

# 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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# EDITOR'S NOTES

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## Legislation Affecting Administrative Rulemaking

During the 2012 General Session, the Legislature passed the following bills that affects rulemaking.

### S. B. 30 Administrative Rules Reauthorization

S. B. 30, entitled "Administrative Rules Reauthorization", is the legislation required annually by Subsection 63G-3-502(3). The bill was sponsored by Sen. Howard Stephenson, and carried a recommendation from the Legislature's Administrative Rules Review Committee.

The bill was amended on the last night of the session. As passed, the bill reauthorized all administrative rules.

Pending the Governor's signature, S.B. 30 goes into effect on 05/01/2012 pursuant to section 2 of the bill.

More information about S.B. 30 is available from the Legislature's web site at:  
<http://le.utah.gov/~2012/htmldoc/sbillhtm/sb0030.htm> .

### S.B. 240 General Repealer

S.B. 240, entitled "General Repealer", was sponsored by Sen. John Valentine. Section 3 of the bill repeals Subsection 63G-3-305(10) from the rulemaking act. This subsection was added to the act back in 1997 to provide a temporary delay in the five-year review requirement for the then-newly-created Department of Workforce Services and the Labor Commission.

Pending the Governor's signature, S.B. 240 goes into effect on 05/08/2012.

More information about S.B. 240 is available from the Legislature's web site at:  
<http://le.utah.gov/~2012/htmldoc/sbillhtm/sb0240s01.htm> .

*Questions about this bill may be directed to Ken Hansen (801-538-3777).*

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



## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between March 02, 2012, 12:00 a.m., and March 15, 2012, 11:59 p.m. are included in this, the April 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 May 1, 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 July 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.

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

**Alcoholic Beverage Control,  
Administration  
R81-3-11  
Application**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35942

FILED: 03/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to establish a deadline for filing an application for a package agency.

**SUMMARY OF THE RULE OR CHANGE:** Package agencies are granted by the Alcoholic Beverage Control Commission at its regularly monthly meeting. This rule establishes the 10th of the month as a deadline for filing a completed application of a package agency. If the 10th falls on a Saturday, Sunday, or state or federal holiday, the filing is on the next business day after the 10th of the month. Late filings will be considered by the commission the following month.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 32B-2-602

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** None--This rule enhances the efficiency of the department by allowing sufficient time to review and process applications, conduct premise inspections, identify issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on the state budget for costs or savings.

◆ **LOCAL GOVERNMENTS:** None--This rule enhances the efficiency of the department by allowing sufficient time to review and process applications, conduct premise inspections, identify issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on local governments for costs or savings.

◆ **SMALL BUSINESSES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process applications, conduct premise inspections, identify issues relating to the application, and prepare summaries and recommendations for the commission. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--This rule enhances the efficiency of the department by allowing sufficient time to review and process applications, conduct premise inspections, identify issues relating to the

application, and prepare summaries and recommendations for the commission. At most, the rule could delay a business's ability to sell alcohol for one month, but only instances where the business fails to timely file a completed application.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The department's application forms state that an application and supporting documentation must be completed and submitted to the department no later than the 10th of the month to be considered by the commission. However, this has been treated as a "soft" deadline by many applicants who press staff to make exceptions for them. This has resulted in last minute modifications to commission agendas causing confusion during commission meetings. This rule formalizes the deadline, requires applicants to complete the application process by a date certain which will give staff the time they need to fully process the applications for the commission.

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

ALCOHOLIC BEVERAGE CONTROL  
ADMINISTRATION

1625 S 900 W

SALT LAKE CITY, UT 84104-1630

or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Thad LeVar by phone at 801-530-6929, by FAX at 801-530-6446, or by Internet E-mail at tlevar@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012**

**AUTHORIZED BY: Francine Giani, Executive Director**

**R81. Alcoholic Beverage Control, Administration.**

**R81-3. Package Agencies.**

**R81-3-11. Application.**

~~[An application for a package agency shall be included in the agenda of the monthly commission meeting for consideration for issuance of a package agency contract when the requirements of Sections 32B-1-304 to 307, 32B-2-602 and 604 have been met, a completed application has been received by the department, and when the package agency premises have been inspected by the department. No application fee is required for type 2 and 3 package agency applicants.]~~ (1) No application for a package agency will be



included on the agenda of a monthly commission meeting for consideration for issuance of a package agency contract until:

(a) The applicant has first met all requirements of Sections 32B-1-304 to 307 (qualifications to be a package agent), and 32B-2-602 and -604 and 32B-6-204 have been met (submission of a completed application, payment of application fee, written consent of local authority, evidence of proximity to certain community locations, a bond, a floor plan, and public liability insurance); and

(b) the department has inspected the package agency premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the 10th day of the month will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

**KEY: alcoholic beverages**

**Date of Enactment or Last Substantive Amendment:**  
~~December 1, 2011~~ 2012

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

**Authorizing, and Implemented or Interpreted Law: 32B-2-202**

**Alcoholic Beverage Control,  
 Administration  
 R81-4A-2  
 Application**

**NOTICE OF PROPOSED RULE  
 (Amendment)  
 DAR FILE NO.: 35943  
 FILED: 03/15/2012**

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to establish a firm deadline for filing an application for a restaurant liquor license.

**SUMMARY OF THE RULE OR CHANGE:** Restaurant liquor licenses are granted by the Alcoholic Beverage Control Commission at its regular monthly meeting. This rule establishes the 10th of the month as a deadline for filing a completed application for a license. If the 10th falls on a Saturday, Sunday, or state or federal holiday, the filing deadline is on the next business day after the 10th of the month. Late filings will be considered by the commission the following month.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 32B-5-201

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** None--This rule merely enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on the state budget for costs or savings.

♦ **LOCAL GOVERNMENTS:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on local government budgets for costs or savings.

♦ **SMALL BUSINESSES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and to prepare summaries and recommendations for the commission. The rule will have no effect on small business budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on other persons' budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The department's application forms state that an application and supporting documentation must be completed and submitted to the department no later than the 10th of the month to be considered by the commission. However, this has been treated as a "soft" deadline by many applicants who press staff to make exceptions for them. This has resulted in last minute modifications to commission agendas causing confusion during commission meetings. This rule formalizes the deadline and requires applicants to complete the application process by a date certain which will give staff the

time they need to fully process the applications for the commission.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
ALCOHOLIC BEVERAGE CONTROL  
ADMINISTRATION  
1625 S 900 W  
SALT LAKE CITY, UT 84104-1630  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Thad LeVar by phone at 801-530-6929, by FAX at 801-530-6446, or by Internet E-mail at tlevar@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012

AUTHORIZED BY: Francine Giani, Executive Director

#### **R81. Alcoholic Beverage Control, Administration.**

##### **R81-4A. Restaurant Liquor Licenses.**

##### **R81-4A-2. Application.**

~~[(1) Except as provided in Subsection (2), a license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a restaurant license when the requirements of Sections 32B-1-304, 32B-5-201, -204 and 32B-6-204 have been met, a completed application has been received by the department, and the restaurant premises have been inspected by the department.~~

~~\_\_\_\_\_ (2) Subsection (1) does not preclude the commission from considering an application for a conditional restaurant license under the terms and conditions of 32B-5-205. ](1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a restaurant license until:~~

~~\_\_\_\_\_ (a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204, and 32B-6-204 (submission of a completed application, payment of application and licensing fees, written consent of local authority, a copy of a current business license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); and~~

~~\_\_\_\_\_ (b) the department has inspected the restaurant premise.~~

~~\_\_\_\_\_ (2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.~~

~~\_\_\_\_\_ (b) An incomplete application will be returned to the applicant.~~

~~\_\_\_\_\_ (c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that~~

month, but will be included on the agenda of the commission meeting the following month.

(3) Subsection (1)(a) does not preclude the commission from considering an application for a conditional restaurant license under the terms and conditions of 32B-5-205.

**KEY: alcoholic beverages**

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

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

**Authorizing, and Implemented or Interpreted Law: 32B-2-202; 32B-5-303(3); 32B-6-202**

## Alcoholic Beverage Control, Administration **R81-4B-2** Application

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35944

FILED: 03/15/2012

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to establish a firm deadline for filing an application for an airport lounge license.

**SUMMARY OF THE RULE OR CHANGE:** Airport lounge licenses are granted by the Alcoholic Beverage Control Commission at its regular monthly meeting. This rule establishes the 10th of the month as a deadline for filing a completed application for a license. If the 10th falls on a Saturday, Sunday, or state or federal holiday, the filing deadline is on the next business day after the 10th of the month. Late filings will be considered by the commission the following month.

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

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** None--This rule merely enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on the state budget for costs or savings.

♦ **LOCAL GOVERNMENTS:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to

the application, and prepare summaries and recommendations for the commission. The rule will have no effect on local government budgets for costs or savings.

♦ **SMALL BUSINESSES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and to prepare summaries and recommendations for the commission. The rule will have no effect on small business budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on other persons' budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The department's application forms state that an application and supporting documentation must be completed and submitted to the department no later than the 10th of the month to be considered by the commission. However, this has been treated as a "soft" deadline by many applicants who press staff to make exceptions for them. This has resulted in last minute modifications to commission agendas causing confusion during commission meetings. This rule formalizes the deadline and requires applicants to complete the application process by a date certain which will give staff the time they need to fully process the applications for the commission.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Thad LeVar by phone at 801-530-6929, by FAX at 801-530-6446, or by Internet E-mail at tlevar@utah.gov

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THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012

AUTHORIZED BY: Francine Giani, Executive Director

**R81. Alcoholic Beverage Control, Administration.**

**R81-4B. Airport Lounge Licenses.**

**R81-4B-2. Application.**

~~[A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of an airport lounge license when the requirements of Sections 32B-1-304, 32B-5-201 and -202, and 32B-6-504 have been met, a completed application has been received by the department, and the airport lounge premises have been inspected by the department.]~~ (1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of an airport lounge license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204 and 32B-6-204 (submission of a completed application, payment of application and licensing fees, written consent of local authority and airport authority, a copy of the sign proposed to be used to inform the public that alcoholic products are sold and consumed on the airport lounge premises, a copy of a current business license, a bond, a floor plan, and public liability and liquor liability insurance); and

(b) the department has inspected the airport lounge premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

**KEY: alcoholic beverages**

**Date of Enactment or Last Substantive Amendment: ~~August 1, 2003~~ 2012**

**Notice of Continuation: November 3, 2010**

**Authorizing, and Implemented or Interpreted Law: 32A-1-107**

**Alcoholic Beverage Control,  
Administration**

**R81-4C-2**

**Application**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35945

FILED: 03/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to establish a firm deadline for filing an application for a limited restaurant liquor license.

**SUMMARY OF THE RULE OR CHANGE:** Limited restaurant liquor licenses are granted by the Alcoholic Beverage Control Commission at its regular monthly meeting. This rule establishes the 10th of the month as a deadline for filing a completed application for a license. If the 10th falls on a Saturday, Sunday, or state or federal holiday, the filing deadline is on the next business day after the 10th of the month. Late filings will be considered by the commission the following month.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 32B-2-202 and Section 32B-6-207 and Subsection 32B-5-303(3)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** None--This rule merely enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on the state budget for costs or savings.

◆ **LOCAL GOVERNMENTS:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on local government budgets for costs or savings.

◆ **SMALL BUSINESSES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and to prepare summaries and recommendations for the commission. The rule will have no effect on small business budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on other persons' budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The department's application forms state that an application and supporting documentation must be completed and submitted to the department no later than the 10th of the month to be considered by the commission. However, this has been treated as a "soft" deadline by many applicants who press staff to make exceptions for them. This has resulted in last minute modifications to commission agendas causing confusion during commission meetings. This rule formalizes the deadline and requires applicants to complete the application process by a date certain which will give staff the time they need to fully process the applications for the commission.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
ALCOHOLIC BEVERAGE CONTROL  
ADMINISTRATION  
1625 S 900 W  
SALT LAKE CITY, UT 84104-1630  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Thad LeVar by phone at 801-530-6929, by FAX at 801-530-6446, or by Internet E-mail at tlevar@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012

AUTHORIZED BY: Francine Giani, Executive Director

**R81. Alcoholic Beverage Control, Administration.**

**R81-4C. Limited Restaurant Licenses.**

**R81-4C-2. Application.**

~~[(1) Except as provided in Subsection (2), a license application shall be included in the agenda of the monthly~~

~~commission meeting for consideration for issuance of a limited restaurant license when the requirements of Sections 32B-1-304, 32B-5-201, -204, and 32B-6-304 have been met, a completed application has been received by the department, and the limited-restaurant premises have been inspected by the department.~~

~~(2) Subsection (1) does not preclude the commission from considering an application for a conditional limited restaurant license under the terms and conditions of 32B-5-205. ](1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a limited restaurant license until:~~

~~(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204 and 32B-6-304 (submission of a completed application, payment of application and licensing fees, written consent of local authority, a copy of a current business license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); and~~

~~(b) the department has inspected the limited restaurant premise.~~

~~(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.~~

~~(b) An incomplete application will be returned to the applicant.~~

~~(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.~~

~~(3) Subsection (1)(a) does not preclude the commission from considering an application for a conditional limited restaurant license under the terms and conditions of 32B-5-205.~~

**KEY: alcoholic beverages**

**Date of Enactment or Last Substantive Amendment: ~~October 1, 2011~~2012**

**Notice of Continuation: July 31, 2008**

**Authorizing, and Implemented or Interpreted Law: 32B-2-202; 32B-5-303(3); 32B-6-207**

**Alcoholic Beverage Control,  
Administration  
R81-4D-2  
Application**

**NOTICE OF PROPOSED RULE  
(Amendment)**

**DAR FILE NO.: 35946**

**FILED: 03/15/2012**

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to establish a firm deadline for filing an application for an on-premise banquet liquor license.

