIC SERVICE COMMISSION

ADMINISTRATION

HEBER M WELLS BLDG

160 E 300 S

SALT LAKE CITY, UT 84111-2316

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ David Clark by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at drexclark@utah.gov

◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2012

AUTHORIZED BY: David Clark, Legal Counsel

R746. Public Service Commission, Administration.

~~[R746-342. Rule on One-Way Paging.~~

~~**R746-342-1. One Way Paging Service Jurisdiction.**~~

~~The Public Service Commission of Utah does not have jurisdiction over one-way paging services. The reason for the rule is that one-way paging service does not fall within the definition of a "telephone corporation" in that such service does not utilize a "telephone line."~~

~~**KEY:** rules and procedures, public utilities, telecommunications, paying standards*~~

~~**Date of Enactment or Last Substantive Amendment:** 1987~~

~~**Notice of Continuation:** April 1, 2008~~

~~**Authorizing, and Implemented or Interpreted Law:** 54-4-1]~~

**Public Service Commission,
Administration
R746-405-2
Format and Construction of Tariffs**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35507

FILED: 12/06/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to update the amount of copies of tariff sheets that need to be filed with the Public Service Commission (PSC).

SUMMARY OF THE RULE OR CHANGE: Changed the amount of copies to be submitted to the commission from 10 to 2 copies.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-3-2 and Section 54-3-3 and Section 54-3-4 and Section 54-4-1 and Section 54-4-4 and Section 54-7-12

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No affect to the state budget, only a change regarding number of copies to be filed.
- ◆ **LOCAL GOVERNMENTS:** No affect to the local government, only a change regarding number of copies to be filed.
- ◆ **SMALL BUSINESSES:** No affect to small businesses except slight savings to a utility filing tariffs due to reducing the number of copies to be filed.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No affect to persons other than small businesses, businesses or local government entities, only a change regarding number of copies to be filed.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Slight compliance cost savings due to reducing the number of tariff copies to be filed with the commission.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In an effort to update some of the PSC's rules, it was found that not as many copies of tariffs submitted were needed as the rule now requires. The PSC has the number of copies to be filed from 10 to 1 original and 2 copies.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ David Clark by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at drexclark@utah.gov
- ◆ Melanie Reif, by FAX at 801-530-6511, or by Internet E-mail at mreif@utah.gov
- ◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2012

AUTHORIZED BY: David Clark, Legal Counsel

R746. Public Service Commission, Administration.

R746-405. Filing of Tariffs for Gas, Electric, Telephone, and Water Utilities.

R746-405-2. Format and Construction of Tariffs.

A. Format--Tariffs shall be in loose-leaf form for binding in a stiff-backed book or books as required and consist of parts or subdivisions arranged in order set forth as follows:

1. Title:
"TARIFF"
Applicable to
Kind of
SERVICE
NAME OF UTILITY

2. Table of Contents: a complete index of numbers and titles of effective sheets listed in the order in which the tariff sheets are arranged in the tariff book. Table of contents sheets shall bear sheet numbers and be in the form set forth in Subsection R746-405-2(C).

3. Preliminary statement: a brief description of the territory served, types and classes or service rendered and general conditions under which the service is rendered. Preliminary sheets shall bear sheet numbers and be in the form set forth in Subsection

R746-405-2(C). The preliminary statement shall clearly define the symbols used in the tariffs. For example:

- a. "C" to signify changed listing, rule or condition which may affect rates or charges;
- b. "D" to signify discontinued material, including listing, rate, rule or condition;
- c. "I" to signify increase;
- d. "L" to signify material relocated from or to another part of the tariff schedules with no change in text, rate, rule or condition;
- e. "N" to signify new material including listing, rate, rule or condition;
- f. "R" to signify reduction;
- g. "T" to signify change in wording of text but no change in rate, rule or condition.

4. Service area maps: maps for telecommunication utilities shall clearly indicate the boundaries of the service area, the principal streets, other main identifying features therein, the general location of the service area in relation to nearby cities, major highways or other well-known reference points and the relation between service area boundaries and map references. Service area maps shall be approximately 8-1/2 x 11 inches in size, or folded to that size in order to fit within the borders of the space provided on tariff sheets. Maps for gas, water and electric utilities shall clearly indicate the boundaries of the service area.

B. Tariff Books--

1. Utilities shall constantly maintain their presently effective tariff at each business office open to the public.
2. Utilities shall remove canceled tariff sheets from their currently effective tariffs. Utilities shall permanently retain a file of canceled tariff sheets.

C. Construction of Tariffs for Filing--

1. The loose-leaf sheets used in tariffs shall be of paper stock not less than 16 lb. bond or of equal durability and 8-1/2 x 11 inches in size. Tariffs may be printed, typewritten or mimeographed or other similar process. Tariffs may not be hand-written. One side of a sheet only may be used and a binding margin of at least 1-1/8 inches at the left of the sheet.

a. The tariff sheets of each utility shall provide the following information:

- i. the name of the utility;
- ii. the sheet, or page number, along with information to designate whether it is the first version of the sheet or whether the sheet has been revised since it was originally issued. Sheets shall be numbered consecutively;
- iii. the number of the advice letter with which the sheet is submitted to the Commission or the docket number if the sheet is filed in accordance with a report and order of the Commission;
- iv. information to indicate the date the sheet was filed with the Commission and the date the sheet became effective.

2. Tariffs shall include the following information and as nearly as possible in the following order:

- a. schedule number or other designation;
- b. class of service, such as business or residential;
- c. character of applicability, such as heating, lighting or power, or individual and party-line service;
- d. territory to which the tariff applies;
- e. rates, in tabular form if practicable;

f. special conditions, limitations, qualifications and restrictions. The conditions shall be brief and clearly worded to cover all special conditions of the rate. Amounts subject to refund shall be specified.

3. If a rate schedule or a rule is carried forward from one sheet to another, the word "Continued" shall be shown.

D. Submission of Tariff Sheets and Advice Letters--

1. Tariff sheets shall be transmitted by an advice letter or in response to a Commission order. A revised table of contents sheet shall be transmitted with each proposed tariff change, if the change requires alteration of the table of contents.

2. ~~One original and two~~[~~Fee~~] copies of each submission of advice letter and tariff sheets shall be filed with the Commission. [~~One copy of the tariff sheets bearing the "Filed Date" and "Effective Date" shall be returned to the utility to constitute the utility's official file copy.~~]

3. Advice letters shall include the following:

- a. sheet numbers and titles of the tariff sheets being filed, together with the sheet numbers of the sheets being canceled;
- b. essential information as to the reasons for the filing;
- c. dates on which the tariff sheets are proposed to become effective;
- d. increases or decreases, more or less restrictive conditions, or withdrawals;
- e. in the case of an increase authorized by the Commission, reference to the report and order authorizing the increase and docket number;

f. if the filing covers a new service not previously offered or rendered, an explanation of the general effect of the filing, including a statement as to whether present rates or charges will be affected, or service withdrawn from a previous user and advice whether the proposed rates are cost-based;

g. a statement that the tariff sheets proposed do not constitute a violation of state law or Commission rule. The filing of proposed tariff sheets shall of itself constitute the representation of the filing utility that it, in good faith, believes the proposed sheets or revised sheets to be consistent with applicable statutes, rules and orders. The Commission may, after hearing, impose sanctions for a violation hereof.

4. If authorized to file a notice that the effective tariff of a previous owner for the same service area is being adopted, the notice of adoption shall be submitted in the form of an advice letter.

5. Advice letters shall be numbered annually and chronologically. The first two digits represent the year followed by a hyphen and two or more digits, beginning with 01, as submitted by a utility for class of utility service rendered.

6. If a change is proposed on a tariff sheet, attention shall be directed to the change by an appropriate character along the right-hand margin of the tariff sheet using the symbols set forth in the preliminary statement.

7. At the time of making a tariff filing with the Commission, the utility shall furnish a copy of the advice letter and a copy of each related tariff sheet to interested parties having requested notification.

8. If the suspension is lifted by order of the Commission, the filing shall be resubmitted under a new advice letter number. If the suspension is made permanent by the Commission, the advice letter number shall not be used again.

E. Approval of Filed Tariff Sheets--

1. Utility tariffs may not increase rates, charges or conditions, change classifications which result in increases in rates and charges or make changes which result in lesser service or more restrictive conditions at the same rate or charge, unless a showing has been made before and a finding has been made by the Commission that the increases or changes are justified. This requirement does not apply to electrical or telephone cooperatives in compliance with Section 54-7-12(6), or by telecommunications utilities with less than 5,000 subscribers access lines in compliance with Section 54-7-12(7).

2. New tariff sheets covering a service or commodity not previously furnished or supplied, or revised tariff sheets, not increasing, or increasing pursuant to Commission order, a rate, toll, rental or charge, may be filed by the advice letter. Tariff sheets, unless otherwise authorized by the Commission either on complaint or on its own motion, shall become effective after not less than 30 calendar days after the filed date.

3. Upon application in the advice letter and for good cause shown, the Commission may authorize tariff sheets to become effective on a day before the end of the 30 day notice period.

4. The Commission may reject or suspend the effectiveness of tariff sheets that do not conform to these rules, which have alterations on the face thereof or contain errors, or for other reasons as the Commission determines. ~~[Copies of rejected tariff sheets and accompanying advice letter shall be stamped "Sheet Rejected" in the appropriate places.]~~ The Commission shall notify ~~[return one copy of the rejected sheets to]~~ the utility, of its action ~~[with]~~ by a letter stating the reasons therefor ~~[for its rejection]~~. Rejected tariff sheets shall be retained in the utility's file of canceled and superseded sheets. Advice letter numbers of rejected filings shall not be reused.

F. Public Inspection of Tariffs--

1. Utilities shall maintain, open for public inspection at their main office, a copy of the complete tariff and advice letters filed with the Commission. Utilities shall maintain, open for public inspection, copies of their effective tariffs applicable within the territories served by the offices.

2. Utilities shall post in a conspicuous place in their major manned business office, a notice to the effect that copies of the schedule of applicable rates in the territory are on file and may be inspected by anyone desiring to do so.

G. Contracts Authorized by Tariff--Tariff sheets expressly providing that a written contract shall be executed by a customer as a condition to the receipt of service, relating either to the quantity or duration of service or the installation of equipment, the contract need not be filed with the Commission. A copy of the general form of contract to be used in each case shall be filed with the tariff as provided in these rules.

This contract shall be subject to changes or modifications by the Commission.

KEY: rules and procedures, public utilities, tariffs, utility regulations

Date of Enactment or Last Substantive Amendment: [August 8, 2005]2012

Notice of Continuation: April 1, 2008

Authorizing, and Implemented or Interpreted Law: 54-3-2; 54-3-3; 54-3-4; 54-4-1; 54-4-4; 54-7-12

**Public Service Commission,
Administration
R746-800
Working 4 Utah Operations**

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 35506

FILED: 12/06/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Due to legislative changes, this rule is no longer applicable and can be eliminated.

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-3-21 and Section 54-3-22 and Section 54-4-1 and Section 54-4-2

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** Due to legislative changes this rule is no longer applicable and can be eliminated. No affect to state budget.

♦ **LOCAL GOVERNMENTS:** The change could affect local government if an employee needs to leave their place of employment early to deliver filings before 5 p.m.

♦ **SMALL BUSINESSES:** The change could affect small businesses if an employee needs to leave their place of employment early to deliver filings before 5 p.m.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The change could affect small businesses, businesses or local government entities if an employee needs to leave their place of employment early to deliver documents before 5 p.m.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This is a repealed rule changing the office hours due to legislative changes. The rule is no longer applicable and can be eliminated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule was put into place in August 2008 with the Working 4 Utah Initiative. Due to legislative changes, this rule is no longer applicable and can be eliminated. Commission office hours are now Monday through Friday 8 am to 5 pm.

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

PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ David Clark by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at drexclark@utah.gov
◆ Melanie Reif, by FAX at 801-530-6511, or by Internet E-mail at mreif@utah.gov
◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2012

AUTHORIZED BY: David Clark, Legal Counsel

R746. Public Service Commission, Administration.

[R746-800. Working 4 Utah Operations.

R746-800-1. Purpose.

~~The Working 4 Utah Initiative is an office-hour schedule effective August 3, 2008. While Working 4 Utah is in effect, state offices and agencies will be open 7 a.m. through 6 p.m., Monday through Thursday and will be closed all day Friday. This rule addresses how the Commission will operate and how documents are to be submitted to the Commission and served upon other parties to comply with other Commission rules or statutory provisions when state offices are closed on a Friday which is not a legal holiday.~~

R746-800-2. Requests for Agency Action or Other Initiatory Documents.

~~The paper original, required paper copies and electronic document versions of a Request for Agency Action, other documents which initiate administrative proceedings or which are initial documents submitted to the Commission will only be received during the Working 4 Utah office hours on Mondays through Thursdays; they will not be accepted on a Friday.~~

R746-800-3. Motions, Response Documents and Other Similar Documents.