**SUMMARY OF THE RULE OR CHANGE:** On-premise banquet liquor licenses are granted by the Alcoholic Beverage Control Commission at its regular monthly meeting. This rule establishes the 10th of the month as a deadline for filing a completed application for a license. If the 10th falls on a Saturday, Sunday, or state or federal holiday, the filing deadline is on the next business day after the 10th of the month. Late filings will be considered by the commission the following month.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 32B-2-202

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** None--This rule merely enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on the state budget for costs or savings.

◆ **LOCAL GOVERNMENTS:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on local government budgets for costs or savings.

◆ **SMALL BUSINESSES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and to prepare summaries and recommendations for the commission. The rule will have no effect on small business budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on other persons' budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

COMPLIANCE COSTS FOR AFFECTED PERSONS: At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department's application forms state that an application and supporting documentation must be completed and submitted to the department no later than the 10th of the month to be considered by the commission. However, this has been treated as a "soft" deadline by many applicants who press staff to make exceptions for them. This has resulted in last minute modifications to commission agendas causing confusion during commission meetings. This rule formalizes the deadline and requires applicants to complete the application process by a date certain which will give staff the time they need to fully process the applications for the commission.

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THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012

AUTHORIZED BY: Francine Giani, Executive Director

**R81. Alcoholic Beverage Control, Administration.**

**R81-4D. On-Premise Banquet License.**

**R81-4D-2. Application.**

~~[(1) A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of an on-premise banquet license when the requirements of Sections 32B-1-304, 32B-5-204, and 32B-6-604 have been met, a completed application has been received by the department, and the on-premise banquet premises have been inspected by the department.]~~  
(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of an on-premise banquet license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204 and 32B-6-604 (submission of a completed application, payment of application and licensing fees, written consent of local

authority, a copy of a current business license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); and

(b) the department has inspected the on-premise banquet premise.

(2)~~[(a)]~~ The application shall include a floor plan showing the locations of function space in or on the applicant's business premises that may be reserved for private banquet functions where alcoholic beverages may be stored, sold or served, and consumed. Hotels shall also indicate the number of sleeping rooms where room service will be provided and include a sample floor plan of a guest room level. No application will be accepted that merely designates the entire hotel, resort, sports center or convention center facility as the proposed licensed premises.

~~[(b) Pursuant to 32B-6-604(6) after an on-premise banquet license has been issued, the licensee may apply to the department for approval of additional locations in or on the premises of the hotel, resort, sports center or convention center that were not included in the licensee's original application. The additional locations must:~~

~~(i) be clearly defined;~~

~~(ii) be configured to ensure separation between any private banquet function and other areas of the facility that are open to the general public; and~~

~~(iii) be configured to ensure compliance with all operational restrictions with respect to the sale, storage, and consumption of alcoholic beverages required by 32B-5-301 to -308 and 32B-6-605. ](3)(a) All application requirements of Subsection (1)(a) and (2) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.~~

~~(b) An incomplete application will be returned to the applicant.~~

~~(c) A completed application filed after the deadline in Subsection (3)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.~~

~~(4) Pursuant to 32B-6-604(6) after an on-premise banquet license has been issued, the licensee may apply to the department for approval of additional locations in or on the premises of the hotel, resort, sports center or convention center that were not included in the licensee's original application. The additional locations must:~~

~~(i) be clearly defined;~~

~~(ii) be configured to ensure separation between any private banquet function and other areas of the facility that are open to the general public; and~~

~~(iii) be configured to ensure compliance with all operational restrictions with respect to the sale, storage, and consumption of alcoholic beverages required by 32B-5-301 to -308 and 32B-6-605.~~

**KEY: alcoholic beverages**

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

**Notice of Continuation: July 31, 2008**  
**Authorizing, and Implemented or Interpreted Law: 32B-2-202**

**Alcoholic Beverage Control,  
 Administration  
 R81-4E-2  
 Application**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35947

FILED: 03/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to establish a firm deadline for filing an application for a resort liquor license.

**SUMMARY OF THE RULE OR CHANGE:** Resort liquor licenses are granted by the Alcoholic Beverage Control Commission at its regular monthly meeting. This rule establishes the 10th of the month as a deadline for filing a completed application for a license. If the 10th falls on a Saturday, Sunday, or state or federal holiday, the filing deadline is on the next business day after the 10th of the month. Late filings will be considered by the commission the following month.

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

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** None--This rule merely enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on the state budget for costs or savings.

◆ **LOCAL GOVERNMENTS:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on local government budgets for costs or savings.

◆ **SMALL BUSINESSES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and to prepare summaries and recommendations for the commission. The rule will have no effect on small business

budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on other persons' budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The department's application forms state that an application and supporting documentation must be completed and submitted to the department no later than the 10th of the month to be considered by the commission. However, this has been treated as a "soft" deadline by many applicants who press staff to make exceptions for them. This has resulted in last minute modifications to commission agendas causing confusion during commission meetings. This rule formalizes the deadline and requires applicants to complete the application process by a date certain which will give staff the time they need to fully process the applications for the commission.

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Thad LeVar by phone at 801-530-6929, by FAX at 801-530-6446, or by Internet E-mail at tlevar@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012**

**AUTHORIZED BY: Francine Giani, Executive Director**

**R81. Alcoholic Beverage Control, Administration.****R81-4E. Resort Licenses.****R81-4E-2. Application.**

~~[(1) A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a resort license when the requirements of Sections 32B-1-304, 32B-5-201, -204, and 32B-8-202, -203 and -302 have been met, a completed application has been received by the department, and the resort premises have been inspected by the department.]~~ (1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a resort license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204 and 32B-6-204 (submission of a completed application, payment of application and licensing fees, written consent of local authority, a copy of a current business license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); and

(b) the department has inspected the resort premise.

(2) Pursuant to 32B-5-203 and 32B-8-204, each sublicense of a resort license is not required to:

(a) submit an application or renewal application that is separate from the resort license application;

(b) carry public liability or dramshop insurance coverage that is separate from that carried by the resort licensee; or

(c) post a bond that is separate from the bond posted by the resort licensee if the aggregate of any bonds posted by the resort licensee covers each sublicense under the resort license.

(3) Pursuant to 32B-8-302, a resort spa sublicense is not required to file a separate application from the application for the resort license unless the resort spa sublicense is being sought after the resort license has already been granted. If a resort licensee seeks to add a resort spa sublicense after its resort license is granted, the application shall comply with 32B-8-204(3)(b), and this rule.

(4)(a) All application requirements of Subsections (1)(a) and (3) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

**KEY: alcoholic beverages**

**Date of Enactment or Last Substantive Amendment: [January 26, 2010]2012**

**Authorizing, and Implemented or Interpreted Law: 32A-1-107**

**Alcoholic Beverage Control,  
Administration  
R81-4F-2  
Application**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35948

FILED: 03/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to establish a firm deadline for filing an application for a reception center liquor license.

**SUMMARY OF THE RULE OR CHANGE:** Reception center liquor licenses are granted by the Alcoholic Beverage Control Commission at its regular monthly meeting. This rule establishes the 10th of the month as a deadline for filing a completed application for a license. If the 10th falls on a Saturday, Sunday, or state or federal holiday, the filing deadline is on the next business day after the 10th of the month. Late filings will be considered by the commission the following month.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 32B-2-202 and Subsection 32B-6-805(3)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** None--This rule merely enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on the state budget for costs or savings.

♦ **LOCAL GOVERNMENTS:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on local government budgets for costs or savings.

♦ **SMALL BUSINESSES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and to prepare summaries and recommendations for the commission. The rule will have no effect on small business budgets for costs or savings. At most, the rule could delay a



business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on other persons' budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

COMPLIANCE COSTS FOR AFFECTED PERSONS: At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department's application forms state that an application and supporting documentation must be completed and submitted to the department no later than the 10th of the month to be considered by the commission. However, this has been treated as a "soft" deadline by many applicants who press staff to make exceptions for them. This has resulted in last minute modifications to commission agendas causing confusion during commission meetings. This rule formalizes the deadline and requires applicants to complete the application process by a date certain which will give staff the time they need to fully process the applications for the commission.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ◆ Thad LeVar by phone at 801-530-6929, by FAX at 801-530-6446, or by Internet E-mail at tlevar@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012

AUTHORIZED BY: Francine Giani, Executive Director

**R81. Alcoholic Beverage Control, Administration.**

**R81-4F. Reception Center License.**

**R81-4F-2. Application.**

~~[(1) A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a reception center license when the requirements of Sections 32B-1-304, 32B-5-201, 204, and 32B-6-804 have been met, a completed application has been received by the department, and the reception center premises have been inspected by the department.]~~

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a reception center license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201,

-204, and 32B-6-804 (submission of a completed application, payment of application and licensing fees, written consent of local authority, a copy of a current business license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); and

(b) the department has inspected the reception center premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

**KEY: alcoholic beverages**

**Date of Enactment or Last Substantive Amendment: ~~October 1, 2011~~ 2012**

**Authorizing, and Implemented or Interpreted Law: 32B-2-202; 32B-6-805(3)**

**Alcoholic Beverage Control,  
 Administration  
 R81-5-2  
 Application**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35949

FILED: 03/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to establish a firm deadline for filing an application for a club liquor license.

**SUMMARY OF THE RULE OR CHANGE:** Club liquor licenses are granted by the Alcoholic Beverage Control Commission at its regular monthly meeting. This rule establishes the 10th of the month as a deadline for filing a completed application for a license. If the 10th falls on a Saturday, Sunday, or state or federal holiday, the filing deadline is on the next business day after the 10th of the month. Late filings will be considered by the commission the following month.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 32B-2-202 and Subsection 32B-6-409(3)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** None--This rule merely enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on the state budget for costs or savings.

◆ **LOCAL GOVERNMENTS:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on local government budgets for costs or savings.

◆ **SMALL BUSINESSES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and to prepare summaries and recommendations for the commission. The rule will have no effect on small business budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on other persons' budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** At most, the rule could delay a business's ability to sell alcohol

for one month, but only in instances where the business fails to timely file a completed application.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The department's application forms state that an application and supporting documentation must be completed and submitted to the department no later than the 10th of the month to be considered by the commission. However, this has been treated as a "soft" deadline by many applicants who press staff to make exceptions for them. This has resulted in last minute modifications to commission agendas causing confusion during commission meetings. This rule formalizes the deadline and requires applicants to complete the application process by a date certain which will give staff the time they need to fully process the applications for the commission.

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**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012**

**AUTHORIZED BY: Francine Giani, Executive Director**

**R81. Alcoholic Beverage Control, Administration.****R81-5. Club Licenses.****R81-5-2. Application.**

[A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a club license when the requirements of Sections 32B-1-304, 32B-5-201, -204 and 32B-6-405 have been met, a completed application has been received by the department, and the club premises have been inspected by the department.](1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a club license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204, and 32B-6-405 (submission of a completed application, payment of application and licensing fees, written consent of local authority, a copy of a current business license, evidence of proximity to certain community locations, evidence that the applicant meets the requirements for the type of club license for which the person is applying, evidence that a variety of food is

prepared and served in connection with dining accommodations, a bond, a floor plan, public liability and liquor liability insurance, and if an equity or fraternal club a copy of the club's bylaws or house rules and any amendment to those records); and

(b) the department has inspected the club premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

**KEY: alcoholic beverages**

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

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

**Authorizing, and Implemented or Interpreted Law: 32B-2-202; 32B-6-409(3)**

**Alcoholic Beverage Control,  
Administration  
R81-6-1  
Application**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 35950  
FILED: 03/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to establish a firm deadline for filing an application for a special use permit liquor license.