~~Documents which would not initiate agency proceedings or which are to be submitted or served during the pendency of a Commission proceeding, e.g., comments, motions, responses or replies to previously filed documents, etc., and whose filing date or service date fall on a Friday should be filed or served as follows:~~

~~A. Fridays which are a legal holiday. If the Friday is a legal holiday under state law, documents are to be filed with the Commission and may be served upon parties on the first subsequent week day (likely the following Monday or Tuesday) which is not a legal holiday.~~

~~B. Fridays which are not a legal holiday. If the Friday is not a legal holiday but is a Friday on which the Commission's office is closed under the Working 4 Utah Initiative, the electronic document version should be submitted to the Commission's electronic filing email address before 11:59 p.m. of that Friday, and the paper original and required paper copies are to be filed with the Commission on the first subsequent week day (likely Monday or Tuesday) which is not a legal holiday. Service of a paper copy or electronic document version of a document required to be made upon other persons shall continue to be made as governed by statute, rule or order.~~

R746-800-4. Commission Action Falling on a Friday.

~~If Commission action required by a statute, rule or order is to occur on a date which falls on or from a time period which ends on a Friday which is not a legal holiday, the Commission action will still be required on such Friday, even though it is a Work 4 Utah Friday on which the Commission's office is closed.~~

KEY: utilities, office hours, filing

~~Date of Enactment or Last Substantive Amendment: August 25, 2008~~

~~Authorizing, and Implemented or Interpreted Law: 54-3-21; 54-3-22; 54-4-1; 54-4-2]~~

School and Institutional Trust Lands, Administration **R850-41** Rights of Entry

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 35542

FILED: 12/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsections 53C-1-302(1)(a)(ii) and 53C-4-101(1) authorize the Director of the School and Institutional Trust Lands Administration to make rules for the sale, exchange, lease, or other disposition or conveyance of trust lands, including procedures for determining fair-market value of those lands. The rule governing the issuance of rights of way to allow persons to enter upon trust lands and conduct non-disturbing, short-term activities was inadvertently allowed to expire. The Utah Administrative Rulemaking Act requires that the agency re-file this program rule as a proposed new rule.

SUMMARY OF THE RULE OR CHANGE: The proposed new rule being filed is the exact same rule as was previously being used by the School and Institutional Trust Lands Administration. No changes have been made to the wording of the proposed rule. The rule was inadvertently allowed to expire and the Utah Administrative Rulemaking Act requires that the Agency file a new rule in order to continue issuing

and managing existing rights of entry. (DAR NOTE: A corresponding 120-day (emergency) Rule R850-41 that is effective as of 12/14/2011 is under DAR No. 35541 in this issue, January 1, 2012, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53C-1-302(1)(a)(ii) and Subsection 53C-4-101(1)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: Because this proposed new rule is an exact replacement of the previously enacted rule, there will be no additional costs or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: Because this proposed new rule is an exact replacement of the previously enacted rule, there are no additional costs or savings to local government.
- ◆ SMALL BUSINESSES: Because this proposed new rule is an exact replacement of the previously enacted rule, there will be no additional costs or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because this proposed new rule is an exact replacement of the previously enacted rule which lapsed, there are no additional costs or savings to persons other than small businesses, businesses, or local governmental entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because this proposed new rule is an exact replacement of the previously enacted rule which lapsed, there are no additional compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will continue to benefit businesses through allowing short-term commercial use of trust lands.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
ROOM 500
675 E 500 S
SALT LAKE CITY, UT 84102-2818
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kim Christy by phone at 801-538-5183, by FAX at 801-355-0922, or by Internet E-mail at kimchristy@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2012

AUTHORIZED BY: Kevin Carter, Director

R850. School and Institutional Trust Lands, Administration.

R850-41. Rights of Entry.

R850-41-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the Director of the School and Institutional Trust Lands Administration to establish criteria by rule for the sale, exchange, lease or other disposition or conveyance of Trust Lands Administration lands including procedures for determining fair-market value of those lands.

R850-41-150. Planning.

Pursuant to Section 53C-2-201(1)(a), this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes.

R850-41-200. Rights of Entry on Trust Lands Administration Lands.

1. The agency may issue non-exclusive right of entry permits on Trust Lands Administration lands when the agency deems it consistent with agency rules and trust responsibilities.

2. Commercial use of Trust Lands Administration lands: a right of entry permit shall be required for any person to use, occupy, or travel upon Trust Lands Administration land in conjunction with any commercial enterprise without regard to the incidental nature of the use, occupancy, or travel, except that a right of entry permit shall not be necessary when the use, occupancy, or travel is across authorized public roads or permitted under some other land use authorization issued by the agency and currently in effect.

3. Non-commercial use of Trust Lands Administration land shall not require a permit provided that the use shall not exceed 15 consecutive days and shall not conflict with an applicable land use or with a management plan. At the conclusion of the 15-day period, any personal property, garbage, litter, and associated debris must be removed by the user. The use may not be relocated on any other Trust Lands Administration land within a distance of at least two miles from the original site or be allowed to reestablish at the original site for 20 consecutive days. If, for any reason, a non-commercial, incidental user desires a document authorizing the use, the agency may issue a Letter of Authorization upon payment of an administrative charge.

4. Non-commercial uses of Trust Lands Administration land exceeding 15 consecutive days will require a right of entry permit.

R850-41-300. Rights of Entry Acquired by Application.

Rights of entry on Trust Lands Administration lands may be acquired only by application and grant made in compliance with the rules and laws applicable thereto. All applications shall be made on agency forms. The filing of an application form is deemed to constitute the applicant's offer to purchase a right of entry under the conditions contained in these rules.

R850-41-400. Valuable Consideration for Right of Entry Permits.

The consideration for any right of entry permit granted under these rules, including those granted to municipal or county

governments or agencies of the state or federal government, shall be determined pursuant to R850-41-600.

R850-41-500. Agency Contractors.

Any person doing work for the agency under a contract or other permit may enter upon Trust Lands Administration lands for the purpose and period of time authorized by the contract or other permit without obtaining a right of entry.

R850-41-600. Right of Entry Fees.

The agency shall establish minimum fees for right of entry permits which may be based on the cost incurred by the agency in administering the right of entry permit and the fair-market value of a proposed land use.

R850-41-700. Application Procedures.

1. Time of Filing. Applications for right of entry permits are received for filing in the office of the agency during office hours. Except as provided, all applications received, whether by U.S. Mail or delivery over the counter, are immediately stamped with the exact date of filing.

2. Non-refundable Application Fees. All applications must be accompanied with a non-refundable application fee as specified in R850-4. After review of the application, the agency shall notify the applicant of the fee pursuant to R850-41-600. Failure to pay the fee within 15 days of mailing of notification shall cause the denial of the application.

3. Refunds and Withdrawals of Applications.

(a) If an application for a right of entry permit is rejected, all monies tendered by the applicant, except the application fee, will be refunded.

(b) Should an applicant desire to withdraw the application, the applicant must make a written request. If the request is received prior to the time that the application is approved, all monies tendered by the applicant, except the application fee, will be refunded. If the request for withdrawal is received after the application is approved, all monies tendered are forfeited to the agency, unless otherwise ordered by the director for a good cause shown.

4. Application Review.

(a) Upon receipt of an application, the agency shall review the application for completeness. The agency shall allow all applicants submitting incomplete applications at least 15 days from the date of mailing of notice as evidenced by the certified mailing posting receipt (Postal Service form 3800), within which to cure any deficiencies. Incomplete applications not remedied within the designated time period may be denied.

(b) Application approval by the director constitutes acceptance of the applicant's offer.

R850-41-800. Term of Rights of Entry.

Rights of entry granted under these rules shall normally be for no greater than a one year term. Longer terms may be granted upon application based on a written finding that such a grant is in the best interest of the trust beneficiaries.

R850-41-900. Conveyance Documents.

Each right of entry shall contain provisions necessary to ensure responsible surface management, including the following

provisions: the rights and responsibilities of the permittee, rights reserved to the permitter; the term of the right of entry; payment obligations; and protection of the Trust Lands Administration from liability for all action of the permittee.

R850-41-1000. Bonding Provisions.

1. Prior to the issuance of a right of entry, or for good cause shown at any time during the term of the right of entry, upon 15 days' written notice, the applicant or permittee may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the right of entry.

2. Bonds posted on rights of entry may be used for payment of all monies, rentals, royalties due to the permitter, reclamation costs, and for compliance with all other terms, conditions, and rules pertaining to the right of entry.

3. Bonds may be increased or decreased in reasonable amounts, at any time as the agency may decide, provided the agency first gives permittee 15 days' written notice stating the increase and the reason(s) for the increase.

4. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. However, the Trust Lands Administration will not be responsible for any investment returns on cash deposits.

(c) Certificates of deposit in the name of "School and Institutional Trust Lands Administration and Permittee, c/o Permittee's address", with an approved state or federally insured banking institution registered in Utah. The certificate of deposit must have a maturity date no greater than 12 months, be automatically renewable, and be deposited with the agency, the permittee will be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the permittee prior to acceptance by the director.

(d) Other forms of surety as may be acceptable to the agency.

(e) Due to the temporary nature of rights of entry, if the agency imposes or increases the amount of a bond, a stop-work order may be issued by the agency to insure the adequacy of the bond prior to the completion of work or activities authorized by the right of entry permit.

R850-41-1100. Conflicts of Use.

The agency reserves the right to issue additional rights of entry or convey other interests in property on Trust Lands Administration land encumbered by existing rights of entry without compensation to the permittee.

R850-41-1200. Amendments.

Any holder of an existing right of entry permit desiring to change any of the terms thereof, shall make application following the same procedure as is used to make an application for a new right of entry. An amendment fee pursuant to R850-4 must accompany the amendment request along with other appropriate fees.

R850-41-1300. Unauthorized Uses.

A right of entry permit does not authorize a permittee to cut any trees or remove or extract any natural, cultural, or historical resources.

R850-41-1310. Prevention of the Spread of Noxious Weeds.

1. In an effort to halt the spread of noxious weeds, trust lands are closed to:

(a) the possession, use or storage of hay, straw, or mulch which has not been certified as noxious weed free or noxious weed seed free, and

(b) the possession, use or storage of supplemental grain or grain products which do not meet the requirements of the "Utah Commercial Feed Act" standards.

2. These restrictions do not apply to:

(a) the use of pelletized feed by authorized occupants on trust lands.

(b) persons with Modified Grazing Permits or Agricultural Special Use Leases that provide for the use of these materials, or

(c) persons with authorization pursuant to R850-50-600(6).

R850-41-1400. Right of Entry Assignments.

1. A right of entry may be assigned to any person, firm, association, or corporation qualified under R850-3-200, provided that the assignments are approved by the agency; and no assignment is effective until approval is given. Any assignment made without such approval is void.

2. An assignment shall take effect the day of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the easement to the same extent as if the assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.

3. An assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the easement number, and land involved, and the name and address of the assignee.

4. An assignment shall be executed according to agency procedures.

R850-41-1500. Termination of Rights of Entry.

Any right of entry permit granted by the agency on Trust Lands Administration land may be terminated in whole or in part for failure to comply with any term or condition of the conveyance document or applicable laws or rules. Based on a written finding, the director shall issue an appropriate instrument when terminating the right of entry for cause.

KEY: natural resources, management, administrative procedures

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

Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-2-201(1)(a); 53C-4-101(1)

Tax Commission, Auditing
R865-3C-1
Allocation of Net Income Pursuant to
Utah Code Ann. Section 59-7-204

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 35510

FILED: 12/08/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment updates the rule to match statutory changes.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment updates this rule to match statutory changes regarding when an out-of-state corporation with Utah income shall attribute receipts arising from royalties and intangible property to the state.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-7-204

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** None--The amendments update the rule to match current statute and processes.
- ◆ **LOCAL GOVERNMENTS:** None--The amendments update the rule to match current statute and processes.
- ◆ **SMALL BUSINESSES:** None--The amendments update the rule to match current statute and processes.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--The amendments update the rule to match current statute and processes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The amendments update the rule to match current statute and processes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because this amendment conforms the rule to statute and current process, the Division anticipates no fiscal impact.

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

TAX COMMISSION

AUDITING

210 N 1950 W

SALT LAKE CITY, UT 84134

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2012

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R865. Tax Commission, Auditing.

R865-3C. Corporation Income Tax.

R865-3C-1. Allocation of Net Income Pursuant to Utah Code Ann. Section 59-7-204.

(1) In general, the provisions of Section R865-6F-8 shall be applied to determine net income attributable to Utah for corporation income tax purposes.