**SUMMARY OF THE RULE OR CHANGE:** Special use permit liquor licenses are granted by the Alcoholic Beverage Control Commission at its regular monthly meeting. This rule establishes the 10th of the month as a deadline for filing a completed application for a license. If the 10th falls on a Saturday, Sunday, or state or federal holiday, the filing deadline is on the next business day after the 10th of the month. Late filings will be considered by the commission the following month.

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

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** None--This rule merely enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on the state budget for costs or savings.

♦ **LOCAL GOVERNMENTS:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on local government budgets for costs or savings.

♦ **SMALL BUSINESSES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and to prepare summaries and recommendations for the commission. The rule will have no effect on small business budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on other persons' budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The department's application forms state that an application and supporting documentation must be completed and submitted to the department no later than the 10th of the month to be considered by the commission. However, this has been treated as a "soft" deadline by many applicants who press staff to make exceptions for them. This has resulted in last minute modifications to commission agendas causing confusion during commission meetings. This rule formalizes the deadline and requires applicants to complete the application process by a date certain which will give staff the time they need to fully process the applications for the commission.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Thad LeVar by phone at 801-530-6929, by FAX at 801-530-6446, or by Internet E-mail at tlevar@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON  
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO  
LATER THAN AT 5:00 PM ON 05/01/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012

AUTHORIZED BY: Francine Giani, Executive Director

**R81. Alcoholic Beverage Control, Administration.**

**R81-6. Special Use Permits.**

**R81-6-1. Application.**

~~[An application for a special use permit shall be included in the agenda of the monthly commission meeting for consideration for issuance of a special use permit when the requirements of Sections 32B-1-304 and 32B-10-202, -205 have been met, and a completed application has been received by the department.](1) No application will be included on the agenda of a monthly commission meeting for consideration for issuance of a special use permit until:~~

~~(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the permit), and 32B-10-202 and -205 (submission of a completed application, payment of application and permit fees if required for the type of permit being sought, statement of purpose for which the applicant applies for the permit, types of alcoholic product the person intends to use under the permit, written consent of local authority, a bond if required, and a floor plan if required; and~~

~~(b) the department has inspected the restaurant premise.~~

~~(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.~~

~~(b) An incomplete application will be returned to the applicant.~~

~~(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.~~

**KEY: alcoholic beverages**

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

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

**Authorizing, and Implemented or Interpreted Law: 32A-1-107**

**Alcoholic Beverage Control,  
Administration  
R81-8-1  
Application**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35951

FILED: 03/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to establish a firm deadline for filing an application for a manufacturer liquor license.

**SUMMARY OF THE RULE OR CHANGE:** Manufacturer liquor licenses are granted by the Alcoholic Beverage Control Commission at its regular monthly meeting. This rule establishes the 10th of the month as a deadline for filing a completed application for a license. If the 10th falls on a Saturday, Sunday, or state or federal holiday, the filing deadline is on the next business day after the 10th of the month. Late filings will be considered by the commission the following month.

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

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** None--This rule merely enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on the state budget for costs or savings.

♦ **LOCAL GOVERNMENTS:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on local government budgets for costs or savings.

♦ **SMALL BUSINESSES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and to prepare summaries and recommendations for the commission. The rule will have no effect on small business

budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on other persons' budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

COMPLIANCE COSTS FOR AFFECTED PERSONS: At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department's application forms state that an application and supporting documentation must be completed and submitted to the department no later than the 10th of the month to be considered by the commission. However, this has been treated as a "soft" deadline by many applicants who press staff to make exceptions for them. This has resulted in last minute modifications to commission agendas causing confusion during commission meetings. This rule formalizes the deadline and requires applicants to complete the application process by a date certain which will give staff the time they need to fully process the applications for the commission.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ALCOHOLIC BEVERAGE CONTROL  
 ADMINISTRATION  
 1625 S 900 W  
 SALT LAKE CITY, UT 84104-1630  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ◆ Thad LeVar by phone at 801-530-6929, by FAX at 801-530-6446, or by Internet E-mail at tlevar@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012

AUTHORIZED BY: Francine Giani, Executive Director

**R81. Alcoholic Beverage Control, Administration.  
 R81-8. Manufacturer Licenses (Distillery, Winery, Brewery).  
 R81-8-1. Application.**

~~[An application for a manufacturer (distillery, winery, brewery) license shall be included in the agenda of the monthly commission meeting for consideration for issuance of a manufacturer license when the requirements of Sections 32B-1-304 and 32B-11-203, -205 and -207 have been met, and a completed application has been received by the department.]~~ (1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a manufacturer (distillery, winery, brewery) license until:

- (a) The applicant has first met all requirements of Sections 32B-1-304 and 32B-11-205 (qualifications to hold the license), and 32B-11-203, -205 and -207 (submission of a completed application, payment of application and licensing fees, written consent of local authority, a statement of the purpose for which the applicant is applying for the license, evidence that the person is authorized by the United States to manufacture an alcoholic product, a bond, and public liability insurance); and
- (b) the department has inspected the manufacturer premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

**KEY: alcoholic beverages**  
**Date of Enactment or Last Substantive Amendment: ~~[June 1, 2004]~~2012**  
**Notice of Continuation: May 10, 2011**  
**Authorizing, and Implemented or Interpreted Law: 32A-1-107**

**Alcoholic Beverage Control,  
 Administration  
 R81-9-1  
 Application**

**NOTICE OF PROPOSED RULE  
 (Amendment)  
 DAR FILE NO.: 35952  
 FILED: 03/15/2012**

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to establish a firm deadline for filing an application for a liquor warehousing license.

**SUMMARY OF THE RULE OR CHANGE:** Liquor warehousing licenses are granted by the Alcoholic Beverage Control Commission at its regular monthly meeting. This rule establishes the 10th of the month as a deadline for filing a completed application for a license. If the 10th falls on a Saturday, Sunday, or state or federal holiday, the filing deadline is on the next business day after the 10th of the month. Late filings will be considered by the commission the following month.

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

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** None--This rule merely enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on the state budget for costs or savings.

◆ **LOCAL GOVERNMENTS:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on local government budgets for costs or savings.

◆ **SMALL BUSINESSES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and to prepare summaries and recommendations for the commission. The rule will have no effect on small business budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on other persons' budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** At most, the rule could delay a business's ability to sell alcohol

for one month, but only in instances where the business fails to timely file a completed application.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The department's application forms state that an application and supporting documentation must be completed and submitted to the department no later than the 10th of the month to be considered by the commission. However, this has been treated as a "soft" deadline by many applicants who press staff to make exceptions for them. This has resulted in last minute modifications to commission agendas causing confusion during commission meetings. This rule formalizes the deadline and requires applicants to complete the application process by a date certain which will give staff the time they need to fully process the applications for the commission.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Thad LeVar by phone at 801-530-6929, by FAX at 801-530-6446, or by Internet E-mail at tlevar@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012**

**AUTHORIZED BY: Francine Giani, Executive Director**

**R81. Alcoholic Beverage Control, Administration.****R81-9. Liquor Warehousing Licenses.****R81-9-1. Application.**

~~[A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a liquor warehousing license when the requirements of Sections 32B-1-304 and 32B-12-202, -204 and -206 have been met, a completed application has been received by the department, and the warehouse premises have been inspected by the department.]~~(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a liquor warehouse license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-12-202, -204, and -206 (submission of a completed application, payment of application and licensing fees, written consent of local authority, a copy of a current business license, a bond, a floor plan, and public liability and liquor liability insurance); and

(b) the department has inspected the warehouse premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

**KEY: alcoholic beverages**

**Date of Enactment or Last Substantive Amendment: [~~April 29, 2002~~2012]**

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

**Authorizing, and Implemented or Interpreted Law: 32A-1-107**

**Alcoholic Beverage Control,  
Administration  
R81-10A-3  
Application**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35953

FILED: 03/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to establish a firm deadline for filing an application for a recreational amenity on-premise beer retailer license.

**SUMMARY OF THE RULE OR CHANGE:** Recreational amenity on-premise beer retailer licenses are granted by the Alcoholic Beverage Control Commission at its regular monthly meeting. This rule establishes the 10th of the month as a deadline for filing a completed application for a license. If the 10th falls on a Saturday, Sunday, or state or federal holiday, the filing deadline is on the next business day after the 10th of the month. Late filings will be considered by the commission the following month.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 32B-2-202 and Section 32B-6-702

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** None--This rule merely enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the

commission. The rule will have no effect on the state budget for costs or savings.

♦ **LOCAL GOVERNMENTS:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on local government budgets for costs or savings.

♦ **SMALL BUSINESSES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and to prepare summaries and recommendations for the commission. The rule will have no effect on small business budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on other persons' budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The department's application forms state that an application and supporting documentation must be completed and submitted to the department no later than the 10th of the month to be considered by the commission. However, this has been treated as a "soft" deadline by many applicants who press staff to make exceptions for them. This has resulted in last minute modifications to commission agendas causing confusion during commission meetings. This rule formalizes the deadline and requires applicants to complete the application process by a date certain which will give staff the time they need to fully process the applications for the commission.

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

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

## DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Thad LeVar by phone at 801-530-6929, by FAX at 801-530-6446, or by Internet E-mail at tlevar@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012

AUTHORIZED BY: Francine Giani, Executive Director

Alcoholic Beverage Control,  
Administration  
**R81-10C-2**  
Application

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 35954  
FILED: 03/15/2012

**R81. Alcoholic Beverage Control, Administration.****R81-10A. Recreational Amenity On-Premise Beer Retailer Licenses.****R81-10A-3. Application.**

~~[A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a recreational amenity on-premise beer retailer license when the requirements of Sections 32B-1-304, 32B-5-201, -204 and 32B-6-705 have been met, and a completed application has been received by the department and the beer retailer premises have been inspected by the department.]~~ (1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a recreational amenity on-premise beer retailer license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204, and 32B-6-705 (submission of a completed application, payment of application and licensing fees, written consent of local authority, a copy of a current business license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability insurance and liquor liability insurance if the retailer sells more than \$5000 of beer annually); and

(b) the department has inspected the recreational amenity on-premise beer retailer premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

**KEY: alcoholic beverages**

**Date of Enactment or Last Substantive Amendment:** ~~October 1, 2011~~ **2012**

**Notice of Continuation:** November 3, 2010

**Authorizing, and Implemented or Interpreted Law:** 32B-2-202; 32B-6-702

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to establish a firm deadline for filing an application for a beer-only restaurant license.

**SUMMARY OF THE RULE OR CHANGE:** Beer-only restaurant licenses are granted by the Alcoholic Beverage Control Commission at its regular monthly meeting. This rule establishes the 10th of the month as a deadline for filing a completed application for a license. If the 10th falls on a Saturday, Sunday, or state or federal holiday, the filing deadline is on the next business day after the 10th of the month. Late filings will be considered by the Commission the following month.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 32B-2-202

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** None--This rule merely enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on the state budget for costs or savings.

♦ **LOCAL GOVERNMENTS:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on local government budgets for costs or savings.

♦ **SMALL BUSINESSES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and to prepare summaries and recommendations for the commission. The rule will have no effect on small business budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.



◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on other persons' budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

COMPLIANCE COSTS FOR AFFECTED PERSONS: At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department's application forms state that an application and supporting documentation must be completed and submitted to the department no later than the 10th of the month to be considered by the commission. However, this has been treated as a "soft" deadline by many applicants who press staff to make exceptions for them. This has resulted in last minute modifications to commission agendas causing confusion during commission meetings. This rule formalizes the deadline and requires applicants to complete the application process by a date certain which will give staff the time they need to fully process the applications for the commission.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ALCOHOLIC BEVERAGE CONTROL  
 ADMINISTRATION  
 1625 S 900 W  
 SALT LAKE CITY, UT 84104-1630  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ◆ Thad LeVar by phone at 801-530-6929, by FAX at 801-530-6446, or by Internet E-mail at tlevar@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012

AUTHORIZED BY: Francine Giani, Executive Director

**R81. Alcoholic Beverage Control, Administration.  
 R81-10C. Beer-Only Restaurant Licenses.  
 R81-10C-2. Application.**

~~[A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a beer-only restaurant license when the requirements of Sections 32B-~~

~~1-304, 32B-5-201, -204 and 32B-6-905 have been met, and a completed application has been received by the department and the restaurant premises have been inspected by the department.](1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a beer only restaurant license until:~~

~~(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204, and 32B-6-904 (submission of a completed application, payment of application and licensing fees, written consent of local authority, a copy of a current business license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); and~~

~~(b) the department has inspected the beer-only restaurant premise.~~

~~(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.~~

~~(b) An incomplete application will be returned to the applicant.~~

~~(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.~~

**KEY: alcoholic beverages**  
**Date of Enactment or Last Substantive Amendment:**  
**[December 1, 2011]2012**  
**Authorizing, and Implemented or Interpreted Law: 32B-2-202**

**Alcoholic Beverage Control,  
 Administration  
 R81-10D-2  
 Application**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 35955  
 FILED: 03/15/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to establish a firm deadline for filing an application for a tavern beer license.