(2) If a corporation derives income from sources within this state, but does not maintain an office within this state from which sales are negotiated or effected, the gross receipts attributable to Utah shall include all receipts of the corporation[~~for the~~]:

(a) ~~for the~~ performance of a service if the purchaser of the service receives a greater benefit of the service in this state than in any other state;~~and~~

(b) ~~for the~~ sale of goods delivered to this state or shipped to a purchaser within this state, regardless of the F.O.B. point or other conditions of the sale;

(c) ~~from a royalty in connection with real property if the real property is in this state;~~

(d) ~~from other income in connection with real or intangible personal property if the real or intangible personal property is in this state; and~~

(e) ~~in connection with intangible property if the intangible property is used in this state .~~

KEY: taxation, corporation tax

Date of Enactment or Last Substantive Amendment: [~~October 13, 2011~~]2012

Notice of Continuation: March 21, 2007

Authorizing, and Implemented or Interpreted Law: 59-7-204

**Tax Commission, Auditing
R865-19S-32**

**Leases and Rentals Pursuant to Utah
Code Ann. Section 59-12-103**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35511

FILED: 12/08/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment clarifies that optional

charges for fuel in a transaction for the lease or rental of a motor vehicle are not subject, under certain conditions, to sales tax.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment clarifies that fuel charges in a transaction for the lease or rental of a motor vehicle are not subject to sales tax if the fuel charges are optional and separately stated.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-103

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: None--The proposed amendment mirrors industry practice.

♦ LOCAL GOVERNMENTS: None. The proposed amendment mirrors industry practice.

♦ SMALL BUSINESSES: None--The proposed amendment mirrors industry practice.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--The proposed amendment mirrors industry practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment mirrors industry practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because the amendment mirrors industry practice, the Division anticipates no fiscal impact.

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

TAX COMMISSION

AUDITING

210 N 1950 W

SALT LAKE CITY, UT 84134

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2012

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R865. Tax Commission, Auditing.

R865-19S. Sales and Use Tax.

R865-19S-32. Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-103.

(1)(a) [~~The~~]Subject to Subsection (1)(b), a lessor shall compute sales or use tax on all amounts received or charged in connection with a lease or rental of tangible personal property.

(b) Fuel charges in a transaction for the lease or rental of a motor vehicle are not subject to sales tax pursuant to Subsection 59-12-104(1) if the fuel charges are:

(i) optional; and

(ii) separately stated on the invoice.

(2) When a lessee has the right to possession, operation, or use of tangible personal property, the tax applies to the amount paid pursuant to the lease agreement, regardless of the duration of the agreement.

(3) Lessors of tangible personal property shall furnish an exemption certificate when purchasing tangible personal property subject to the sales or use tax on rental receipts. Costs of repairs and renovations to tangible personal property are exempt if paid for by the lessor since it is assumed that those costs are recovered by the lessor in his rental receipts.

(4) A person that furnishes tangible personal property along with an operator, as described in the definition of lease or rental in Section 59-12-102, provides a service and shall:

(a) pay sales and use tax at the time that person purchases the tangible personal property that is furnished under this Subsection (4); and

(b) collect sales and use tax at the time that person provides the service if the service is subject to sales and use tax.

KEY: charities, tax exemptions, religious activities, sales tax
Date of Enactment or Last Substantive Amendment: [~~August 11, 2011~~2012]

Notice of Continuation: March 13, 2007

Authorizing, and Implemented or Interpreted Law: 9-2-1702; 9-2-1703; 10-1-303; 10-1-306; 10-1-307; 10-1-405; 19-6-808; 26-32a-101 through 26-32a-113; 59-1-210; 59-12; 59-12-102; 59-12-103; 59-12-104; 59-12-105; 59-12-106; 59-12-107; 59-12-108; 59-12-118; 59-12-301; 59-12-352; 59-12-353

Tax Commission, Motor Vehicle Enforcement

R877-23V-20

Reasonable Cause to Deny, Suspend, or Revoke a License Issued Under Title 41, Chapter 3 Pursuant to Utah Code Ann. Section 41-3-209

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35512

FILED: 12/08/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed section was requested by the Tax Commissioners to place the current practice in rule.

SUMMARY OF THE RULE OR CHANGE: The proposed section indicates that reasonable cause to deny, suspend, or revoke a license issued under Title 41, Chapter 3, does not exist if an applicant: 1) indicates on the application form any violations of state or federal law listed under Subsection 41-3-209(2); 2) has completed any court-ordered probation or parole, or met the conditions of a plea in abeyance; and 3) has paid any required restitution or fines.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-3-209

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: None--The proposed section matches agency practice.

◆ LOCAL GOVERNMENTS: None--The proposed section matches agency practice.

◆ SMALL BUSINESSES: None--The proposed section matches agency practice.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--The proposed section matches agency practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Prior to the passage of the section, applicants who met these conditions were denied a license up front and required to appeal to the Commission. Once the section passes, these applicants will be granted a license up front and not required to appeal the denial to the Commission.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment may reduce the fiscal impact on applicants who may avoid an appeal.

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

TAX COMMISSION
MOTOR VEHICLE ENFORCEMENT
210 N 1950 W
SALT LAKE CITY, UT 84134

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2012

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R877. Tax Commission, Motor Vehicle Enforcement.**R877-23V. Motor Vehicle Enforcement.****R877-23V-20. Reasonable Cause to Deny, Suspend, or Revoke a License Issued Under Title 41, Chapter 3 Pursuant to Utah Code Ann. Section 41-3-209.**

There is a rebuttable presumption that reasonable cause to deny, suspend, or revoke a license issued under Title 41, Chapter 3 does not include a violation of a state or federal law listed under Subsection 41-3-209(2) if the license applicant:

(1) indicates on the license application that the applicant has been charged with, found in violation of, or convicted of a state or federal law listed under Subsection 41-3-209(2);

(2) has completed any court-ordered probation or parole;

(3) if the license applicant has entered into a plea in abeyance, met the conditions of that plea in abeyance; and

(4) paid any required restitution and fines.

KEY: taxation, motor vehicles

Date of Enactment or Last Substantive Amendment:
[December 8, 2009]2012

Notice of Continuation: March 14, 2007

Authorizing, and Implemented or Interpreted Law: 41-1a-712; 41-3-105; 41-3-201; 41-3-202; 41-3-210; 41-3-301; 41-3-302; 41-3-305; 41-3-503; 41-3-505; 41-3-506; 41-3-507

Tax Commission, Motor Vehicle Enforcement

R877-23V-21

Automated License Plate Recognition System Pursuant to Utah Code Ann. Section 41-3-105

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35513

FILED: 12/08/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed section was requested by the Administrative Rules Review Committee.

SUMMARY OF THE RULE OR CHANGE: The proposed section is drafted at the direction of the Administrative Rules Review Committee. The purpose of the section is to provide the following criteria for the automated license plate recognition (ALPR) system used by the Motor Vehicle Enforcement Division: length of time data is stored in the system, who has access to the information in the system, what the system information may be used for, and whether the system information is protected.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-3-105

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** None--The proposed section matches agency practice.

♦ **LOCAL GOVERNMENTS:** None--The proposed section matches agency practice.

♦ **SMALL BUSINESSES:** None--The proposed section matches agency practice.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--The proposed section matches agency practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed section matches agency practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This section matches current agency practice yielding no fiscal impact proposed.

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

TAX COMMISSION
MOTOR VEHICLE ENFORCEMENT
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2012

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R877. Tax Commission, Motor Vehicle Enforcement.**R877-23V. Motor Vehicle Enforcement.****R877-23V-21. Automated License Plate Recognition System Pursuant to Utah Code Ann. Section 41-3-105.**

(1) "Automated license plate recognition system" (ALPR) means the computer-based system that utilizes special cameras to capture a color image, as well as an infrared image, of the license plate of a passing vehicle.

(2) "Criminal justice agency" is as defined in Section 53-10-102.

(3) Information in the ALPR system may be retained for a period of one year.

(4) Access to the information obtained from the ALPR system is restricted to:

(a) a criminal justice agency;

(b) a noncriminal justice agency or individual authorized by statute, or commission rule; and

(c) an agency or individual that has an agreement with a criminal justice agency, as authorized by the executive director of the commission.

(5) Information obtained from the ALPR system may be used only for law enforcement purposes.

(6) Information in the ALPR system is a protected record under Section 63G-2-305.

KEY: taxation, motor vehicles

Date of Enactment or Last Substantive Amendment: ~~December 8, 2009~~ **2012**

Notice of Continuation: March 14, 2007

Authorizing, and Implemented or Interpreted Law: 41-1a-712; 41-3-105; 41-3-201; 41-3-202; 41-3-210; 41-3-301; 41-3-302; 41-3-305; 41-3-503; 41-3-505; 41-3-506; 41-3-507

**Tax Commission, Property Tax
R884-24P-62**

Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35514

FILED: 12/08/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment is in response to public comment.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment incorporates public comments into the rule, defining the term "non-mobile flight equipment," modifying the term "aircraft valuation manual" to "aircraft pricing guide" to match industry terminology, clarifying the meaning of an aircraft pricing guide, and indicating that value estimates from an aircraft pricing guide shall when possible be included in an appraisal report. None of these amendments substantively impact the administration of this section.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-2-201

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** None--Property tax revenues are local revenues.
- ◆ **LOCAL GOVERNMENTS:** None--These amendments clarify the amendments adopted 12/09/2010.
- ◆ **SMALL BUSINESSES:** None--These amendments clarify the amendments adopted 12/09/2010.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--These amendments clarify the amendments adopted 12/09/2010.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--These amendments clarify the amendments adopted 12/09/2010.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These clarifying amendments have no fiscal impact.

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

TAX COMMISSION
PROPERTY TAX
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2012

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R884. Tax Commission, Property Tax.

R884-24P. Property Tax.

R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1) Purpose. The purpose of this rule is to:

(a) specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

(b) identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

(2) Definitions:

(a) "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

(b) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

(c) "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

(d) "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

(i) Unitary properties include:

(A) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(B) all property of public utilities as defined in Section 59-2-102.

(ii) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(A) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(B) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(C) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

(3) All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

(4) General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

(a) The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See *Beaver County v. WilTel, Inc.*, 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

(b) The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in Subsection (5).

(i) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

(ii) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in Subsection (5) (d).

(iii) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established

for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

(c) Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

(5) Appraisal Methodologies.

(a) Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

(i) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(A) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(B) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(I) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(II) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(III) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

(ii) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

(iii) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

(iv) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD

to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

(v) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

(b) Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

(i) Yield Capitalization. The yield capitalization formula is $CF/(k-g)$, where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(A) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(I) NOI is defined as net income plus interest.

(II) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(III) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

(Aa) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

(Bb) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(B) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(I) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(II) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

(Aa) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

(Bb) The CAPM formula is $k(e) = R(f) + (\text{Beta} \times \text{Risk Premium})$, where $k(e)$ is the cost of equity and $R(f)$ is the risk free rate.

(Cc) The risk free rate shall be the current market rate on 20-year Treasury bonds.

(Dd) The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

(Ee) The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(C) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(I) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

(ii) A discounted cash flow (DCF) method may be impractical to implement in a mass appraisal environment, but may be used when reliable cash flow estimates can be established.

(A) A DCF model should incorporate for the terminal year, and to the extent possible for the holding period, growth and discount rate assumptions that would be used in the yield capitalization method defined under Subsection (5)(b)(i).

(B) Forecasted growth may be used where unusual income patterns are attributed to

- (I) unused capacity;
- (II) economic conditions; or
- (III) similar circumstances.

(C) Growth may not be attributed to assets not in place as of the lien date.

(iii) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

(c) Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

(I) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

(II) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

(d) Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

(6) Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

(a) Cost Regulated Utilities.

(i) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(A) subtracting intangible property;

(B) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(C) adding any taxable items not included in the utility's net plant account or rate base.

(ii) Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

(iii) Items excluded from rate base under Subsections (6)(a)(i)(A) or (B) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

(b)(i) Railroads.

(ii) The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

(c) Airlines, air charter services, and air contract services.

(i) For purposes of this Subsection (6)(c):

(A) "aircraft ~~valuation manual~~ pricing guide" means a nationally recognized ~~airline price guide containing~~ publication that assigns value estimates for individual commercial aircraft that are in average condition typical for their type and vintage, and identified by year, make and model;

(B) "airline" means an:

(I) airline under Section 59-2-102;

(II) air charter service under Section 59-2-102; and

(III) air contract service under Section 59-2-102; ~~and~~

(C) "airline market indicator" means an estimate of value based on an aircraft ~~valuation manual~~ pricing guide; and

(D) "non-mobile flight equipment" means all operating property of an airline, air charter service, or air contract service that

is not within the definition of mobile flight equipment under Section 59-2-102.

(ii) In situations where the use of preferred methods for determining fair market value under Subsection (5) does not produce a reasonable estimate of the fair market value of the property of an airline operating as a unit, an airline market indicator published in an aircraft ~~valuation manual~~ pricing guide, and adjusted as provided in Subsections (6)(c)(ii)(A) and (6)(c)(ii)(B), may be used to estimate the fair market value of the airline property.

(A)(I) In order to reflect the value of a fleet of aircraft as part of an operating unit, an aircraft market indicator shall include a fleet adjustment or equivalent valuation for a fleet.