SUMMARY OF THE RULE OR CHANGE: Tavern beer licenses are granted by the Alcoholic Beverage Control Commission at its regular monthly meeting. This rule establishes the 10th of the month as a deadline for filing a completed application for a license. If the 10th falls on a Saturday, Sunday, or state or federal holiday, the filing

deadline is on the next business day after the 10th of the month. Late filings will be considered by the commission the following month.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-2-202 and Subsection 32B-1-407(5)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: None--This rule merely enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on the state budget for costs or savings.

♦ LOCAL GOVERNMENTS: None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on local government budgets for costs or savings.

♦ SMALL BUSINESSES: None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and to prepare summaries and recommendations for the commission. The rule will have no effect on small business budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on other persons' budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

COMPLIANCE COSTS FOR AFFECTED PERSONS: At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department's application forms state that an application and supporting documentation must be completed and submitted to the department no later than the 10th of the month to be considered by the commission. However, this has been treated as a "soft" deadline by many applicants who press staff to make exceptions for them. This has resulted in

last minute modifications to commission agendas causing confusion during commission meetings. This rule formalizes the deadline and requires applicants to complete the application process by a date certain which will give staff the time they need to fully process the applications for the commission.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Thad LeVar by phone at 801-530-6929, by FAX at 801-530-6446, or by Internet E-mail at tlevar@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012

AUTHORIZED BY: Francine Giani, Executive Director

**R81. Alcoholic Beverage Control, Administration.**

**R81-10D. Tavern Beer Licenses.**

**R81-10D-2. Application.**

~~[A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a tavern beer license when the requirements of Sections 32B-1-304, 32B-5-201, -204 and 32B-6-703 and -705 have been met, and a completed application has been received by the department and the restaurant premises have been inspected by the department.]~~ (1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a tavern license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204, and 32B-6-703 and -705 (submission of a completed application, payment of application and licensing fees, written consent of local authority, a copy of a current business license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability insurance and liquor liability insurance if the tavern sells more than \$5000 of beer annually); and

(b) the department has inspected the tavern premise.  
(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

**KEY: alcoholic beverages**

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

**Authorizing, and Implemented or Interpreted Law: 32B-2-202; 32B-1-407(5)**

**Alcoholic Beverage Control,  
Administration  
R81-11-1  
Application**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 35956  
FILED: 03/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to establish a firm deadline for filing an application for a beer wholesaler license.

**SUMMARY OF THE RULE OR CHANGE:** Beer wholesaler licenses are granted by the Alcoholic Beverage Control Commission at its regular monthly meeting. This rule establishes the 10th of the month as a deadline for filing a completed application for a license. If the 10th falls on a Saturday, Sunday, or state or federal holiday, the filing deadline is on the next business day after the 10th of the month. Late filings will be considered by the commission the following month.

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

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** None--This rule merely enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on the state budget for costs or savings.

♦ **LOCAL GOVERNMENTS:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on local government budgets for costs or savings.

♦ **SMALL BUSINESSES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and to prepare summaries and recommendations for the commission. The rule will have no effect on small business budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on other persons' budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The department's application forms state that an application and supporting documentation must be completed and submitted to the department no later than the 10th of the month to be considered by the commission. However, this has been treated as a "soft" deadline by many applicants who press staff to make exceptions for them. This has resulted in last minute modifications to commission agendas causing confusion during commission meetings. This rule formalizes the deadline and requires applicants to complete the application process by a date certain which will give staff the time they need to fully process the applications for the commission.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
ALCOHOLIC BEVERAGE CONTROL  
ADMINISTRATION  
1625 S 900 W  
SALT LAKE CITY, UT 84104-1630  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
♦ Thad LeVar by phone at 801-530-6929, by FAX at 801-530-6446, or by Internet E-mail at tlevar@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012**

AUTHORIZED BY: Francine Giani, Executive Director

**R81. Alcoholic Beverage Control, Administration.**

**R81-11. Beer Wholesaler Licenses.**

**R81-11-1. Application.**

~~[An application for a beer wholesaler license shall be included in the agenda of the monthly commission meeting for consideration for issuance of a beer wholesaler license when the requirements of Section 32B-1-304 and 32B-13-202, -204 and -206 have been met, and a completed application has been received by the department.]~~(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a beer wholesaler license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-13-202, -204 and -206 (submission of a completed application, payment of application and licensing fees, written consent of local authority, a copy of a current business license, a bond, a statement of the brands of beer the applicant is authorized to sell and distribute, statement of the territories in which the applicant is authorized to sell and distribute beer under an agreement required by 32B-11-201 or 32B-11-503, and public liability insurance); and

(b) the department has inspected the beer wholesaler premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday or state or federal holiday in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

**KEY: alcoholic beverages**

**Date of Enactment or Last Substantive Amendment:**  
~~[1994]~~**2012**

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

**Authorizing, and Implemented or Interpreted Law: 32A-1-107**

**Alcoholic Beverage Control,  
Administration  
R81-12-1  
Application**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 35957  
FILED: 03/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to establish a firm deadline for filing an application for a local industry representative license.

**SUMMARY OF THE RULE OR CHANGE:** Local industry representative licenses are granted by the Alcoholic Beverage Control Commission at its regular monthly meeting. This rule establishes the 10th of the month as a deadline for filing a completed application for a license. If the 10th falls on a Saturday, Sunday, or state or federal holiday, the filing deadline is on the next business day after the 10th of the month. Late filings will be considered by the commission the following month.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 32B-4-401 and Section 32B-4-701 and Section 32B-4-702 and Section 32B-4-703 and Section 32B-4-704 and Section 32B-4-705 and Section 32B-4-706 and Section 32B-4-707 and Section 32B-4-708

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** None--This rule merely enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on the state budget for costs or savings.

♦ **LOCAL GOVERNMENTS:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on local government budgets for costs or savings.

♦ **SMALL BUSINESSES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and to prepare summaries and recommendations for the commission. The rule will have no effect on small business budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--This rule primarily enhances the efficiency of the department by allowing sufficient time to review and process license applications, conduct premise inspections, identify any issues relating to the application, and prepare summaries and recommendations for the commission. The rule will have no effect on other persons' budgets for costs or savings. At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

COMPLIANCE COSTS FOR AFFECTED PERSONS: At most, the rule could delay a business's ability to sell alcohol for one month, but only in instances where the business fails to timely file a completed application.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department's application forms state that an application and supporting documentation must be completed and submitted to the department no later than the 10th of the month to be considered by the commission. However, this has been treated as a "soft" deadline by many applicants who press staff to make exceptions for them. This has resulted in last minute modifications to commission agendas causing confusion during commission meetings. This rule formalizes the deadline and requires applicants to complete the application process by a date certain which will give staff the time they need to fully process the applications for the commission.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ALCOHOLIC BEVERAGE CONTROL  
 ADMINISTRATION  
 1625 S 900 W  
 SALT LAKE CITY, UT 84104-1630  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Thad LeVar by phone at 801-530-6929, by FAX at 801-530-6446, or by Internet E-mail at tlevar@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012

AUTHORIZED BY: Francine Giani, Executive Director

**R81. Alcoholic Beverage Control, Administration.  
 R81-12. Local Industry Representative Licenses (Distillery, Winery, Brewery).**

**R81-12-1. Application.**

~~[An application for a local industry representative license shall be included in the agenda of the monthly commission meeting for consideration for issuance of a license when the requirements of 32B-1-304 and 32B-11-604 and -606 have been met, and a completed application has been received by the department.]~~ (1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a local industry representative license until the applicant has first met all requirements of Sections 32B-1-304 and 32B-11-606 (qualifications to hold the license), and 32B-11-604 (submission of a completed application, payment of application and licensing fees, verification the person is a resident of Utah, a Utah partnership, a Utah corporation, or a Utah limited liability company, and an affidavit

stating the name and address of any manufacturer, supplier, or importer the person will represent.

(2)(a) All application requirements of Subsection (1) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

**KEY: alcoholic beverages**

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

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

**Authorizing, and Implemented or Interpreted Law: 32B-4-401; 32B-4-701 to 708**

**Commerce, Real Estate  
 R162-2e-402  
 Administrative Proceedings**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35915

FILED: 03/06/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to provide rules governing administrative proceedings involving appraisal management companies.

SUMMARY OF THE RULE OR CHANGE: This filing replicates, within the rules that govern appraisal management companies, the administrative procedures currently in place and used by the appraisal board in matters involving appraisers. The filing is intended to avoid any confusion should the board be required to adjudicate a matter involving an appraisal management company.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-2e-103 and Subsection 61-2e-402(1)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The proposed section is already in place as to matters involving appraisers. This filing clarifies that the board will follow the same rules in adjudicating matters involving appraisal management companies. Therefore, no impact to the state budget is anticipated.

- ◆ LOCAL GOVERNMENTS: Local government is required neither to comply with nor to enforce the proposed rules. Therefore, no fiscal impact to local government is anticipated.
- ◆ SMALL BUSINESSES: These rules outline procedures that small businesses and the appraisal board must follow in administrative hearings. They do not impose fees, educational costs, or any other requirement that would represent a cost or a savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The only person who is required to register as an appraisal management company and, therefore, be subject to these proposed rules is a business. Where no other persons are within the scope of the rules, there are no costs to any other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: To comply, an affected person must adhere to certain procedural rules regarding an administrative hearing. Compliance will require a person to understand the rules and exercise care in terms of meeting deadlines and providing documents where applicable, but compliance is not expected to pose any financial burden to an affected person.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing establishes the procedures that the Division will follow in its adjudicative proceedings as permitted by the Utah Administrative Procedures Act. No fiscal impact to businesses is anticipated.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at [jjonsson@utah.gov](mailto:jjonsson@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012

AUTHORIZED BY: Jonathan Stewart, Director

**R162. Commerce, Real Estate.**

**R162-2e. Appraisal Management Company Administrative Rules.**

**R162-2e-402. Administrative Proceedings.**

(1) An adjudicative proceeding before the board shall be conducted as an informal adjudicative proceeding.

(2)(a) A hearing before the board will be held in:

(i) a proceeding conducted subsequent to the issuance of a cease and desist order or other emergency order;

(ii) a case where the division seeks to deny an application for original or renewed registration, licensure, or certification for failure of the applicant to meet the criteria of good moral character, honesty, integrity or truthfulness;

(iii) a case where the division seeks disciplinary action pursuant to Sections 61-2e-307 or 61-2e-402(2) against an AMC or an owner or controlling person of an AMC; and

(iv) an appeal from an automatic revocation under Section 61-2e-203(3)(b), if the appellant requests a hearing.

(b) If properly requested by the applicant, a hearing will be held before the board to consider an application that is denied by the division on the grounds that the controlling person's attestation to upstanding moral character is false.

(c) A hearing is not required and will not be held in the following informal adjudicative proceedings:

(i) the issuance, renewal, or reinstatement of an AMC registration by the division;

(ii) the issuance of any interpretation of statute, rule or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the division; and

(iii) the denial of renewal or reinstatement of an AMC registration for incompleteness or for failure to comply with a requirement found in statute or rule.

(3)(a) An application for an AMC registration shall be deemed a request for agency action.

(b) Any other request for agency action shall be in writing, signed by the requestor, and shall contain the following:

(i) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(ii) the agency's file number or other reference number, if known;

(iii) the date of mailing of the request for agency action;

(iv) a statement of the legal authority and jurisdiction under which the agency action is requested, if known;

(v) a statement of the relief or action sought from the division; and

(vi) a statement of the facts and reasons forming the basis for relief or agency action.

(c) A complaint against an AMC, a controlling person, or an appraiser on the panel of an AMC requesting that the division commence an investigation or a disciplinary action is not a request for agency action.

(4) Procedures for hearings in informal adjudicative proceedings.

(a) All informal adjudicative proceedings shall adhere to procedures as outlined in:

(i) Utah Administrative Procedures Act Title 63G, Chapter 4;

(ii) Utah Administrative Code Rule R151-4 et seq.; and

(iii) the rules promulgated by the division.

(b) Except as provided in Subsection R162-2e-402(5)(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

(c) In any proceeding under this Subsection R162-2e-402, the board and division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the board and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(d)(i) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first class postage-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing, to the respondent at the address last provided to the division through a registration process.

(ii) The notice shall set forth the matters to be addressed in the hearing.

(e) Formal discovery is prohibited.

(f) The division may issue subpoenas or other orders to compel production of necessary evidence:

(i) on its own behalf; or

(ii) on behalf of a party where the party:

(A) makes a written request;

(B) assumes responsibility for effecting service of the subpoena; and

(C) bears the costs of the service, any witness fee, and any mileage to be paid to a witness.