(II) If a fleet adjustment is provided in an aircraft ~~valuation manual~~ pricing guide, the adjustment under Subsection (6)(c)(ii)(A)(I) shall follow the directions in that ~~manual~~ guide. If no fleet adjustment is provided in an aircraft ~~valuation manual~~ pricing guide, the standard adjustment under Subsection (6)(c)(ii)(A)(I) shall be 20 percent from a wholesale value or equivalent level of value as published in the ~~manual~~ guide.

(B) Non-mobile flight equipment shall be valued using the cost approach under Subsection (5)(a) or the market or sales comparison approach under Subsection (5)(c), and added to the value of the fleet.

(iii) An income capitalization approach under Subsection (5)(b) shall incorporate the information available to make an estimate of future cash flows.

(iv)(A) When an aircraft market indicator under Subsection (6)(c)(ii) is used to estimate the fair market value of an airline, the Division shall:

(I) calculate the fair market value of the airline using the preferred methods under Subsection (5);

(II) retain the calculations under Subsection (6)(c)(iv)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(iv)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) When an aircraft market indicator under Subsection (6)(c)(ii) is used, the Division shall justify in any appraisal report issued with an assessment why the preferred methods under Subsection (5) were not used.

(v)(A) When the preferred methods under Subsection (5) are used to estimate the fair market value of an airline, the Division shall:

(I) calculate an aircraft market indicator under Subsection (6)(c)(ii);

(II) retain the calculations under Subsection (6)(c)(v)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(v)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) Value estimates from an aircraft ~~valuation manual~~ pricing guide under Subsection (6)(c)(i)(A) along with the valuation of non-mobile flight equipment under Subsection (6)(c)(ii)(B) ~~may~~ shall, when possible, also be included in an assessment or appraisal report for purposes of comparison.

(C) Reasons for not including a value estimate required under Subsection (6)(c)(v)(B) include:

(I) failure to file a return; or

(II) failure to identify specific aircraft.

KEY: taxation, personal property, property tax, appraisals
Date of Enactment or Last Substantive Amendment: [~~October 27, 2011~~]**2012**
Notice of Continuation: March 12, 2007
Authorizing and Implemented or Interpreted Law: Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-514; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1308.5; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365

**Transportation, Operations,
 Maintenance
 R918-3
 Snow Removal**

**NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 35515
 FILED: 12/08/2011**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to simplify the criteria for when snow removal service may be provided on roads leading to for-profit winter recreation areas. Other technical changes include correcting the beginning and ending mile post locations for segments that close during the winter and renumbering the subsections for consistency with other rules.

SUMMARY OF THE RULE OR CHANGE: The rule describes the circumstances where UDOT will provide snow removal services, and where such responsibility is left to local governments or private owners. In regard to snow removal service on roads leading to for-profit winter recreation areas, a complicated formula designed to calculate whether such a road segment was eligible for service was removed and replaced with simplified language that allows more discretion to the Region Director.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-1-201 and Section 72-1-205

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** The change neither adds to nor subtracts from the amount of service currently provided for

most winter recreational areas. However, under the revised rule, Eagle Point Ski Area in Beaver County could become eligible for snow removal service, which would be an added cost to the state of approximately \$200,000 per year.
 ♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government because the changes only affect one winter recreation area.
 ♦ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses because the changes only affect one winter recreation area.
 ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the changes only affect one winter recreation area.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons because the changes only affect one winter recreation area and the affect would be to its benefit.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: For most ski resorts, the revised rule will represent no change, and therefore have no fiscal impact to the operation. The change positively affects Eagle Point Ski Resort, as it did not previously qualify for weekend or holiday snow removal service under several essential service requirements. However, in order to receive snow removal service, Eagle Point will have to provide parking away from the highway, and commit to keeping that parking clear.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 TRANSPORTATION
 OPERATIONS, MAINTENANCE
 CALVIN L RAMPTON COMPLEX
 4501 S 2700 W
 SALT LAKE CITY, UT 84119-5998
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2012

AUTHORIZED BY: John Njord, Executive Director

**R918. Transportation, Operations, Maintenance.
 R918-3. Snow Removal.
 R918-3-1. Purpose and Authority.**
The purpose of this rule is to indicate where and when the Utah Department of Transportation will provide snow removal

services. This rule is enacted under the general rulemaking authority in Section 72-1-201.

R918-3-2 On State Roads.

~~[A-](1)~~ The Utah Department of Transportation will provide snow removal services on the following functional classes of state roads:

~~[1-](a)~~ Interstate highways

~~[2-](b)~~ Principal arterials

~~[3-](c)~~ Minor arterials

~~[4-](d)~~ Collector roads which meet the following criteria:

~~[a-](i)~~ where counties or cities provide year round fire, police and emergency services;

~~[b-](ii)~~ where mail year round delivery is provided;

~~[e-](iii)~~ where year round water and sanitary services are provided; and

~~[d-](iv)~~ where counties or cities request or concur with year round snow removal.

~~[B-](2)~~ The following state road sections are an exception to paragraph ~~[A-](1)~~ above and shall be closed in the fall when snow depth requires closure, and will not be reopened until spring weather conditions permit.

TABLE 1

SR-35 (Wolf Creek Pass)	MP [12.0—32.0]12.44 to 27.51
SR-39 (Monte Cristo)	MP [37.2—60.3]36.86 to 55.4
SR-65 (Region 2 East Canyon)	MP 3.11 to[-] 8.4
SR-65 (Region 1 Big Mountain)	MP 8.4 to 13.47
SR-92 (American Fork Canyon/ Alpine Loop)	MP [14.4 to 22.3]12.63 to 22.40
SR-148 (Cedar [Canyon]Breaks)	MP [0.2 to 3.5]0.15 to 2.544
SR-150 (Mirror Lake Highway)	MP 14.70 to 48.63
SR-153 (Puffer Lake)	MP [21.5—39.6]21.29 to 39.55
SR-190 (Guardsman Pass)	MP [18.1]17.71 to 21
SR-224 (Wasatch County line to Deer Valley)	[-]MP [10 to 12.1]0.0 to 1.11

~~[C-](3)~~ Other state road sections may be closed for the winter/or not receive snow removal services, if the Region/ ~~District office~~ Director determines that it is not cost effective to provide snow removal services.

~~[D-](4)~~ The removal of the normal snowfall and windrows on private road approaches, both on and off the highway right-of-way, is a responsibility of the property owner. When clearing these approaches, the property owner shall not push or pile the snow onto the state right-of-way. Within towns and where curb and gutter exist, the normal parking area off the travel lane may be used for snow storage by state forces. If it is desired to remove this snow, it shall be the responsibility of the city, county or the adjacent property owner. The state shall not haul snow off the roadway except ~~[on structures—]where [the length of structures makes—] removal [of the snow—]by other means is impracticable.~~

R918-3-[2]3. On State Roads Leading to for-profit Winter Recreational Areas.

~~[A-](1)~~ State roads leading to for-profit winter recreational areas not qualifying above may qualify for weekend and holiday snow removal services~~[—upon consideration of developed analytical criteria as listed below. These criteria establish a procedure to equally evaluate all winter recreational areas throughout the State].~~ Each for-profit winter recreational area will

be evaluated individually~~[—on the basis of a benefit cost ratio and the resort facilities provided by the operator and/or their entrepreneurs].~~

~~[B-](2)~~ To receive weekend and holiday snow removal services, owners or operators of a for-profit winter recreational area shall~~[—meet a benefit cost ratio of 50 or greater as defined below, provide adequate parking area as defined below, and provide emergency accommodations. To receive weekday services, in addition to the above requirements the area must provide two of the following]:~~

~~[1-](a)~~ ~~[lift capacity of 700,000 vertical transport feet/hour]~~request, in writing to the Region Director, weekend and/or holiday snow removal services;

~~[2-](b)~~ ~~[on-site lodging facilities]~~provide parking away from the highway for all employees, guests, and users; and

~~[3-](c)~~ ~~[on-site eating accommodations; ——— 4. gasoline, towing and automotive services]~~clear snow from all winter recreation site parking areas.

~~[C-](3)~~ ~~[The benefit cost ratio — as used herein, is the quotient obtained by dividing the amount of money spent by recreational area users by the cost of providing snow removal operations on access roads. To qualify for snow removal services the benefit cost ratio "K" as determined by the following formula shall be 50 or greater:~~

~~—————~~ $K = NU / 7C$

~~—————~~ N = Number of days of operation per week

~~—————~~ ADT = Average daily traffic

~~—————~~ U = (Average occupancy rate for each vehicle)

~~—————~~ x (ADT for the road during the skiing season)

~~—————~~ x (Length of season in days) x (Average amount spent at resorts by skiers per day)

~~—————~~ C = Average daily cost of providing snow removal services

~~—————~~ The number "7" is the number of days in a week]The Region Director may authorize weekend and holiday snow removal services based on UDOT Policy 06A-42, functional classification of the road, and available resources.

~~[D-](4)~~ ~~[Parking Facilities: The resort operator is to provide and plow a minimum of 200 square feet of parking area (off of state right-of-way) for each unit of average daily traffic used in computing "K" in paragraph C., regardless of the number of operating days per week, "N". The state will plow state access roads but not open them until the winter recreational area operator has plowed the parking area to the required square footage and opened any access roads off the state highway system. Whenever the parking area is not satisfactorily plowed, the state will close the state access roads to inbound traffic except emergency vehicles]~~The Region Director may suspend, delay, postpone, accelerate, or terminate weekend and holiday snow removal services based on resource availability, avalanche danger, unusual snowfall accumulation, or other factors determined by the Region Director as presenting unacceptable risk to the traveling public or snow removal personnel.

~~[—————E. Emergency Accommodations. The recreational area operator is to provide lodging and meal accommodations for emergencies:~~

~~—————F. Resort Facilities - To receive snow removal services each resort must have certain capabilities:~~

~~—————Capacity and Services: Snow removal based on benefit cost ratio will be limited to weekends and holidays. To receive~~

~~weekday services the winter recreational resort operator must provide or have available for other concessionaires at least two of the following at the resort site:~~

- ~~1. lift capacity of 700,000 vertical transport feet/hour;~~
- ~~2. on-site lodging accommodations for 5% of (average daily traffic for the road during the skiing season), x (average occupancy rate for each vehicle);~~
- ~~3. on site eating accommodations for 10% of (average daily traffic for the road during the skiing season), x (average occupancy rate for each vehicle);~~
- ~~4. gasoline, towing and automotive services.]~~

R918-3-[3]4. Other Than Roadways on the State System.

[A-](1) Snow removal service will not be provided for the following, except where provided through written agreement with the Utah Department of Transportation:

- [1-](a) sidewalks;
- [2-](b) overhead crosswalk structures;
- [3-](c) walkways attached to structures;
- [4-](d) driveways;
- [5-](e) parking lots;
- [6-](f) roads not on the state system;
- [7-](g) overhead vehicular structures not on the state system; [and]or
- [8-](h) bike and pedestrian trails.

KEY: snow removal

Date of Enactment or Last Substantive Amendment: [February 15, 2004]2012

Notice of Continuation: August 9, 2007

Authorizing, and Implemented or Interpreted Law: 72-1-201; 72-1-205[; 72-1-303]

**Transportation, Preconstruction
R930-3
Highway Noise Abatement**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35516

FILED: 12/08/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Federal Highway Administration (FHWA) published a Final Rule in the Federal Register that amended the federal noise regulation titled "Procedures for Abatement of Highway Traffic Noise" outlined in 23 CFR 772. Amended sections of this regulation require that UDOT revise this rule and its Noise Abatement Policy to be consistent with federal regulations.

SUMMARY OF THE RULE OR CHANGE: Proposed changes to this rule include the following: 1) noise studies must now be prepared for projects that involve adding auxiliary lanes or interchange ramps; 2) to be considered

reasonable, noise abatement measures must achieve at least 8 decibels of noise reduction at receptors nearest the highway. (The old criteria was 5 decibels of noise reduction); 3) the definition of a "benefited" noise receptor has been revised. A benefited receptor is a noise receptor that would receive an 8 decibel decrease in noise as a result of abatement measures. (The old criterion was a 5 decibel decrease to be considered benefited); and 4) residents (renters) must be allowed to vote for or against noise abatement measures. Property owner's votes will be weighted by a factor of 5 compared to a weighting factor of 1 for residents (renters) votes. (Previously, only property owners voted for or against noise abatement measures).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-1-201 and Section 72-6-111

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 23 CFR 772, published by Government Printing Office, April 1, 2011

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget because the proposed amendment only incorporates changes to federal regulations which are already in place.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government because the proposed amendment only incorporates changes to federal regulations which are already in place.
- ◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses because the proposed amendment only incorporates changes to federal regulations which are already in place.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the proposed amendment only incorporates changes to federal regulations which are already in place.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs because the proposed amendment only incorporates changes to federal regulations which are already in place.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact on businesses because the proposed amendment only incorporates changes to federal regulations which are already in place.