(g) Upon ordering a person who is registered or required to be registered as an AMC to appear for a hearing, the division shall provide to the person the information that the division will introduce at the hearing.

(h) Intervention is prohibited.

(i) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:

(i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or

(ii) Title 52, Chapter 4, the Open and Public Meetings Act.

(j) Upon filing a proper entry of appearance with the division pursuant to Utah Administrative Code Section R151-4-110(1)(a), an attorney may represent a party.

(5) Additional procedures for disciplinary proceedings.

(a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:

(i) a notice of agency action;

(ii) a petition setting forth the allegations made by the division;

(iii) a witness list, if applicable; and

(iv) an exhibit list, if applicable.

(b) Answer.

(i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.

(ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.

(iii) Any answer shall be filed with the division no later than 30 days following the mailing date of the notice of agency action pursuant to this Subsection (5)(a).

(c) Witness and exhibit lists.

(i) Where applicable, the division shall provide its witness and exhibit lists to the respondent at the time it mails its notice of agency action.

(ii) Any witness list shall contain:

(A) the name, address, and telephone number of each witness; and

(B) a summary of the testimony expected from the witness.

(iii) Any exhibit list:

(A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and

(B) shall be accompanied by copies of the exhibits.

(d) Pre-hearing motions.

(i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.

(ii) The division director shall receive and rule upon any pre-hearing motions.

**KEY: administrative proceedings, appraisal management company, conduct, registration**

**Date of Enactment or Last Substantive Amendment: ~~June 22, 2011~~2012**

**Authorizing, and Implemented or Interpreted Law: 61-2e-102; 61-2e-103; 61-2e-304; 61-2e-305; 61-2e-402(1)**

## Education, Administration R277-107-6 Public Education Employees

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35932

FILED: 03/15/2012

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to correct a citation and provides clarifying language under which a public education employee may accept a gift.

**SUMMARY OF THE RULE OR CHANGE:** The amendments correct a citation and provide clarifying language under which a public education employee may accept a gift in Section R277-107-6.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53A-1-402.5 and Subsection 53A-1-401(3)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. Correcting a citation and providing clarifying language under which a public education employee may accept a gift do not result in a cost or savings.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. Correcting a citation and

providing clarifying language under which a public education employee may accept a gift do not result in a cost or savings.

♦ **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. Correcting a citation and providing clarifying language under which a public education employee may accept a gift do not result in a cost or savings.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. Correcting a citation and providing clarifying language under which a public education employee may accept a gift do not result in compliance costs.

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

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

EDUCATION  
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 05/01/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012

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

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**R277. Education, Administration.**

**R277-107. Educational Services Outside of Educator's Regular Employment.**

**R277-107-6. Public Education Employees.**

A. Public education employees shall comply with Section 63G-6-1001, Felony to accept emolument.

B. Public education employees shall comply with Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.

C. Consistent with Section 63G-6-1001 and Title 67, Chapter [44]16, public education employees shall not solicit or accept gifts, incentives, honoraria, or stipends from private sources:

(1) for their personal or family use unless the gift is of nominal value and is for birthdays, holidays or teacher appreciation

occasions or is a public award in recognition of public service, consistent with school or LEA policies and the Utah Public Employees Ethics Act;

(2) in exchange or payment for advertising placed by employee; or

(3) in exchange or payment for securing agreements, contracts or purchases between private company and public education employer, programs or teams.

D. Public education employees who hold Utah educator licenses shall be subject to license discipline (including license suspension or revocation) for violation of this rule and applicable provisions of Utah law.

**KEY: school personnel**

**Date of Enactment or Last Substantive Amendment:** [~~March 12,~~]2012

**Notice of Continuation:** July 1, 2010

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53A-1-402.5; 53A-1-401(3)

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Education, Administration  
**R277-419-5**  
Student Membership

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35905

FILED: 03/02/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Section R277-419-5 is amended to make the rule consistent with state law in that, as of February 2012, public education students who are attending regional applied technology colleges (ATC) cannot be counted in student membership during the regular school day for the periods of ATC attendance.

**SUMMARY OF THE RULE OR CHANGE:** The amendment adds language to the rule prohibiting public education students from being counted for attendance purposes at public schools for the periods that the students attend ATCs. The amendment also deletes language that allows public education students to include travel time to ATCs as school attendance.

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

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget due to this amended rule. The Legislature withheld \$5,000,000 from the Minimum School Program (MSP) to adjust for students who were claimed in public school enrollment while taking ATC classes.



- ◆ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government due to this amended rule because the Utah State Office of Education previously adjusted MSP distribution to local education agencies to account for students attending ATCs during the regular school day.
- ◆ 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 amendment has decreased funding to public schools for students who attended ATC classes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Public schools will no longer claim state funding for students for the periods that students attend ATCs.

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 05/01/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012

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

**R277. Education, Administration.  
 R277-419. Pupil Accounting.  
 R277-419-5. Student Membership.**

- A. Eligibility
  - (1) In order to generate membership for funding through the MSP for any clock hour of instruction on any school day, a student shall:
    - (a) not have previously earned a basic high school diploma or certificate of completion;
    - (b) not be enrolled in a YIC program with a YIC time code other than ISI-1 or ISI-2;

(c) not be enrolled in a regional applied technology college created under Title 53B, Chapter 2a, Utah College of Applied Technology;

([e]d) not have unexcused absences on all of the prior ten consecutive school days;

([d]e) be a resident of Utah as defined under Sections 53A-2-201 through 213;

([e]f) be of compulsory school age or a retained senior;  
 ([f]g)(i) be expected to attend a regular learning facility operated or recognized by the LEA on each regularly scheduled school day; or

(ii) have direct instructional contact with a licensed educator provided by the LEA at an LEA-sponsored center for tutorial assistance or at the student's place of residence or convalescence for at least 120 minutes each week during an expected period of absence, if physically excused from such a facility for an extended period of time, due to:

- (A) injury, illness, surgery, suspension, pregnancy, pending court investigation or action; or
- (B) an LEA determination that home instruction is necessary.

(2) Students may generate MSP funding by participation in an LEA-sponsored or LEA-supported virtual education program other than the Utah Electronic High School that is consistent with the student's SEOP, has been approved by the student's counselor, and includes regular face-to-face instruction or facilitation by a designated employee of the LEA.

B. Reporting

(1) LEAs shall report aggregate membership for each student via the School Membership field in the S1 record and special education membership in the SCRAM Membership field in the S2 record and YIC membership in the S3 record of the Year End upload of the Data Clearinghouse file.

(2) In the Data Clearinghouse, aggregate membership shall be expressed in days.

C. Calculations

(1) If a student was enrolled for only part of the school day or only part of the school year, the student's membership shall be prorated according to the number of hours, periods or credits for which the student actually was enrolled in relation to the number of hours, periods or credits for which a full-time student normally would have been enrolled. For example:

- (a) If the student was enrolled for 4 periods each day in a 7 period school day for all 180 school days, the student's aggregate membership would be 4/7 of 180 days or 103 days.
- (b) If the student was enrolled for 7 periods each day in a 7 period school day for 103 school days, the student's membership would also be 103 days.

(2) For students in grades 2 through 12, days in membership shall be calculated by the LEA using a method equivalent to the following: total clock hours of instruction for which the student was enrolled during the school year divided by 990 hours and then multiplied by 180 days and finally rounded up to the nearest whole day. For example, if a student was enrolled for only 900 hours during the school year, the student's aggregate membership would be (900/990)\*180, and the LEA would report 164 days.

(3) For students in grade 1, the first term of the formula shall be adjusted to use 810 hours as the denominator.

(4) For students in kindergarten, the first term of the formula shall be adjusted to use 450 hours as the denominator.

D. Constraints

(1) The sum of regular plus self-contained special education and self-contained YIC membership days may not exceed 180 days;

(2) The sum of regular and resource special education membership days may not exceed 360 days;

(3) The sum of regular, ISI-1 and ISI-2 YIC membership days may not exceed 360 days.

E. Exceptions

LEAs may also count a student in membership for the equivalent in hours of up to:

(1) one period each school day, if the student has been:

(a) released by school upon parent's request during the school day for religious instruction or individual learning activity consistent with the student's SEOP; or

(b) exempted from school attendance under 53A-11-102 for home schooling and participates in one or more extracurricular activities under R277-438;

~~[(2) two periods each school day for time spent in bus travel during the regular school day to and from UCAT facilities, if the student is enrolled in CTE instruction consistent with the student's SEOP;~~

](3)2 all periods each school day, if the student is enrolled in:

(a) a concurrent enrollment program that satisfies all the criteria of R277-713;

(b) a private school without religious affiliation under a contract initiated by an LEA which directs that the instruction be paid by public funds. Contracts shall be approved by the LEA board in an open meeting.

(c) a foreign exchange student program under 53A-2-206(2)(i)(B)(8).

(d) Electronic High School ~~[or UCAT classes]~~ courses for credit which meet curriculum requirements, consistent with the student's SEOP and following written school counselor approval.

(e) a school operated by an LEA under a Utah Schools for the Deaf and the Blind IEP:

(i) students may only be counted in (S1) membership and shall not have an S2 record;

(ii) the S2 record for these students shall only be submitted by the Utah Schools for the Deaf and the Blind.

**KEY: education finance, school enrollment**

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

**Notice of Continuation: October 5, 2007**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1-402(1)(e); 53A-1-404(2); 53A-1-301(3) (d); 53A-3-404; 53A-3-410**

## NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35933

FILED: 03/15/2012

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to add a new definition and to make terminology changes consistent with the new definition.

**SUMMARY OF THE RULE OR CHANGE:** The amendment to the rule adds a new definition in Section R277-454-1 and updates terminology throughout the rule.

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

#### ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The changes to the rule are terminology changes that do not result in a cost or savings.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The changes to the rule are terminology changes that do not result in a cost or savings.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. The changes to the rule are terminology changes that do not result in a cost or savings.

♦ **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 the rule are terminology changes that do not result in a cost or savings.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. The changes to the rule are terminology changes that do not result in compliance costs.

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

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

EDUCATION  
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

Education, Administration  
**R277-454**  
Construction Management of School  
Building Projects

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012

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

Education, Administration  
**R277-479**  
 Charter School Special Education  
 Student Funding Formula

**NOTICE OF PROPOSED RULE**  
 (New Rule)

DAR FILE NO.: 35935  
 FILED: 03/15/2012

**R277. Education, Administration.**

**R277-454. Construction Management of School Building Projects.**

**R277-454-1. Definitions.**

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

B. "CM" means an individual designated as a construction manager. The CM may be an architect, engineer, general contractor, or other professional consultant. It may also be an entity which is referred to as a construction management firm. The CM works as the agent of the owner of the construction project. The CM, at the discretion of the owner, may assist in the development and implementation of any or all of the predesign, design, bidding, construction, and occupancy stages of the construction project. The CM is responsible for the effective, orderly, and acceptable completion of the construction project.

C. "Construction management" means a contractual and professional working relationship between the owner of a construction project and a CM.

D. "LEA" means a local education agency which includes school boards/public school districts, and charter schools.

**R277-454-2. 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-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities and Section 53A-20-103 which requires the Board to prepare an annual school plant capital outlay report of all ~~school districts~~ LEAs, which includes information on the number and size of building projects completed and under construction.

B. The purpose of this rule is to specify the standards local boards of education shall follow in using construction management for school construction projects.

**R277-454-3. Standards.**

A. A construction management contract shall clearly specify the duties of the CM with respect to the building project.

B. An ~~local school district~~ LEA shall bid each component part of the building project in accordance with advertising, public opening, performance bond, payment bond, and other statutory requirements.

**KEY: educational facilities, education finance**

**Date of Enactment or Last Substantive Amendment: [August 15, 2003]2012**

**Notice of Continuation: October 5, 2007**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-20-103**

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this new rule is to specify standards and procedures for charter school special education funding, provide funding for students with disabilities similar to students with disabilities in traditional schools, and provide funding for students with disabilities to charter school expansions in a more timely manner.

**SUMMARY OF THE RULE OR CHANGE:** This new rule provides definitions and procedures for charter school special education add-on funding.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53A-15-301 and 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. This new rule provides for special education funding to be disbursed to charter schools similar to disbursement to traditional schools and in a more timely manner.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. Charter schools will receive special education funding more consistent with traditional schools and in a more timely manner.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This rule applies to public education funding 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. Charter schools will receive special education funding more consistent with traditional schools and in a more timely manner.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. Charter schools will receive special education funding more consistent with traditional schools and in a more timely manner which 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:

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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 05/01/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012

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

**R277. Education, Administration.**

**R277-479. Charter School Special Education Student Funding Formula.**

**R277-479-1. Definitions.**

A. "Base" for purposes of this rule, means prior year special education add-on WPU.

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

C. "Charter schools" means schools authorized as charter schools by chartering entities under Sections 53A-1a-515, 53A-1a-521, and this rule or by the Board under Section 53A-1a-505.

D. "Chartering entities" means entities that authorize charter schools under Section 53A-1a-501.3(2).

E. "Estimated enrollment" means a charter school's projected student enrollment in the school's first year of operation as approved by the USOE.

F. "Foundation," for purposes of this rule, means the average of special education students' (self-contained and resource) average daily membership (ADM) over the previous five years.

G. "Negative growth adjustment" means prior year special education add-on WPU minus weighted negative growth.

H. "New charter school," for the purpose of this rule, means a charter school with less than five years of operation.

I. "Positive growth adjustment" means prior year special education add-on WPU plus weighted growth.

J. "Prevalence rate" means the percentage of students with disabilities within the total student enrollment.

K. "Previous," for the purpose of this rule, means the five year span between the seventh and second prior fiscal year.

L. "Significant expansion" means a substantial increase in the number of students attending a charter school due to a significant event, such as the addition of new grade levels or additions of sites, that is unlikely to occur on a regular basis.

M. "Special education" means specially designed instruction and related services to meet the unique needs of a student with a disability under R277-750.

N. "State Charter School Board" means the board designated in Section 53A-1a-501.5.

O. "Student with a disability" means a student, evaluated in accordance with Utah State Board of Education Special Education Rules, determined to be eligible for special education and related services.

P. "Total enrollment," for the purposes of this rule, means the total number of all students enrolled in the school (including all multiple sites) as of the October 1 UTREx update.

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

S. "Utah eTranscript and Record Exchange (UTREx)" means a system that allows individual detailed student records to be exchanged electronically among public education LEAs and the USOE, and allows electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

**R277-479-2. 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 rules regarding services for persons with disabilities, Section 53A-15-301 which directs the Board to set standards for state funds appropriated for students with disabilities, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards and procedures for charter school special education student funding.

**R277-479-3. Charter School Special Education Add-On Funding.**

A. Foundation

(1) For existing charter schools, the foundation is calculated based on the average ADM of students with disabilities for the previous five years.

(2) New charter schools

(a) For new charter schools, a five year average cannot be calculated; the calculation of foundation shall be based on the average special education ADM for the number of years the new charter school has been in operation beyond the first year. In the first operational year, new charter school funding shall be based on estimated enrollment.

(b) Unless the new charter school's approved purpose is specific to the needs of students with disabilities, the estimate of students with disabilities shall be 10 percent of the estimated enrollment.

(3) The foundation is the minimum amount a charter school may receive for special education-add on funding.

B. Growth adjustments

(1) Positive Growth Adjustment

(a) Weighted growth is determined by comparing special education ADM and total ADM from the third and second prior fiscal years.

(b) The rate of growth in special education ADM is limited to the rate of growth in total ADM. If the percentage

determined for growth is positive, it is multiplied by a factor of 1.53 and added to the base.

(c) There is no funding cap imposed based on the charter prevalence rate because some charter schools are designed and authorized specifically to serve students with disabilities.

(d) When there is no growth, either because the charter school is new or because the same number of students is enrolled, then there is no positive growth adjustment.

(2) Negative Growth Adjustment

(a) If the charter school experiences a decline in special education ADM of students with disabilities, a negative growth adjustment shall be applied. The negative growth adjustment is the base multiplied by the percentage of enrollment decline. This number is then subtracted from the base to determine WPU.

(b) When there is no decline in the enrollment of students with disabilities, either because the charter school is new or because the same number of students is enrolled, then there is no negative growth adjustment.

(c) If the negative growth adjustment brings the WPU to lower than the foundation, the charter school shall receive the foundation WPU.

C. Significant expansion adjustment

(1) Charter schools identified by the school's chartering entity as having significant expansion receive an additional funding adjustment after the entire add-on WPU formula is calculated in the first and second years of expansion. After that period, the special education formula shall account for the expansion.

(2) The significant expansion adjustment will estimate the number of students with disabilities who will enroll as part of the expansion, and provide funding for these anticipated students.

(a) The estimate shall be based on the projected expansion adjustment as determined by the USOE. This projection shall be multiplied by the prevalence rate of students with disabilities for the charter school for the most recent year calculated in the add-on formula.

(b) The result shall be the estimated ADM of students with disabilities who enroll with the expansion. This number is equal to the significant expansion adjustment WPU, which is added as an expansion supplement to the add-on WPU allocated to each charter school.

**KEY: charter schools, students with disabilities**  
**Date of Enactment or Last Substantive Amendment: 2012**  
**Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-1-402(1); 53A-15-301; 53A-1-401(3)**

**Education, Administration**  
**R277-485**  
**Loss of Enrollment**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 35936  
 FILED: 03/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to update requirements and clarify language.

**SUMMARY OF THE RULE OR CHANGE:** The amendments change and add definitions in Section R277-485-1 and change report dates in Section R277-485-5.

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

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The changes clarify definitions and update reporting dates; changes do not result in a cost or savings.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The changes clarify definitions and update reporting dates that are administered at a state level.

◆ **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 changes clarify definitions and update reporting dates that are administered at a state level.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. The changes clarify definitions and update reporting dates which do not result in compliance costs.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
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 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 05/01/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012**

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

**R277. Education, Administration.**

**R277-485. Loss of Enrollment.**

**R277-485-1. Definitions.**

A. "ADM" means average daily membership [~~as defined in R277-419~~] derived from end-of-year data.

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

C. "Carryforward balance" means the unspent amount of MSP Uniform School Fund monies from the previous fiscal year.

~~[D. "Fall Update" means the annual Minimum School Program allocation report made by school districts to the Utah State Office of Education in late fall or early winter.]~~

~~[E]D.~~ "Historical Mean ADM" means the mean of the two highest ADM in the three years preceding the prior year.

~~[F]E.~~ "Local Effort" means the prior year sum of tax rates imposed by the local school board.

~~[G]E.~~ "Lost ADM" means the difference between prior year ADM and Historical Mean ADM.

~~[H]E.~~ "Mid-year update" means the annual Minimum School Program allocation report prepared by the USOE and provided after January 1 annually.

H. "Minimum School Program (MSP)" means the state supported Minimum School Program as defined in 53A-17a.

I. "Weighted Pupil Unit (WPU)" means the unit of measure of factors that is computed in accordance with the MSP for the purpose of determining the costs of a program on a uniform basis for each district.

**R277-485-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-139 which allows the Board to increase funds for a school district in order to avoid penalizing it for an excessive loss in student enrollment due to factors beyond its control.

B. The purpose of this rule is to compensate a school district financially for an excessive loss in student enrollment due to factors beyond its control.

**R277-485-3. Eligibility.**

A. A school district shall be eligible for funding if the district's lost ADM is at least four percent less than the district's historical mean ADM.

B. Charter schools are not eligible for funding under this rule.

**R277-485-4. Funding.**

A. The source of funding to the district shall be the current unencumbered MSP carryforward balance. This rule shall provide funds to school districts only after all other authorized uses of the carryforward balance have been carried out.

B. The total amount of funds made available for distribution shall be equal to the lesser of:

(1) the sum of lost ADM in eligible districts multiplied by 25 percent of the current year value of the WPU; or

(2) 25 percent of the current unencumbered MSP carryforward balance.

C. Available funds shall be distributed proportional to lost ADM (90 percent) and prior year local effort (10 percent) among eligible districts.

D. If there are not any current year unencumbered MSP funds, eligible districts shall not be funded.

**R277-485-5. Implementation.**

~~[A.]~~Funds shall be distributed annually in one lump sum with the ~~[fall]~~ mid-year update of the current year MSP.

~~[B.]~~ Funds shall be distributed initially in FY 2004.

**KEY: student, enrollment**

**Date of Enactment or Last Substantive Amendment:** ~~[March 7, 2003]~~ **2012**

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

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53A-17a-139

**Education, Administration**

**R277-720**

**Child Nutrition Programs**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35937

FILED: 03/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to update revision dates on publications, add guidance and instructions issued by the United States Department of Agriculture (USDA), and delete an outdated program.

**SUMMARY OF THE RULE OR CHANGE:** The amendments provide updated revision dates and add a new publication in Section R277-720-3 and delete an outdated program in Section R277-720-4.

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

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The amendments provide updated revision dates, a new publication, and delete an outdated program; changes do not result in a cost or savings.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The amendments provide updated revision dates, a new publication, and delete an outdated program; changes do not result in a cost or savings.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This rule applies to the federal child nutrition program 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 amendments provide updated revision dates, a new publication, and deletes an outdated program; changes do not result in a cost or savings.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. The amendments provide updated revision dates, a new publication, and remove an outdated program which do not result in compliance costs.

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

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
 EDUCATION  
 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 05/01/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012**

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

**R277. Education, Administration.  
 R277-720. Child Nutrition Programs.  
 R277-720-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "USOE" means the Utah State Office of Education.

**R277-720-2. 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, by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, by Section 53A-1-402(1)(b) which directs the Board to make rules and minimum standards regarding access to programs, and by Section 53A-1-402(3) which authorizes the Board to administer funds made available through programs of the federal government.

B. The purpose of this rule is to specify the standards and procedures for child nutrition programs administered by the Board.

**R277-720-3. Standards and Procedures for Child Nutrition.**

A. The Board adopts the following laws and regulations found at the Utah State Office of Education Child Nutrition Section and law libraries and hereby incorporates them by reference:

- (1) the Richard B. Russell National School Lunch Act, 42 USC 1751, et seq.;
- (2) the Child Nutrition Act of 1966, 42 USC 1771, et seq.; and
- (3) the Emergency Food Assistance Act, 7 USC, 7501, et seq.

B. The Board shall act in accordance with the following publications available from the USOE Child Nutrition Section:

- (1) Administrative Manual, NSLP/NSBP/SMP, [~~3 vols~~], ~~1998~~2010;
- (2) Administrative Manual, CACFP (FDCH), [~~3 vols~~], ~~2000~~2012;
- (3) Administrative Manual, Centers, [~~3 vols~~], ~~2001~~2012;
- (4) Code of Federal Regulations, Chapter 7; [~~and~~]
- (5) state plans and agreements which are required and submitted under applicable federal law[-]; and
- (6) guidance and instructions issued by USDA regarding laws and regulations identified in R277-720-3.

**R277-720-4. Programs.**

The Board administers the following federal child nutrition programs:

- A. National School Lunch Program;
- B. School Breakfast Program;
- C. Special Milk Program;
- D. Child and Adult Care Food Program;
- E. Summer Food Service Program for Children;
- F. Food Distribution Program; and
- G. ~~[Nutrition Education and Training Program; and~~
- ~~H.]~~At Risk After School Snack Program.

**KEY: school lunch programs, nutrition**  
**Date of Enactment or Last Substantive Amendment: [January 15, 2004]2012**  
**Notice of Continuation: September 6, 2007**  
**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1-402(1)(b); 53A-1-402(3)**

**Education, Administration  
 R277-916  
 Technology, Life, and Careers, and  
 Work-Based Learning Programs**

**NOTICE OF PROPOSED RULE  
 (Amendment)  
 DAR FILE NO.: 35938  
 FILED: 03/15/2012**

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to provide updated terminology throughout the rule.

**SUMMARY OF THE RULE OR CHANGE:** The amendments provide changes to definitions and updated terminology throughout the rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53A-15-202

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. Updated terminology throughout the rule does not result in a cost or savings.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. Updated terminology throughout the rule does not result in a cost or savings.
- ◆ **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. Updated terminology throughout the rule does not result in a cost or savings.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. Updated terminology throughout the rule 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 05/01/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012**

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

**R277. Education, Administration.**

**R277-916.** ~~[Technology, Life, and Careers]~~**Career and Technical Education Introduction and Work-Based Learning Programs.**

**R277-916-1. Definitions.**

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

B. ~~["TLC" means Technology, Life, and Careers]~~**"CTE Intro" means Career and Technical Education Introduction** which is a ~~[middle/junior high school]~~**7th grade core curriculum course** comprised of activities encouraging students to explore ~~[careers in]~~**college and career opportunities** in Agriculture, Business, Family and Consumer Sciences, Health Science~~[and Health Technology]~~, Information Technology, Marketing, Economics, and Technology ~~and Engineering Education~~. Career development activities are integrated throughout the ~~[TLC]~~curriculum. The ~~[TLC]~~**CTE Intro** course is coordinated with the Comprehensive **Counseling and Guidance** program.

~~[C. "New TLC" means an advanced curriculum from the TLC program with additional practical activities. These standards apply to funding support, inservice training, curriculum development and refinement associated with the new TLC curriculum.~~

~~]~~ **[D]**C. "Cone" means a group of schools whose students feed a high school and schools and agencies which interact with the high school.