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

TRANSPORTATION
PRECONSTRUCTION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2012

AUTHORIZED BY: John Njord, Executive Director

R930. Transportation, Preconstruction.

R930-3. Highway Noise Abatement.

R930-3-[0]1. Purpose and Authority.

~~The purpose of this rule is to allow UDOT to address highway noise impacts and to determine the conditions under which noise abatement may be approved. This rule is authorized by the grant of rulemaking authority found in Section 72-6-111. Th[e]is [following]rule is consistent with the Federal Highway Administration's Procedures for Abatement of Highway Traffic Noise and Construction Noise, 23 CFR 772 (April 1, 2011), which is hereby adopted and incorporated by reference[, and in accordance with Utah Code Ann. Section 72-6-111. This rule is designed to allow UDOT to address highway noise impacts and to determine the conditions under which noise abatement may be approved].~~

R930-3-[4]2. Definitions.

(1) "Existing Noise Level" means the noise level, Leq, resulting from the natural and mechanical sources and human activity, considered to be usually present in a particular area.

(2) "Design Noise Level" means the noise level, Leq, calculated for the worst traffic noise conditions likely to occur on a regular basis using a method approved by FHWA.

(3) "Type I Project" means a highway construction project that is related to an increase in traffic noise - construction of a highway on new location or the physical alteration of an existing highway which substantially changes the alignment or increases the number of through-traffic lanes or the addition of auxiliary lanes or interchange ramps.

(4) "Type II Project" means a proposed highway project strictly for noise abatement on an existing highway.

(5) "Type III Project" means a project that does not meet the classification of a Type I project or a Type II project. Type III projects do not require a noise analysis.

(6[5]) "UDOT" means Utah Department of Transportation.

(7[6]) "FHWA" means Federal Highway Administration.

(8[7]) "dBA" means decibels of sound expressed or measured using the "A" weighting scale of a sound-pressure level meter.

(9) "Leq" means the equivalent (average) sound level reported in units of dBA.

(10[8]) "AASHTO" means American Association of State Highway and Transportation Officials.

R930-3-[2]3. Applicability.

(1) Type I Projects. Noise abatement shall be considered for Type I projects where noise impacts are identified. A new or proposed subdivision or other development must have a formal building permit before the issuance of the final environmental decision document to be considered for noise abatement.

(2) Type II Projects. UDOT does not provide a noise retrofit (Type II) program to construct noise abatement measures along existing state transportation facilities.

R930-3-[3]4. Noise Impact Determination.

A traffic noise impact occurs, for purposes of this policy, when either of the following conditions exists at a sensitive land use:

(1) The design noise level is greater than or equal to the UDOT Noise Abatement Criterion (NAC) in Table 1 for each corresponding land use category[-]; or

(2) The design noise level substantially exceeds (ten dBA or more) the existing noise level.

R930-3-[4]5. Noise Abatement Objective.

When noise abatement measures are being considered, every reasonable effort shall be made to obtain substantial noise reductions consistent with Department procedures.

R930-3-[5]6. Noise Abatement Conditions.

In order to be considered for noise abatement, all of the following conditions must be met[-, if applicable]:

(1) A noise abatement device shall not be installed where it will create a hazard or violate design standards. Specifically, noise abatement walls shall not be added within the highway clear zone as defined in the AASHTO Roadside Design Guide, unless a safety barrier already exists[-];

(2) At least ~~eight~~five dBA of noise reduction must be achievable at ~~[typical-]impacted~~ receptors~~[receivers]~~ nearest the highway[-]; and

(3) Noise abatement measures must be cost effective. [Residential Areas (Category B, Table 1):-]

(a) For residential areas (Category B, Table 1), Cost effectiveness is based on the cost of abatement divided by the number of benefited receptors. ~~[b]Benefited receptors~~~~[receivers]~~ must be considered in determining a noise barrier's cost per receptor~~[receiver]~~ regardless of whether or not they were identified as impacted. A benefited receptor~~[receiver]~~ is any impacted or non-impacted receptor~~[receiver]~~ that gets a noise reduction of ~~8~~5 dBA or more as a result of the noise barrier. The maximum cost used to determine reasonableness to provide noise abatement is listed in the Noise Abatement Procedures. This cost may be periodically reviewed by the Department for reasonableness and updated~~[ing]~~, as needed.

~~[(b) In the event that the noise barrier cost effectiveness criteria listed in the Noise Abatement Procedures is exceeded, the cost will be considered to be reasonable only if it can be demonstrated that a "severe" noise impact will occur. Severe traffic noise impacts are defined as traffic noise levels by 30 dBA or more, or results in absolute exterior noise levels of 80 dBA or greater. Based on severity, abatement will be considered on a case-by-case basis.~~

~~]~~ (b[e]) For non-residential areas (Category A, ~~C~~[B], ~~D~~ or ~~E~~[E], Table 1): ~~[The] [e]Cost effectiveness[of noise abatement measures for schools, parks, churches and other non-residential developments including commercial and industrial areas will] depends on the height of noise wall required and corresponding length of frontage.[this type of development has exposed to the transportation facility.]~~ In any case, a reasonable cost for ~~[mitigation for]noise abatement will not exceed the cost effectiveness criteria listed in the Noise Abatement Procedures section of the UDOT Noise Policy.~~

~~[R930-3-6. Other Considerations.~~

~~Noise abatement benefits shall be consistent with overall social, economic, and environmental conditions on both sides of the highway. Aesthetics shall be considered where appropriate' including graffiti deterrence and surrounding landscape. Other factors may be considered.~~

~~[R930-3-7. Declaration of Intent.~~

~~Environmental study documents will[shall] indicate those areas where noise impacts are projected and areas where abatement appears reasonable and feasible.[mitigation is "likely." "Likely" does not mean a firm commitment.] A final decision on the installation of [the]abatement measures will[shall] be made after[upon] completing[on of] final[the project] design and the [public involvement]balloting process.[and based upon what the department believes is reasonable and feasible.]~~

~~R930-3-8. Public Involvement.~~

~~(1) As part of the final design phase of projects, the Department needs to establish whether property owners and residents are in favor of noise abatement measures. This process involves sending ballots to the following groups so they can indicate their preference for or against noise abatement measures:~~

~~(a) All benefited receptors (property owners and residents/renters). A benefited receptor is one that would receive a reduction of 8 dBA or more as a result of noise abatement; and~~

~~(b) Receptors that border and are directly adjacent to the end of a proposed noise wall that are not, by definition, benefited by the wall. [Department representatives shall contact the local government agency and impacted residents. This shall be done prior to completion of final design activities. The concerns of the impacted residents and local government agency shall be a major consideration in reaching a decision on the abatement measures to be provided.]~~

~~(2) The number of votes is established as follows:~~

~~(a) Owner occupied residences: The owner will have 1 vote.~~

~~(b) Rental homes, multi-family residences and apartments: The owner will have 1 vote per unit and the resident/renter will have 1 vote for the unit.~~

~~(c) Day care centers, hospitals, libraries, medical facilities, parks, picnic areas, places of worship, playgrounds, public meeting rooms, public or nonprofit institutional structures: The owner will have 1 vote.~~

~~(d) Commercial/industrial businesses: The owner will have 1 vote for the unit and, if applicable, the tenant will have 1 vote for the unit.~~

~~(e) Mobile home parks: The mobile home owner will have 1 vote. The lot owner, if different than the home owner, will have 1 vote. [Noise abatement may not be planned after local government agency and impacted residents' involvement if the majority of them are in opposition or indifferent to noise mitigation.]~~

~~(3) Assessing ballots - When votes are counted, property owners'votes will receive a multiplier factor of 5 compared to residents (non-owners) factor of 1.[Balloting Process for Noise Abatement Measures]~~

~~(a) Noise abatement will only be recommended if 75% of votes counted, favor noise abatement. The denominator used to calculate this percentage will equal the total number of votes. In addition, at least 50% of the total number of completed ballots must be returned to adequately assess if noise abatement measures are desired. If less than 50 percent of ballots are returned after balloting efforts are completed, then noise abatement measures will be deemed not reasonable.[As part of the final design phase of projects, the Department needs to know if residents/land owners are in favor of noise abatement measures. This public input along with other information including; local ordinances, the amount of noise reduction achieved, engineering considerations, cost and views of the impacted and benefited residents will be considered together to come to a decision on whether or not to construct noise abatement. This process involves sending ballots to residents/land owners so they can indicate their preference for or against noise abatement measures.]~~

~~(b) Ballots sent by mail are deemed by the Department as "due [D]iligence" in notifying the affected property owners and residents/renters of possible noise mitigation measures in their area. [One b]Ballots will be sent by regular mail to each [resident/land]property owner of record and each residing household/resident. Each ballot will include[be given] a deadline for return to the Department.[as to when the ballots need to be returned for counting. If ballots sent to the residents/land owners are not returned by the deadline, a second ballot will be sent by registered mail, to those who have not returned a ballot.] For ballots sent but not received by the deadline, a second ballot will be sent by Registered Mail to those who have not returned a ballot.~~

~~(c) If the voting process results in a decision not to construct noise abatement, the area will not be considered for noise abatement unless a future transportation project falls under the guidelines of a Type I Project.~~

~~[Noise abatement will only be recommended if 75 percent of the following groups of residents/land owners vote, through balloting, in favor the abatement:~~

~~Front row (adjacent) receivers;~~

~~Receivers that would be impacted by the project and benefited by noise abatement.~~

~~(e) The denominator used to calculate this percentage will equal the total number of completed ballots returned. At least 50 percent of the total number of completed ballots must be returned to adequately assess if noise abatement measures are desired by residents/land owners. If less than 50 percent of completed ballots are returned, then noise abatement measures will not be considered reasonable.~~

~~]~~

R930-3-9. Coordination with Local Officials.

~~For Type I Projects, the Department will inform local officials of noise compatible planning concepts and an estimate of future noise levels on undeveloped lands or properties within the project limits. [The Department shall coordinate in the local government review process with regard to aesthetics, height, and other design features of the proposed noise abatement measure. Effective control of highway traffic noise requires land uses near highways to be controlled, but land use planning and control belong to local government jurisdiction. UDOT shall, upon request, assist local agencies by giving information that shall help them to be aware of incompatible land uses near state highways.~~

~~Local governments may have ordinances in place that restrict the height of fences and walls along property lines. In addition, there is an increased potential for conflicts between noise barriers and overhead utilities in urban areas. As such, proposed noise barriers on non-limited access roadways in urban areas will not exceed 8 feet in height.]~~

R930-3-10. Local Government Participation.

In instances where noise abatement has already been deemed feasible and reasonable, a third party such as a local municipality, may contribute funds to make functional or aesthetic enhancements to a noise abatement feature.

R930-3-11. Projects Funded From Other Sources.

The Utah Code authorizes the Department to construct and maintain noise abatement measures along state highways in cases where the cost for the noise abatement is provided by citizens, adjacent property owners, developers, or local governments, and meeting other established criteria. These cases may be treated as a special application of Paragraph R930-3-10, in which the Department may design, build, and maintain the abatement measure, and the local government agency shall pay the Department for all preliminary engineering and construction costs.

R930-3-12. Construction Off Right-of-Way.

Normally, noise barriers (walls or berms) built pursuant to this rule [policy] will [shall] be constructed within Department right-of-way and owned and maintained by the Department. There are cases in which Department right-of-way is not the most prudent location for noise barriers, yet noise abatement can be very feasible and reasonable if built on adjacent property or adjacent public right-of-way. In these cases:

(1) The Department's cost is limited to normal cost for abatement on Department right-of-way.

(2) In no case shall the Department construct a noise barrier unless the adjacent property owners allow access and easements as necessary in order to construct and maintain the barrier.

~~(3) Maintenance of noise walls and associated landscaping on the side facing the highway shall normally be the Department's responsibility. The opposite side shall be maintained by the property owner.~~

~~(4) When landscaping is included off the Department right-of-way, the Department and landowner shall sign an irrigation agreement. The Department shall not pay for irrigation off the right-of-way.]~~

TABLE 1- UDOT Noise Abatement Criteria (NAC)
(Hourly A- Weighted Sound Level decibels (dB(A)))

Activity Category	UDOT Criteria(1)	Evaluation Location	Activity Description
A	56	Exterior	Lands on which serenity and quiet are of extraordinary significance and serve an important public need and where the preservation of those qualities is essential if the area is to continue to serve its intended purpose.
B	66	Exterior	Residential
C	66	Exterior	Active sports areas, amphitheatres, auditoriums, campgrounds, cemeteries, day care centers, hospitals, libraries, medical facilities, parks, picnic areas, places of worship, playgrounds, public meeting rooms, public or nonprofit institutional structures, radio studios, recording studios, recreation areas, Section 4(f) sites, schools, television studios, trails and trail crossings.
D	51	Interior	Auditoriums, day care centers, hospitals, libraries, medical facilities, places of worship, public meeting rooms, public or nonprofit institutional structures, radio studios, recording studios, schools, and television studios.
E	71	Exterior	Hotels, motels, offices, restaurants/bars, and other developed lands, properties or activities not included in A-D or F.
F	No Limit	-	Agriculture, airports, bus yards, emergency services, industrial, logging, maintenance facilities, manufacturing, mining, rail yards, retail facilities, shipyards, utilities (water resources, water treatment, electrical), and warehousing.
G	No Limit	-	Undeveloped lands that are not permitted.

(1) Hourly A-weighted sound level in decibels reflecting a 1 dBA "approach" value below 23CFR 772 values

[~~TABLE I — UDOT NOISE ABATEMENT CRITERIA (NAC)~~

Land Use Activity Category	Leq(h), dba*	Description of Activity Category
A	56 (Exterior)	Lands on which serenity and quiet are of extraordinary significance and serve an important public need and where the preservation of those qualities is essential if the area is to continue to serve its intended purpose.
B	66 (Exterior)	Picnic areas, fixed recreation areas, active sports areas, parks, residences, motels, hotels, schools, churches, libraries, and hospitals.
C	71 (Exterior)	Cemeteries, commercial areas, industrial areas, exterior office buildings, and other developed lands, properties or activities not included in Categories A or B above.

D	No limit	Undeveloped lands.
E	51 (Interior)	Motels, hotels, public meeting rooms, schools churches, libraries, hospitals, and auditoriums. (The interior criterion only applies when there are no exterior activities affected by traffic noise.)

~~* Hourly A weighed sound level in Decibels, Reflecting a zdB
"Approach" Value Below 23 CFR 772~~

~~]~~

KEY: transportation, barrier, traffic noise abatement, highways
Date of Enactment or Last Substantive Amendment: ~~January 12, 2009~~2012
Notice of Continuation: November 1, 2011
Authorizing, and Implemented or Interpreted Law: 72-1-201; 72-7-101; 72-6-111

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

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.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period, and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends January 31, 2012.

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.

From the end of the 30-day waiting period through April 30, 2012, an 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 the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective 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. 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** by the end of the 120-day period after publication, 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; Rule R15-2; and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page

**Transportation, Motor Carrier
R909-19
Safety Regulations for Tow Truck
Operations - Tow Truck Requirements
for Equipment, Operation and
Certification**

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 35256

FILED: 12/08/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to remove "credit cards, cash and checkbook" from the proposed definition of "life-essential personal property." This change is based on comments received from the tow truck industry and the bill sponsor regarding the intent of H.B. 81 (2011 General Session) which provided that certain towing fees are a possessory lien on non-life essential items left in a vehicle. By removing "credit cards, cash and checkbook" from the proposed definition of "life-essential personal property," tow truck carriers will be able to collect cash left in a towed vehicle to pay certain fees, particularly on abandoned vehicles.

SUMMARY OF THE RULE OR CHANGE: This change removes "credit cards, cash and checkbook" from the proposed definition of "life-essential personal property." (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the October 15, 2011, issue of the Utah State Bulletin, on page 41. 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.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-6a-1404 and Section 41-6a-1405 and Section 41-6a-1406 and Section 53-1-106 and Section 53-8-105 and Section 72-9-301 and Section 72-9-303 and Section 72-9-601 and Section 72-9-602 and Section 72-9-603 and Section 72-9-604 and Section 72-9-701 and Section 72-9-702 and Section 72-9-703

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget because the change only affects tow truck carriers and owners of towed vehicles.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government because the change only affects tow truck carriers and owners of towed vehicles.

◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses because the change only affects tow truck carriers and owners of towed vehicles, other than the change will allow small businesses that are tow truck carriers to collect certain fees from cash left in towed vehicles.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the change only affects tow truck carriers and owners of towed vehicles.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no anticipated compliance costs for affected persons because the change only affects tow truck carriers and owners of towed vehicles, except that owners of towed vehicles may have certain fees collected from cash they leave in their vehicle.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The only fiscal impact on businesses is that the change will allow businesses that are tow truck carriers to collect certain fees from cash left in towed vehicles.

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

TRANSPORTATION
MOTOR CARRIER
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2012

AUTHORIZED BY: John Njord, Executive Director

**R909. Transportation, Motor Carrier.
R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification.**

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R909-19-3. Definitions.

(1) "Consent Tow" means any tow truck service that is done at the vehicle, vessel, or outboard motor owner's, or its legal operator, knowledge and/or approval.

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

(3) "Division" means the Motor Carrier Division.

(4) "Gross Combination Weight Rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GVCR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

(5) "Gross Vehicle Weight Rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

(6) "Life-Essential personal property" includes those items essential to sustain life or health including: prescription medication, medical equipment, essential clothing (e.g. shoes, coat), food and water, child safety seats, and government issued photo-identification[~~,-credit cards, cash, and checkbook~~].

(7) "Non-Consent Police Generated Tow" means tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority, as defined in Section 72-1-102.

(8) "Non-consent Non Police Generated Tow" means towing services performed without the prior consent or knowledge of the owner of the vehicle or the person authorized by the owner to operate the vehicle from private property. The tow truck service must be from private property, at the request of the property landowner or agent for the landowner.

(9) "Normal Office Hours" means hours of operation where the office or yard shall be staffed and open for public business during normal business hours Monday thru Friday, except for designated state and federal holidays.

(10) "Recovery Operation" means a towing service that may require charges in addition to the normal one-truck/one-driver towing service requirements. The additional charges may include charges for manpower, extra equipment, traffic control, and special recovery equipment and supplies.

(11) "Tow Truck" means a motor vehicle constructed, designed, altered, or equipped primarily for the purpose of towing or removing damaged, disabled, abandoned, seized, repossessed or impounded vehicles from highway or other place by means of a crane, hoist, tow bar, tow line, dolly tilt bed, or other similar means of vehicle transfer without its own power or control.

(12) "Tow Truck Certification Program" means a program to authorize and approve tow truck motor carrier owners, operators, and vehicles is the process by which the Department, acting under Section 72-9-602, shall verify compliance with the State and Federal Motor Carriers Safety Regulations.

(13) "Tow Truck Motor Carrier" means any company that provides for-hire, private, salvage, or repossession towing services. It includes the company's agents, officers, and representatives as well as employees responsible for hiring, training, supervisory, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of equipment and/or accessories.

(14) "Tow Truck Service" means the functions and any ancillary operations associated with recovering, removing, and towing a vehicle and its load from a highway or other place by means of a tow truck.

(a) Tow Truck Service, with regards to authorized towing fees, is determined by the type and size of the towed vehicle, not the type and size of the tow truck performing the service.

(b) Towed Vehicle Classifications will be used when determining authorized fees. Information regarding the GVWR to determine classification category of towed vehicle can be found on the identification plate on the vehicle driver side doorframe. Towed vehicle classifications are as follows:

(i) "Light Duty" means any towed vehicle with a GVWR 10,000 pounds or less;

(ii) "Medium Duty" means any towed vehicle with a GVWR between 10,001 and 26,000 pounds;

(iii) "Heavy Duty" means any towed vehicle with a GVWR or GCWR 26,001 pounds and greater.

(15) "Tow Truck Motor Carrier Steering Committee" means a committee established by the Motor Carrier Division and will include enforcement personnel, industry representatives and other persons as deemed necessary.

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KEY: safety regulations, trucks, towing, certifications

Date of Enactment or Last Substantive Amendment: ~~2011~~2012

Notice of Continuation: September 19, 2011

Authorizing, and Implemented or Interpreted Law: 41-6a-1404; 41-6a-1405; 41-6a-1406; 53-1-106; 53-8-105; 72-9-601; 72-9-602; 72-9-603; 72-9-604; 72-9-301; 72-9-303; 72-9-701; 72-9-702; 72-9-703

End of the Notices of Changes in Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule.

Because **120-DAY RULES** are effective immediately, the law does not require a public comment period. However, when an agency files a **120-DAY RULE**, it usually files a **PROPOSED RULE** at the same time, to make the requirements permanent. Comments may be made on the **PROPOSED RULE**. Emergency or **120-DAY RULES** are governed by Section 63G-3-304; and Section R15-4-8.

School and Institutional Trust Lands, Administration **R850-41** Rights of Entry

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 35541
FILED: 12/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Pursuant to Subsections 53C-1-302(1)(a)(ii) and 53C-4-101(1), the Director of the School and Institutional Trust Lands Administration is directed to make rules for the sale, exchange, lease, or other disposition or conveyance of trust lands, including procedures for determining fair-market value of those lands. The previous rule governing the right to enter upon trust lands and conduct non-disturbing, short-term activities was inadvertently allowed to expire, eliminating the agency's ability to allow and manage this type of activity on trust lands. In order that the agency may continue to manage existing rights of entry, as well as issue new ones which provide income to the various trust beneficiaries, this emergency rule filing will allow the agency to remain in compliance with statute until such time as the proposed new rule goes through the rulemaking process and becomes effective in February 2012.

SUMMARY OF THE RULE OR CHANGE: The proposed new rule is identical to the rights of entry program rule which expired. This rule governs the issuance and management of

rights of entry and allows the agency to extend the right to others to enter upon trust lands and conduct non-disturbing, short-term activities for the benefit of the various trust beneficiaries. This emergency rule will allow the agency to remain in compliance with statute until such time as a new rule can be made effective. (DAR NOTE: The proposed new Rule R850-41 is under DAR No. 35542 in this issue, January 1, 2012, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53C-1-302(1)(a)(ii) and Subsection 53C-4-101(1)

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

JUSTIFICATION: State law, as cited above, requires the agency to maintain rules for the disposition of trust lands. If the proposed rule is not enacted, the agency will not be in compliance with state statute.

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule is in essence a re-enactment of the previously expired rule so there will be no addition cost or savings to state budget beyond what previously existed.

◆ **LOCAL GOVERNMENTS:** This rule is in essence a re-enactment of the previously expired rule, and there will not be any additional cost or savings to local government beyond what previously existed.

◆ **SMALL BUSINESSES:** This rule is essentially a re-enactment of the previously expired rule and there will not be any additional costs or savings to small businesses beyond what previously existed.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule is essentially a re-enactment of the previously expired rule and there will not be any additional costs or savings to persons other than small businesses, businesses, or local government entities than what previously existed.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule is essentially a re-enactment of the previously expired rule and there are no additional compliance costs for affected persons beyond what previously existed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will continue to benefit businesses through allowing short-term commercial use of trust lands.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
ROOM 500
675 E 500 S
SALT LAKE CITY, UT 84102-2818
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ John Andrews by phone at 801-538-5180, by FAX at 801-538-5118, or by Internet E-mail at jandrews@utah.gov

EFFECTIVE: 12/14/2011

AUTHORIZED BY: Kevin Carter, Director

R850. School and Institutional Trust Lands, Administration.

R850-41. Rights of Entry.

R850-41-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the Director of the School and Institutional Trust Lands Administration to establish criteria by rule for the sale, exchange, lease or other disposition or conveyance of Trust Lands Administration lands including procedures for determining fair-market value of those lands.

R850-41-150. Planning.

Pursuant to Section 53C-2-201(1)(a), this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes.

R850-41-200. Rights of Entry on Trust Lands Administration Lands.

1. The agency may issue non-exclusive right of entry permits on Trust Lands Administration lands when the agency deems it consistent with agency rules and trust responsibilities.

2. Commercial use of Trust Lands Administration lands; a right of entry permit shall be required for any person to use,

occupy, or travel upon Trust Lands Administration land in conjunction with any commercial enterprise without regard to the incidental nature of the use, occupancy, or travel, except that a right of entry permit shall not be necessary when the use, occupancy, or travel is across authorized public roads or permitted under some other land use authorization issued by the agency and currently in effect.

3. Non-commercial use of Trust Lands Administration land shall not require a permit provided that the use shall not exceed 15 consecutive days and shall not conflict with an applicable land use or with a management plan. At the conclusion of the 15-day period, any personal property, garbage, litter, and associated debris must be removed by the user. The use may not be relocated on any other Trust Lands Administration land within a distance of at least two miles from the original site or be allowed to reestablish at the original site for 20 consecutive days. If, for any reason, a non-commercial, incidental user desires a document authorizing the use, the agency may issue a Letter of Authorization upon payment of an administrative charge.

4. Non-commercial uses of Trust Lands Administration land exceeding 15 consecutive days will require a right of entry permit.

R850-41-300. Rights of Entry Acquired by Application.

Rights of entry on Trust Lands Administration lands may be acquired only by application and grant made in compliance with the rules and laws applicable thereto. All applications shall be made on agency forms. The filing of an application form is deemed to constitute the applicant's offer to purchase a right of entry under the conditions contained in these rules.

R850-41-400. Valuable Consideration for Right of Entry Permits.

The consideration for any right of entry permit granted under these rules, including those granted to municipal or county governments or agencies of the state or federal government, shall be determined pursuant to R850-41-600.