**[G]**D. "Geographical Region" means one of the ~~[nine educational]~~**eight Career and Technical Education** planning units: Bear River, ~~[Ogden/Weber, Davis/Morgan,]~~**Wasatch Front North**, Wasatch Front South, Mountainland, Uintah Basin, Central, Southeast, and Southwest.

**E. "LEA" means a local education agency which includes school boards/public school districts, and charter schools.**

**[H]**E. "USOE" means the Utah State Office of Education.

**[I]**G. "Weighted Pupil Unit (WPU)" means the unit of measure that is computed in accordance with the Minimum School Program Act for the purpose of determining the costs of a program on a uniform basis for each ~~[school district]~~**LEA**.

**[E]**H. "Work-Based Learning" (WBL) means activities that involve ~~[actual work experience or connect classroom learning to work]~~**teaching students a variety of skills used in business and industry through experiential career development experiences.**

**R277-916-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public education system in the Board, by Section 53A-15-202 which allows the Board to establish minimum standards for ~~[applied technology]~~**career and technical** education programs in the public education system, and Section 53A-17a-113 which directs the Board to distribute specific amounts of funds to ~~[school districts]~~**LEAs**.



B. This rule establishes standards and procedures for ~~[school districts]~~LEAs seeking to qualify for ~~[Technology, Life, and Careers]~~Career and Technical Education Introduction and WBL Programs funds administered by the Board.

**R277-916-3. Disbursement of Funds -- ~~[Technology, Life, and Careers-H Funds]~~Career and Technical Introduction.**

A. ~~[FLC]~~CTE Intro funds shall be utilized to update the ~~[FLC]~~CTE Intro curriculum, purchase and maintain needed equipment and supplies, field test new ~~[FLC]~~CTE Intro program modifications, and provide ongoing ~~[inservice training]~~professional development for teachers, counselors, and administrators.

B. ~~[Schools]~~LEAs shall meet all ~~[FLC]~~CTE Intro requirements in order to receive funding.

C. ~~[FLC]~~CTE Intro funds shall be allocated to ~~[school districts]~~LEAs for approved schools using a base ~~[of \$4,000]~~amount per school.

D. Funds remaining after funds are distributed ~~[for]~~under Section R277-916-3C, above, shall be distributed based on enrollment in grade 7 ~~[of the]~~to approved schools based on the October 1 enrollment report for the previous year.

E. ~~[School districts]~~LEAs shall annually complete a funding application with assurances of each school meeting ~~[FLC]~~CTE Intro standards.

F. Personnel from each~~[of the]~~ selected school[s] shall participate in USOE training.

G. ~~[Schools]~~LEAs shall receive continued USOE support and funding based on meeting established standards.

H. LEAs shall apply for funding annually.

**R277-916-4. ~~[Technology, Life, and Careers]~~Career and Technical Education Introduction - Standards.**

A. The ~~[Technology, Life, and Careers]~~Career and Technical Education Introduction funds may be used to:

(1) update the ~~[FLC]~~CTE Intro curriculum;

(2) ~~[purchase]~~update and maintain equipment and supplies, including consumables for the CTE Intro course;

(3) ~~[field test and]~~implement new ~~[FLC]~~CTE Intro program modifications; and

(4) provide ~~[regular inservice training]~~support for USOE sponsored professional development activities for teachers, counselors, and administrators.

B. ~~[School districts]~~LEAs may qualify for ~~[Technology, Life, and Careers]~~Career and Technical Education Introduction funds ~~[based on]~~consistent with the following:

(1) ~~[FLC]~~CTE Intro program funds shall not be used ~~[to pay]~~for personnel costs;

(2) ~~[FLC-s]~~Schools shall teach 180 days of ~~[FLC]~~CTE Intro core curriculum as a stand alone course with distinct credit which includes the components and objectives of Agriculture, Business, Family and Consumer Sciences, Information Technology, Health Science~~[and Health Technology]~~, Marketing, Economics, Technology and Engineering Education, and Career Guidance and Development;

(3) All ~~[FLC]~~CTE Intro teachers and counselors at the schools shall have appropriate licenses and endorsements;

(4) All ~~[FLC]~~CTE Intro team members shall agree to assist in the development and implementation of new ~~[FLC]~~CTE Intro activities and materials;

(5) Schools shall utilize the services of the WBL coordinator, where available, to integrate grade level appropriate work-based learning activities into ~~[FLC]~~CTE Intro. Where WBL Coordinators are not available, the CTE Intro team shall plan and provide the WBL activities;

(6) Schools shall integrate grade level appropriate career development content into the ~~[FLC]~~CTE Intro activities and use the services of the counselor in the program;

(7) The ~~[school district/school]~~LEA shall utilize the full allocation of funds as provided under R277-916-4. The ~~[school district/school]~~LEA shall support ~~[inservice training]~~staff development activities necessary to the Core ~~[FLC]~~CTE Intro content as adopted by the Board; and

(8) All ~~[FLC]~~CTE Intro related personnel in the school shall participate fully in evaluating the current program, recommending changes or modifications, ~~[field]~~pilot testing and implementing new activities, materials, and resources.

(9) All CTE Intro related personnel in the school shall participate in annual planning and accountability for these funds.

(10) All CTE Intro related personnel shall be part of the CTE Program Approval evaluation every six years.

**R277-916-5. Work-Based Learning - Disbursement of Funds.**

A. All public elementary, secondary, and postsecondary/adult schools shall be aligned by cone and grouped within the ~~[school district]~~LEA.

B. The proportion of total WBL funding allocated for each participating ~~[school district]~~LEA shall remain the same as the previous year unless the ~~[school district]~~LEA discontinues the program or ~~[school district]~~LEA proportions are adjusted by the Board.

C. State appropriated WBL funds require an equal match of funds provided by participating ~~[school districts]~~LEAs.

**R277-916-6. Work-Based Learning - Standards.**

A. WBL shall be integrated into all levels of the educational delivery system and shall be coordinated within the cones of the ~~[school district]~~LEA and among regions.

B. To be eligible for WBL funds, ~~[school districts/schools]~~LEAs shall~~[, upon request]~~:

(1) have the program approved by the local board.

(2) employ licensed WBL coordination personnel with salaries/benefits matched by the local recipient of funds.

(3) document that a WBL committee representing all schools within the cone has been created, is functioning effectively and regularly addresses WBL issues.

(4) ~~[complete a cone-wide student/parent/teacher WBL needs assessment]~~conduct WBL activities utilizing information from business and industry, administrators, teachers, counselors, parents and students.

(5) develop work-based preparation, participation, and evaluation activities for students and teachers involved in all WBL cone activities.

(6) maintain evidence that WBL components have been integrated and coordinated with elementary career awareness, secondary career exploration, integrated core curriculum activities, ~~[Technology, Life, and Careers]~~CTE Intro and comprehensive guidance and ~~[skills certification]~~counseling.

(7) maintain evidence of WBL activities developed in coordination with IEP/SEP/SEOP/504 requirements in each cone and all WBL assurances.

(8) require the inclusion of all student groups within the cone in career development and preparation.

(9) demonstrate WBL coordination with employers and with other school/community development activities.

(10) verify sufficient budget for a WBL coordinator, facilities, materials, equipment, and support staff is available.

(11) participate in initial state-sponsored WBL [C]oordination [Training]professional development and in periodic ongoing coordination and [inservice]professional development activities.

(12) require that the WBL team utilize a[-statewide] database system [to be developed by the USOE]developed by the LEA for the LEA's specific needs.

(13) participate in the CTE Program Approval evaluation every six years.

**KEY: public schools, work-based learning programs**

**Date of Enactment or Last Substantive Amendment: [April 23, 2002]2012**

**Notice of Continuation: May 4, 2009**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-15-202; 53A-17a-113**

## Environmental Quality, Air Quality R307-202 Emission Standards: General Burning

### NOTICE OF PROPOSED RULE

(Repeal and Reenact)  
DAR FILE NO.: 35923  
FILED: 03/08/2012

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R307-202 was submitted to the Environmental Protection Agency (EPA) as part of Utah's 1999 PM10 State Implementation Plan (SIP). EPA is required under consent decree to take action on this rule by 06/14/2012. EPA has reviewed the rule and concluded that it cannot approve the rule as currently written and has requested that the rule be amended.

**SUMMARY OF THE RULE OR CHANGE:** This rulemaking is being done as a repeal and reenactment because the proposed reenacted rule has been significantly reorganized from the current rule. Section R307-202-1 is divided into two sections; Sections R307-202-2 and R307-202-3 are removed completely; and a section titled, General Requirements has been added to the reenacted rule. Substantive changes in the proposed reenacted rule include the following: in this rule, local fire authorities may establish a 30-day open burning window for northern counties between March 30th and May 30th, while in southern counties, the 30-day window

may be established between March 1st and May 30th to accommodate the earlier spring season. In the fall, if approved by the state forester, the fire authorities may establish a 30-day open burning window between September 15th and October 30th in northern counties, and between September 15th and November 15th in southern counties to accommodate their extended growing season. Open burning permits are not valid during periods when the clearing index is below 500 or when publicly announced air pollution emergencies or alerts have been declared in the area of the proposed burn. The rule identifies county or municipal fire authorities as the individuals who will make determinations as to whether onsite burning of materials posing threats to public health require burning in place. The rule also requires that permits must be filed on a DAQ-approved form. Nothing in this rule would permit open burning that would result in the exceedance of a national ambient air quality standard.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-104 and Section 65A-8-211 and Section 76-10-803 and Subsection 11-7-1(2)(a)

### ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as there will be no additional costs to administer the new rule.

♦ **LOCAL GOVERNMENTS:** The repeal and reenactment of Rule R307-202 will not affect the costs or savings to local governments, as similar provisions in the reenactment of the rule already exist in the current rule.

♦ **SMALL BUSINESSES:** As this rule expands burning windows for some counties, there may be some small costs or savings for small businesses who burn in those counties; however, it is difficult to estimate what those costs or savings would be.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** As this rule expands burning windows for some counties, there may be some small costs or savings for those individuals burning in those counties; however, it is difficult to estimate what those costs or savings would be.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There may be minimal compliance costs for affected persons; however, it is difficult to estimate what those costs would be.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Any changes in the costs or benefits for businesses from the changes in this rule will be minimal.

**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 05/01/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:  
 ♦ 04/17/2012 09:00 AM, MSOB, 195 N 1950 W, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/06/2012

AUTHORIZED BY: Bryce Bird, Director

**R307. Environmental Quality, Air Quality.**  
**R307-202. Emission Standards: General Burning.**  
**[R307-202-1. Definitions and Exclusions.**

As provided in Section 19-2-114, the provisions of R307-202 are not applicable to:

- (1) burning incident to horticultural or agricultural operations of:
    - (a) prunings from trees, bushes, and plants; or
    - (b) dead or diseased trees, bushes, and plants, including stubble;
  - (2) burning of weed growth along ditch banks incident to clearing these ditches for irrigation purposes;
  - (3) controlled heating of orchards or other crops to lessen the chances of their being frozen so long as the emissions from this heating do not violate minimum standards set by the board; and
  - (4) the controlled burning of not more than two structures per year by an organized and operating fire department for the purpose of training fire service personnel when the United States Weather Service clearing index is above 500.
- See also Section 11-7-1(2)(a).

**R307-202-2. Community Waste Disposal.**  
 No open burning shall be done at sites used for disposal of community trash, garbage and other wastes except as authorized through a variance or as authorized for a specific period of time by the Board on the basis of justifiable circumstances reviewed and weighed in terms of pollution effects and other relevant considerations at an appropriate hearing following written application.

**R307-202-3. General Prohibitions.**  
 No person shall burn any trash, garbage or other wastes, or shall conduct any salvage operation by open burning except in conformity with the provisions of R307-202-4 and 5.

**R307-202-4. Permissible Burning - Without Permit.**  
 When not prohibited by other laws or by other officials having jurisdiction and provided that a nuisance as defined in Section 76-10-803 is not created, the following types of open burning are permissible without the necessity of securing a permit:

- (1) in devices for the primary purpose of preparing food such as outdoor grills and fireplaces;
- (2) campfires and fires used solely for recreational purposes where such fires are under control of a responsible person;
- (3) in indoor fireplaces and residential solid fuel burning devices except as provided in R307-302-2;
- (4) properly operated industrial flares for combustion of flammable gases; and
- (5) burning, on the premises, of combustible household wastes generated by occupants of dwellings of four family units or less in those areas only where no public or duly licensed disposal service is available.

**R307-202-5. Permissible Burning - With Permit.**  
 (1) Open burning is authorized by the issuance of a permit as specified in (3) below when not prohibited by other laws or other officials having jurisdiction, and when a nuisance as defined in Section 76-10-803 is not created.