R850-41-500. Agency Contractors.

Any person doing work for the agency under a contract or other permit may enter upon Trust Lands Administration lands for the purpose and period of time authorized by the contract or other permit without obtaining a right of entry.

R850-41-600. Right of Entry Fees.

The agency shall establish minimum fees for right of entry permits which may be based on the cost incurred by the agency in administering the right of entry permit and the fair-market value of a proposed land use.

R850-41-700. Application Procedures.

1. Time of Filing. Applications for right of entry permits are received for filing in the office of the agency during office hours. Except as provided, all applications received, whether by U.S. Mail or delivery over the counter, are immediately stamped with the exact date of filing.

2. Non-refundable Application Fees. All applications must be accompanied with a non-refundable application fee as specified in R850-4. After review of the application, the agency

shall notify the applicant of the fee pursuant to R850-41-600. Failure to pay the fee within 15 days of mailing of notification shall cause the denial of the application.

3. Refunds and Withdrawals of Applications.

(a) If an application for a right of entry permit is rejected, all monies tendered by the applicant, except the application fee, will be refunded.

(b) Should an applicant desire to withdraw the application, the applicant must make a written request. If the request is received prior to the time that the application is approved, all monies tendered by the applicant, except the application fee, will be refunded. If the request for withdrawal is received after the application is approved, all monies tendered are forfeited to the agency, unless otherwise ordered by the director for a good cause shown.

4. Application Review.

(a) Upon receipt of an application, the agency shall review the application for completeness. The agency shall allow all applicants submitting incomplete applications at least 15 days from the date of mailing of notice as evidenced by the certified mailing posting receipt (Postal Service form 3800), within which to cure any deficiencies. Incomplete applications not remedied within the designated time period may be denied.

(b) Application approval by the director constitutes acceptance of the applicant's offer.

R850-41-800. Term of Rights of Entry.

Rights of entry granted under these rules shall normally be for no greater than a one year term. Longer terms may be granted upon application based on a written finding that such a grant is in the best interest of the trust beneficiaries.

R850-41-900. Conveyance Documents.

Each right of entry shall contain provisions necessary to ensure responsible surface management, including the following provisions: the rights and responsibilities of the permittee, rights reserved to the permitter; the term of the right of entry; payment obligations; and protection of the Trust Lands Administration from liability for all action of the permittee.

R850-41-1000. Bonding Provisions.

1. Prior to the issuance of a right of entry, or for good cause shown at any time during the term of the right of entry, upon 15 days' written notice, the applicant or permittee may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the right of entry.

2. Bonds posted on rights of entry may be used for payment of all monies, rentals, royalties due to the permitter, reclamation costs, and for compliance with all other terms, conditions, and rules pertaining to the right of entry.

3. Bonds may be increased or decreased in reasonable amounts, at any time as the agency may decide, provided the agency first gives permittee 15 days' written notice stating the increase and the reason(s) for the increase.

4. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. However, the Trust Lands Administration will not be responsible for any investment returns on cash deposits.

(c) Certificates of deposit in the name of "School and Institutional Trust Lands Administration and Permittee, c/o Permittee's address", with an approved state or federally insured banking institution registered in Utah. The certificate of deposit must have a maturity date no greater than 12 months, be automatically renewable, and be deposited with the agency, the permittee will be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the permittee prior to acceptance by the director.

(d) Other forms of surety as may be acceptable to the agency.

(e) Due to the temporary nature of rights of entry, if the agency imposes or increases the amount of a bond, a stop-work order may be issued by the agency to insure the adequacy of the bond prior to the completion of work or activities authorized by the right of entry permit.

R850-41-1100. Conflicts of Use.

The agency reserves the right to issue additional rights of entry or convey other interests in property on Trust Lands Administration land encumbered by existing rights of entry without compensation to the permittee.

R850-41-1200. Amendments.

Any holder of an existing right of entry permit desiring to change any of the terms thereof, shall make application following the same procedure as is used to make an application for a new right of entry. An amendment fee pursuant to R850-4 must accompany the amendment request along with other appropriate fees.

R850-41-1300. Unauthorized Uses.

A right of entry permit does not authorize a permittee to cut any trees or remove or extract any natural, cultural, or historical resources.

R850-41-1310. Prevention of the Spread of Noxious Weeds.

1. In an effort to halt the spread of noxious weeds, trust lands are closed to:

(a) the possession, use or storage of hay, straw, or mulch which has not been certified as noxious weed free or noxious weed seed free, and

(b) the possession, use or storage of supplemental grain or grain products which do not meet the requirements of the "Utah Commercial Feed Act" standards.

2. These restrictions do not apply to:

(a) the use of pelletized feed by authorized occupants on trust lands,

(b) persons with Modified Grazing Permits or Agricultural Special Use Leases that provide for the use of these materials, or

(c) persons with authorization pursuant to R850-50-600(6).

R850-41-1400. Right of Entry Assignments.

1. A right of entry may be assigned to any person, firm, association, or corporation qualified under R850-3-200, provided

that the assignments are approved by the agency; and no assignment is effective until approval is given. Any assignment made without such approval is void.

2. An assignment shall take effect the day of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the easement to the same extent as if the assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.

3. An assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the easement number, and land involved, and the name and address of the assignee.

4. An assignment shall be executed according to agency procedures.

R850-41-1500. Termination of Rights of Entry.

Any right of entry permit granted by the agency on Trust Lands Administration land may be terminated in whole or in part for failure to comply with any term or condition of the conveyance document or applicable laws or rules. Based on a written finding, the director shall issue an appropriate instrument when terminating the right of entry for cause.

KEY: natural resources, management, administrative procedures

Date of Enactment or Last Substantive Amendment: December 14, 2011

Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-2-201(1)(a); 53C-4-101(1)

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to remove obsolete rules from the Utah Administrative Code. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **NOTICE**. By filing a Notice, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. **NOTICES** are effective upon filing.

NOTICES are governed by Section 63G-3-305.

Financial Institutions, Banks **R333-13**

Rule Designating Applicable Federal Law for Banks Subject to the Jurisdiction of the Department of Financial Institutions

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 35517
FILED: 12/09/2011

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The rule designates which one or more federal laws are applicable to a bank subject to the jurisdiction of the department. The rule establishes that designated federal law may only be enforced by the department by taking action permitted under Title 7 and the applicable chapters set forth in Section 7-1-325. The statutory provision states that the ". . . department shall by rule . . . designate which one or more federal laws are applicable to an institution subject to the jurisdiction of the department."

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 supporting or opposing written comments have been received since the last notice of continuation.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY

DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 7-1-325 requires that the department designate, by rule, which one or more federal laws are applicable to an institution subject to the jurisdiction of the department. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
FINANCIAL INSTITUTIONS
BANKS
ROOM 201
324 S STATE ST
SALT LAKE CITY, UT 84111-2393
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pallred@utah.gov

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 12/09/2011

Financial Institutions, Industrial Loan Corporations **R339-12**

Rule Designating Applicable Federal Law for Industrial Loan Corporations Subject to the Jurisdiction of the Department of Financial Institutions

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 35518
FILED: 12/09/2011

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The rule designates which one or more federal laws are applicable to a industrial loan corporation subject to the jurisdiction of the department. The rule establishes that designated federal law may only be enforced by the department by taking action permitted under Title 7 and the applicable chapters set forth in Section 7-1-325. The statutory provision states that the ". . . department shall by rule . . . designate which one or more federal laws are applicable to an institution subject to the jurisdiction of the department."

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 supporting or opposing written comments have been received since the last notice of continuation.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 7-1-325 requires that the department designate, by rule, which one or more federal laws are applicable to an institution subject to the jurisdiction of the department. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 FINANCIAL INSTITUTIONS
 INDUSTRIAL LOAN CORPORATIONS
 ROOM 201
 324 S STATE ST
 SALT LAKE CITY, UT 84111-2393
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pallred@utah.gov

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 12/09/2011

**Natural Resources, Wildlife Resources
 R657-20
 Falconry**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 35519
 FILED: 12/12/2011

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under Section 23-17-7 and in accordance with 50 CFR 21, 2000 ed., which is incorporated by reference into Rule R657-20, the Wildlife Board is authorized and required to provide rules to regulate the possession and use of raptors for falconry.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received during or since the last five-year review of Rule R657-20.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-20 provides the requirements, procedures, and standards for possessing and using raptors for falconry. The provisions adopted in this rule are effective in providing the requirements, procedures, and standards for managing the falconry program. Continuation of this rule is necessary for continued success of this program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 NATURAL RESOURCES
 WILDLIFE RESOURCES
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: James Karpowitz, Director

EFFECTIVE: 12/12/2011

**Public Education Job Enhancement Program, Job Enhancement Committee
 R690-100
 Public Education Job Enhancement Program Participant Eligibility and Requirements**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 35532
 FILED: 12/14/2011

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1a-602(5) authorizes the Job Enhancement Committee to make a rule to establish policies and procedures for awards and scholarships in accordance with prioritized critical areas of need as determined by the committee, timelines for the submission and approval of applications, and the distribution of the awards and scholarships to successful applicants based on available money provided by legislative appropriation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides procedures for participation in the Public Education Job Enhancement Program. There was no new money for Public Education Job Enhancement Program as of March 2011, but remaining funds continue to be distributed and monitored for previously identified educators. Therefore, this rule should be continued.

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

PUBLIC EDUCATION JOB ENHANCEMENT PROGRAM
JOB ENHANCEMENT COMMITTEE
250 E 500 S
SALT LAKE CITY, UT 84414
or at the Division of Administrative Rules.

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

AUTHORIZED BY: John Sutherland, Chair, Job Enhancement Committee

EFFECTIVE: 12/14/2011

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35521
FILED: 12/13/2011

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 53-6-105(1)(k) provides that the director shall, with the advice of the council, make rules necessary to administer Title 53, Chapter 6. The authority for this rule is authorized under Section 63G-4-301 which describes how interested parties may petition an agency with regard to making, amending, or repealing 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 public comments regarding this rule have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The continuation of this rule is necessary in order to establish the procedure under which an individual or agency may file a petition for a declaratory ruling to the Director of Peace Officer Standards and Training (POST). This rule also establishes the procedures to be followed for the review and disposition of such petitions.

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

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kelly Sparks by phone at 801-256-2321, by FAX at 801-256-0600, or by Internet E-mail at ksparks@utah.gov

AUTHORIZED BY: Scott Stephenson, Director

EFFECTIVE: 12/13/2011

**Public Safety, Peace Officer Standards
and Training
R728-101
Public Petitions For Declaratory
Rulings**

**Public Safety, Peace Officer Standards
and Training
R728-401**

**Requirements for Approval and
Certification of Peace Officer Basic
Training Programs and Applicants**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35522

FILED: 12/13/2011

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 53-6-105 which states the Director of Peace Officer Standards and Training shall prescribe standards for the certification of peace officer training academies and prescribe minimum qualifications for certification of peace officers. Subsection 53-6-105(1)(k) provides that the director shall, with the advice of the council, make rules necessary to administer Title 53, Chapter 6.

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 public comments regarding this rule have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the statutorily required standards and qualifications for peace officer training and for peace officer certification. It is necessary to continue this rule so the standards and qualifications established by the rule will be maintained. The division has received no public comments, in the past five years, calling any portion of this rule into question.

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

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kelly Sparks by phone at 801-256-2321, by FAX at 801-256-0600, or by Internet E-mail at ksparks@utah.gov

AUTHORIZED BY: Scott Stephenson, Director

EFFECTIVE: 12/13/2011

**Public Safety, Peace Officer Standards
and Training
R728-402**

**Application Procedures to Attend a
Basic Peace Officer Training Program**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35523

FILED: 12/13/2011

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 53-6-105 which states the Director of Peace Officer Standards and Training shall prescribe standards for the certification of peace officer training academies and prescribe minimum qualifications for certification of peace officers. Subsection 53-6-105(1)(k) provides that the director shall, with the advice of the council, make rules necessary to administer Title 53, Chapter 6.

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 public comments regarding this rule have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the application procedures that allow the division to ensure the statutorily required standards and qualifications for peace officer training and for peace officer certification are met. It is necessary to continue this rule so the established application procedures will be understood and maintained. The division has received no public comments, in the past five years, calling any portion of this rule into question.

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

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kelly Sparks by phone at 801-256-2321, by FAX at 801-256-0600, or by Internet E-mail at ksparks@utah.gov

AUTHORIZED BY: Scott Stephenson, Director

EFFECTIVE: 12/13/2011

**Public Safety, Peace Officer Standards
and Training
R728-403**

**Qualifications For Admission To
Certified Peace Officer Training
Academies**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35524
FILED: 12/13/2011

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 53-6-105 which states the Director of Peace Officer Standards and Training shall prescribe standards for the certification of peace officer training academies and prescribe minimum qualifications for certification of peace officers. Subsection 53-6-105(1)(k) provides that the director shall, with the advice of the council, make rules necessary to administer Title 53, Chapter 6. Section 53-6-203 lists the requirements for admission in a certified training academy.

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 public comments regarding this rule have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the qualifications required to admit an individual into a peace officer training academy as referenced in Section 53-6-203. It is necessary to continue this rule in order to establish procedures that will ensure individuals entering into a certified training academy meet the statutory requirements. The division has received no public comments in the past five years calling any portion of this rule into question.

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

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kelly Sparks by phone at 801-256-2321, by FAX at 801-256-0600, or by Internet E-mail at ksparks@utah.gov

AUTHORIZED BY: Scott Stephenson, Director

EFFECTIVE: 12/13/2011

**Public Safety, Peace Officer Standards
and Training
R728-404**

Basic Training Basic Academy Rules

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35525
FILED: 12/13/2011

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 53-6-105 which states the Director of Peace Officer Standards and Training shall prescribe standards for the certification of peace officer training academies and prescribe minimum qualifications for certification of peace officers. Subsection 53-6-105(1)(k) provides that the director shall, with the advice of the council, make rules necessary to administer Title 53, Chapter 6.

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 public comments regarding this rule have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes rules which must be followed by a certified training academy in order to ensure all statutory requirements are met. It is necessary to continue this rule in order to establish procedures that will ensure

individuals attending a certified training academy meet the statutory requirements. The division has received no public comments in the past five years calling any portion of this rule into question.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED,
DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kelly Sparks by phone at 801-256-2321, by FAX at 801-256-0600, or by Internet E-mail at ksparks@utah.gov

AUTHORIZED BY: Scott Stephenson, Director

EFFECTIVE: 12/13/2011

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF FIVE-YEAR EXPIRATIONS

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 (Division). However, if the agency fails to file either the review or the extension by the five-year anniversary date of the rule, the rule expires.

Upon expiration of the rule, the Division is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule, and it must follow regular rulemaking procedures to replace the rule if necessary.

The rules listed below were *not* reviewed in accordance with Section 63G-3-305. These rules have expired and have been removed from the *Utah Administrative Code*.

The expiration of administrative rules for failure to comply with the five-year review requirement is governed by Subsection 63G-3-305(8).

School and Institutional Trust Lands,
Administration
R850-41
Rights of Entry

FIVE-YEAR REVIEW EXPIRATION

DAR FILE NO.: 35528

FILED: 12/13/2011

SUMMARY: The agency failed to file the five-year review on this rule by the deadline of 12/12/2011. Therefore, the rule has expired and will be removed from the Administrative Code. (DAR NOTE: The agency has filed a 120-day (emergency) Rule R850-41 that is effective 12/14/2011 under DAR No. 35541 (this puts the rule back in place) and a proposed new Rule R850-41 under DAR No. 35542 in this issue, January 1, 2012, of the Bulletin.)

EFFECTIVE: 12/13/2011

End of the Notices of Notices of Five Year Expirations Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a Notice of Effective Date within 120 days from the publication of a Proposed Rule or a related Change in Proposed Rule the rule lapses and the agency must start the rulemaking process over.

Notices of Effective Date are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

Administrative Services

Facilities Construction and Management

No. 35333 (NEW): R23-32. Rules of Procedure for Conduct of Utah State Building Board Meetings

Published: 11/01/2011

Effective: 12/09/2011

Career Service Review Office

Administration

No. 35089 (AMD): R137-1-2. Definitions

Published: 08/15/2011

Effective: 12/09/2011

Education

Administration

No. 35341 (AMD): R277-106. Utah Professional Practices Advisory Commission Appointment Process

Published: 11/01/2011

Effective: 12/08/2011

No. 35342 (AMD): R277-401. Child Abuse-Neglect Reporting by Education Personnel

Published: 11/01/2011

Effective: 12/08/2011

No. 35343 (AMD): R277-419. Pupil Accounting

Published: 11/01/2011

Effective: 12/08/2011

No. 35344 (AMD): R277-422. State Supported Voted Leeway, Local Board-Approved Leeway and Local Board Leeway for Reading Improvement Programs

Published: 11/01/2011

Effective: 12/08/2011

No. 35345 (AMD): R277-424. Indirect Costs for State Programs

Published: 11/01/2011

Effective: 12/08/2011

No. 35346 (AMD): R277-477. Distribution of Funds from the Interest and Dividend Account (School LAND Trust Funds) and Administration of the School LAND Trust Program

Published: 11/01/2011

Effective: 12/08/2011

No. 35347 (AMD): R277-600-10. Special Transportation Levy

Published: 11/01/2011

Effective: 12/08/2011

No. 35348 (AMD): R277-914. Applied Technology Education (ATE) Leadership

Published: 11/01/2011

Effective: 12/08/2011

Environmental Quality

Air Quality

No. 35222 (AMD): R307-121. General Requirements: Clean Air and Efficient Vehicle Tax Credit

Published: 10/01/2011

Effective: 01/01/2012

Governor

Economic Development, Pete Suazo Utah Athletic Commission

No. 35200 (AMD): R359-1-301. Qualifications for Licensure

Published: 09/15/2011

Effective: 12/15/2011

No. 35199 (AMD): R359-1-501. Promoter's Responsibilities in Arranging a Contest

Published: 09/15/2011

Effective: 12/15/2011

Human Services

Child and Family Services

No. 35310 (AMD): R512-205-4. Investigation

Published: 11/01/2011

Effective: 12/08/2011

Insurance

Administration

No. 35103 (AMD): R590-192. Unfair Accident and Health

Claims Settlement Practices

Published: 08/15/2011

Effective: 12/08/2011

No. 35103 (CPR): R590-192. Unfair Accident and Health
Claims Settlement Practices

Published: 11/01/2011

Effective: 12/08/2011

No. 35104 (AMD): R590-203. Health Grievance Review
Process

Published: 08/15/2011

Effective: 12/08/2011

No. 35104 (CPR): R590-203. Health Grievance Review
Process

Published: 11/01/2011

Effective: 12/08/2011

No. 35331 (AMD): R590-225. Submission of Property and
Casualty Rate and Form Filings

Published: 11/01/2011

Effective: 12/08/2011

No. 35105 (AMD): R590-261. Health Benefit Plan Adverse
Benefit Determination

Published: 08/15/2011

Effective: 12/08/2011

No. 35105 (CPR): R590-261. Health Benefit Plan Adverse
Benefit Determinations

Published: 11/01/2011

Effective: 12/08/2011

Labor Commission

Administration

No. 35362 (AMD): R600-3-1. Authority and Scope

Published: 11/01/2011

Effective: 12/08/2011

Natural Resources

Parks and Recreation

No. 35361 (NEW): R651-209. Anchored and Beached
Vessels

Published: 11/01/2011

Effective: 12/09/2011

No. 35330 (AMD): R651-637. 2011 Antelope Island State
Park Special Mule Deer and Bighorn Sheep Hunt

Published: 11/01/2011

Effective: 12/09/2011

Tax Commission

Administration

No. 35182 (AMD): R861-1A-24. Formal Adjudicative
Proceedings Pursuant to Utah Code Ann. Sections 59-1-
502.5, 63G-4-206, and 63G-4-208

Published: 09/15/2011

Effective: 12/08/2011

Property Tax

No. 35332 (AMD): R884-24P-53. 2011 Valuation Guides for
Valuation of Land Subject to the Farmland Assessment Act
Pursuant to Utah Code Ann. Section 59-2-515

Published: 11/01/2011

Effective: 12/08/2011

Transportation

Administration

No. 35324 (AMD): R907-66. Incorporation and Use of
Federal Acquisition Regulations on Federal-Aid and State-
Financed Transportation Projects

Published: 11/01/2011

Effective: 12/08/2011

Operations, Aeronautics

No. 35326 (AMD): R914-1. Rules and Regulations of the
Utah State Aeronautical Committee

Published: 11/01/2011

Effective: 12/08/2011

Veterans' Affairs

Administration

No. 35261 (NEW): R978-1. Rule Governing Veterans' Affairs

Published: 10/15/2011

Effective: 12/10/2011

End of the Notices of Rule Effective Dates Section

**2011 RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2011 through December 15, 2011. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive 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	EXT = Five-Year Review Extension
EXP = Expedited Rule	LNR = Legislative Nonreauthorization
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Administration</u>					
R13-2	Access to Records	35309	5YR	10/04/2011	2011-21/155
R13-3	Americans with Disabilities Act Grievance Procedures	34347	AMD	03/10/2011	2011-3/4
R13-3-2	Definitions	34674	NSC	04/27/2011	Not Printed
<u>Facilities Construction and Management</u>					
R23-23	Health Reform - Health Insurance Coverage in State Contracts - Implementation	34801	EMR	05/10/2011	2011-11/105
R23-23	Health Reform - Health Insurance Coverage in State Contracts - Implementation	34803	AMD	07/11/2011	2011-11/6
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R380-200	Patient Safety Sentinel Event Reporting	35234	5YR	09/14/2011	2011-19/65
R380-210	Health Care Facility Patient Safety Program	35235	5YR	09/14/2011	2011-19/66
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R398-2	Newborn Hearing Screening	34589	NSC	05/03/2011	Not Printed
R398-5	Birth Defects Reporting	34590	NSC	05/03/2011	Not Printed
R398-10	Autism Spectrum Disorders and Mental Retardation Reporting	34591	NSC	05/03/2011	Not Printed
R398-20	Early Intervention	34592	NSC	05/03/2011	Not Printed

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R406-200	Program Overview	34594	NSC	05/03/2011	Not Printed
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R406-202	Eligibility	34596	NSC	05/03/2011	Not Printed

R406-301	Clinic Guidelines	34597	NSC	05/03/2011	Not Printed
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R392-101	Food Safety Manager Certification	34572	NSC	05/03/2011	Not Printed
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R392-400	Temporary Mass Gatherings Sanitation	34579	NSC	05/03/2011	Not Printed
R392-401	Roadway Rest Stop Sanitation	34580	NSC	05/03/2011	Not Printed
R392-402	Mobile Home Park Sanitation	34581	NSC	05/03/2011	Not Printed
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R392-510	Utah Indoor Clean Air Act	34584	NSC	05/03/2011	Not Printed
R392-510	Utah Indoor Clean Air Act	34733	AMD	09/12/2011	2011-10/24
R392-600	Illegal Drug Operations Decontamination Standards	34585	NSC	05/03/2011	Not Printed
R392-700	Indoor Tanning Bed Sanitation	34586	NSC	05/03/2011	Not Printed
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R386-702	Communicable Disease Rule	34564	NSC	05/03/2011	Not Printed
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R386-703	Injury Reporting Rule	34565	NSC	05/03/2011	Not Printed
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R388-803	HIV Test Reporting	34568	NSC	05/03/2011	Not Printed
R388-804	Special Measures for the Control of Tuberculosis	34569	NSC	05/03/2011	Not Printed
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ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive 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	EXT = Five-Year Review Extension
EXP = Expedited Rule	LNR = Legislative Nonreauthorization
GEX = Governor's Extension	

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	34831	R277-712	REP	07/11/2011	2011-11/59
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	35339	R277-406-4	NSC	10/31/2011	Not Printed
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	35018	R151-4-708	AMD	09/07/2011	2011-15/44
	34480	R151-46b	REP	04/21/2011	2011-6/18
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	34712	R156-46b	NSC	05/25/2011	Not Printed
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	34662	R434-40	NSC	05/03/2011	Not Printed
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	35089	R137-1-2	AMD	12/09/2011	2011-16/9
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	34754	R861-1A-45	AMD	06/23/2011	2011-10/108

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	35541	R850-41	EMR	12/14/2011	Not Printed	
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	34348	R307-342	REP	06/07/2011	2011-3/32	
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	34424	R651-221	5YR	02/10/2011	2011-5/112
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	34446	R651-601-15	AMD	04/07/2011	2011-5/40
	34889	R651-606-5	AMD	07/27/2011	2011-12/60
	34507	R651-608-1	AMD	05/09/2011	2011-7/17
	34377	R651-611	5YR	01/24/2011	2011-4/44
	34364	R651-611	AMD	04/07/2011	2011-3/37
	34380	R651-611	NSC	04/11/2011	Not Printed
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	35335	R414-320	AMD	12/23/2011	2011-21/109
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	34456	R68-7-10	NSC	06/02/2011	Not Printed
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petroleum industries

Tax Commission, Auditing	35147	R865-15O-1	AMD	10/13/2011	2011-17/62
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pets

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physical therapist

Commerce, Occupational and Professional Licensing	35443	R156-24b	5YR	11/15/2011	2011-23/104
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physical therapist assistant

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	35348	R277-914	AMD	12/08/2011	2011-21/26
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	34849	R251-708	NSC	06/14/2011	Not Printed	
	34850	R251-709	NSC	06/14/2011	Not Printed	
	34903	R251-710	AMD	10/12/2011	2011-13/40	
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	34460	R926-9	AMD	04/21/2011	2011-6/89
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