(2) Individual permits for the types of burning listed in (3) below may be issued by an authorized local authority under the "clearing index" system approved and coordinated by the Department of Environmental Quality.

(3) Types of burning for which a permit may be granted are:

- (a) open burning of tree cuttings and slash in forest areas where the cuttings accrue from pulping, lumbering, and similar operations, but excluding waste from sawmill operations such as sawdust and scrap lumber;
- (b) open burning of trees and brush within railroad rights-of-way provided that dirt is removed from stumps before burning, and that tires, oil more dense than #2 fuel oil or other materials which can cause severe air pollution are not used to start fires or keep fires burning;
- (c) open burning of solid or liquid fuels or structures for removal of hazards or eyesores;
- (d) open burning, in remote areas, of highly explosive or other hazardous materials, for which there is no other known practical method of disposal;
- (e) open burning of clippings, bushes, plants and prunings from trees incident to property clean-up activities provided that the following conditions have been met:
  - (i) in any area of the state, the local county fire marshal has established a 30 day period between March 1 and May 30 for such burning to occur and notified the executive secretary of the open burning period prior to the commencement of the 30 day period, or, in areas which are located outside of Salt Lake, Davis, Weber, and Utah Counties, the local county fire marshal has established, if allowed by the state forester under Section 65A-8-211, a 30 day period between September 15 and October 30 for such burning to occur and has notified the executive secretary of the opening burning period prior to the commencement of the 30 day period;
  - (ii) such burning occurs during the period established by the local county fire marshal;
  - (iii) materials to be burned are thoroughly dry;
  - (iv) no trash, rubbish, tires, or oil are used to start fires or included in the material to be burned.

~~(4) The Board may grant a permit for types of open burning not specified in (3) above on written application if the Board finds that the burning is not inconsistent with the State Implementation Plan.~~

**R307-202-6. Special Conditions.**

~~Open burning for special purposes, or under unusual or emergency circumstances, may be approved by the executive secretary. ]~~

**R307-202. Emission Standards: General Burning.**

**R307-202-1. Definitions.**

(1) "Attainment areas" means any area that meets the national primary and secondary ambient air quality standard (NAAQS) for the pollutant.

(2) "County or municipal fire authority" means the public official so designated with the responsibility, authority, and training to protect people, property, and the environment from fire, within their respective area of jurisdiction.

(3) "Federal Class I Area" means an area that consists of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. See Clean Air Act section 162(a).

(4) "Fire hazard" means a hazardous condition involving combustible, flammable, or explosive material that represents a substantial threat to life or property if not immediately abated, as declared by the county or municipal fire authority.

**R307-202-2. Exclusions.**

As provided in Section 19-2-114, the provisions of R307-202 are not applicable to:

(1) Horticultural or agricultural operations of:

(a) Prunings from trees, bushes, and plants;

(b) Dead or diseased trees, bushes, and plants, including stubble;

(2) Weed growth along ditch banks for clearing these ditches for irrigation purposes;

(3) Controlled heating of orchards or other crops during the frost season to lessen the chances of their being frozen so long as the emissions from this heating do not cause or contribute to an exceedance of any national ambient air quality standards and is consistent with the federally approved State Implementation Plan; and

(4) The controlled burning of not more than two structures per year by an organized and operating fire department for the purpose of training fire service personnel when the National Weather Service clearing index is above 500. See also Section 11-7-1(2)(a).

**R307-202-3. Community Waste Disposal.**

No open burning shall be done at sites used for disposal of community trash, garbage and other wastes.

**R307-202-4. General Requirements.**

(1) Except as otherwise provided in this rule, no person shall set or use an open outdoor fire for the purpose of disposal or burning of petroleum wastes; demolition or construction debris; residential rubbish; garbage or vegetation; tires; tar; trees; wood

waste; other combustible or flammable solid, liquid or gaseous waste; or for metal salvage or burning of motor vehicle bodies.

(2) The county or municipal fire authority shall approve burning based on the predicted meteorological conditions and whether the emissions would impact the health and welfare of the public, or cause or contribute to an exceedance of any national ambient air quality standard.

(3) Nothing in this regulation shall be construed as relieving any person conducting open burning from meeting the requirements of any applicable federal, state or local requirements concerning disposal of any combustible materials.

(4) The county or municipal fire authority that approves any open burning permit will retain a copy of each permit issued for one year.

**R307-202-5. Open Burning - Without Permit.**

The following types of open burning do not require a permit when not prohibited by other local, state or federal laws and regulations, when it does not create a nuisance, as defined in Section 76-10-803, and does not impact the health and welfare of the public.

(1) Devices for the primary purpose of preparing food such as outdoor grills and fireplaces;

(2) Campfires and fires used solely for recreational purposes where such fires are under control of a responsible person and the combustible material is clean, dry wood or charcoal;

(3) Indoor fireplaces and residential solid fuel burning devices except as provided in R307-302-2.

**R307-202-6. Open Burning - With Permit.**

(1) No person shall knowingly conduct open burning unless the open burning activities may be conducted without a permit pursuant to R307-202-5 or the person has a valid permit for burning on a specified date or period, issued by the county or municipal fire authority having jurisdiction in the area where the open burning will take place.

(2) A permit applicant shall provide information as requested by the county or municipal fire authority. No permit or authorization shall be deemed valid unless the issuing authority determines that the applicant has provided the required information.

(3) Persons seeking an open burning permit shall submit to the county or municipal fire authority an application on a form provided by the executive secretary for each separate burn.

(4) A permit shall be valid only on the lands specified on the permit.

(5) No material shall be burned unless it is clearly described and quantified as material to be burned on a valid permit.

(6) No burning shall be conducted contrary to the conditions specified on the permit.

(7) Any permit issued by a county or municipal fire authority shall be subject to the local, state, and federal rules and regulations.

(8) Open burning is authorized by the issuance of a permit, as stipulated within this rule, for specification in (10) below. These permits can only be issued when not prohibited by other local, state or federal laws and regulations and when a nuisance as defined in Section 76-10-803 is not created, and does not impact the health and welfare of the public.

(9) Individual permits, as stipulated within this rule, for the types of burning listed in (10) below may be issued by a county or municipal fire authority when the clearing index is 500 or greater. When the clearing index is below 500 all permits issued for that day will be null and void until further notice from the county or municipal fire authority. Additionally, anyone burning on the day when the clearing index is below 500 or is found to be violating any part of this rule shall be liable for a fine in accordance with R307-130.

(10) Types of open burning for which a permit may be granted are:

(a) Except in nonattainment and maintenance areas, open burning of tree cuttings and slash in forest areas where the cuttings accrue from pulping, lumbering, and similar operations, but excluding waste from sawmill operations such as sawdust and scrap lumber;

(b) Open burning of trees and brush within railroad rights-of-way provided that dirt is removed from stumps before burning, and that tires, oil more dense than #2 fuel oil, tar, or other materials which can cause severe air pollution are not present in the materials to be burned, and are not used to start fires or to keep fires burning;

(c) Open burning of a fire hazard that a county or municipal fire authority determines cannot be abated by any other viable option;

(d) Open burning of highly explosive materials when a county or municipal fire authority, law enforcement agency or governmental agency having jurisdiction determines that onsite burning or detonation in place is the only reasonably available method for safely disposing of the material;

(e) Open burning for the disposal of contraband in the possession of public law enforcement personnel provided they demonstrate to the county or municipal fire authority that open burning is the only reasonably available method for safely disposing of the material;

(f) Open burning of clippings, bushes, plants and prunings from trees incident to property clean-up activities provided that the following conditions have been met:

(i) Within only the counties of Washington, Kane, San Juan, Iron, Garfield, Beaver, Piute, Wayne, Grand and Emery:

(A) The county or municipal fire authority has established a 30-day period between March 1 and May 30 for such burning to occur and notified the executive secretary of the open burning period prior to the commencement of the 30-day period; or

(B) The county or municipal fire authority has established a 30-day period between September 15 and November 15 and notified the executive secretary of the open burn window and the state forester has approved the burning window under Section 65A-8-211.

(ii) In all other areas of the state:

(A) The county or municipal fire authority has established a 30-day period between March 30 and May 30 for such burning to occur and notified the executive secretary of the open burning period prior to the commencement of the 30-day period; or

(B) The county or municipal fire authority has established a 30-day period between September 15 and October 30 for such burning to occur and has notified the executive secretary of the open burning period prior to the commencement of the 30-day

period and the state forester has approved the burning window under Section 65A-8-211.

(iii) Such burning occurs during the period(s) established by the county or municipal fire authority, in accordance with state and federal requirements;

(iv) Materials to be burned are thoroughly dry;

(v) No trash, rubbish, tires, or oil are included in the material to be burned, used to start fires, or used to keep fires burning.

(g) Except for nonattainment and maintenance areas, the executive secretary may grant a permit for types of open burning not specified in (3) above on written application if the executive secretary finds that the burning is consistent with the federally approved State Implementation Plan and does not cause or contribute to an exceedance of any national ambient air quality standards:

(i) This permit may be granted once the executive secretary has reviewed the written application with the requirements and criteria found within this rule at R307-202-6(2).

(ii) Open Burning Permit Criteria

(A) The executive secretary, county or municipal fire authority shall consider the following factors in determining whether, and upon what conditions, to issue an open burning permit:

(I) The location and proximity of the proposed burning to any building, other structures, the public, and federal Class I areas that might be impacted by the smoke and emissions from the burn;

(II) Burning will only be conducted when the clearing index is 500 or above;

(III) Whether there is any practical alternative method for the disposal of the material to be burned; and

(B) Methods to minimize emissions and smoke impacts may include, but are not limited to:

(I) The use of clean auxiliary fuel;

(II) Drying the material prior to ignition; and

(III) Separation for alternative disposal of materials that produce higher levels of emissions and smoke during the combustion process.

(C) Open burning permits are not valid during periods when the clearing index is below 500 or publicly announced air pollution emergencies or alerts have been declared in the area of the proposed burn.

(D) For burns of piled material, all piles shall be reasonably dry and free of dirt.

(E) Open burns shall be supervised by a responsible person who shall notify the local fire department and have available, either on-site or by the local fire department, the means to suppress the burn if the fire does not comply with the terms and conditions of the permit.

(F) All open burning operations shall be subject to inspection by the executive secretary or county or municipal fire authority. The permittee shall maintain at the burn site the original or a copy of the permit that shall be made available without unreasonable delay to the inspector.

(G) If at any time the executive secretary or the county or municipal fire authority granting the permit determines that the permittee has not complied with any term or condition of the permit, the permit is subject to partial or complete suspension, revocation or imposition of additional conditions. All burning

activity subject to the permit shall be terminated immediately upon notice of suspension or revocation. In addition to suspension or revocation of the permit, the executive secretary or county or municipal fire authority may take any other enforcement action authorized under state or local law.

**R307-202-7. Special Conditions.**

(1) Open burning for special purposes or under unusual or emergency circumstances may be approved by the executive secretary if it is consistent with the federally approved State Implementation Plan and does not cause or contribute to an exceedance of any national ambient air quality standards.

(a) This permit may be granted once the executive secretary has reviewed the written application with the requirements and criteria in R307-202-6.

**KEY: air pollution, open burning, fire [marshal]authority**  
**Date of Enactment or Last Substantive Amendment: [July 15, 1999]2012**  
**Notice of Continuation: March 4, 2010**  
**Authorizing, and Implemented or Interpreted Law: 19-2-104; 11-7-1(2)(a); 65A-8-211; 76-10-803**

Environmental Quality, Air Quality  
**R307-214**  
 National Emission Standards for  
 Hazardous Air Pollutants

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35922

FILED: 03/08/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R307-214 must be updated periodically to reflect changes to the NESHAPs as published in Title 40 of the Code of Federal Regulations (40 CFR), Parts 61 and 63. This action incorporates changes that were made to 40 CFR, Parts 61 and 63, incorporated by reference in Rule R307-214, promulgated from 07/01/2010 through 07/01/2011.

**SUMMARY OF THE RULE OR CHANGE:** The version of the CFR for environmental regulations has been updated to 07/01/2011; therefore, it is necessary to update Rule R307-214. The changes to the incorporated sections of the CFR are summarized as follows: Federal Register / Vol. 75, No. 175 / Friday, September 10, 2010, pages 55276, 69351, 55652, and 55653. Action added authority citations. Federal Register / Vol. 76, No. 39 / Monday, February 28, 2011, page 10761. Action added delegation of authority. Federal Register / Vol. 76, No. 39 / Monday, February 28, 2011, page 10761. Action added Delegation of Authority to the states of Iowa; Kansas; Missouri; Nebraska; Lincoln-Lancaster County, NE; and City of Omaha, NE, for New Source Performance

Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP) Including Maximum Achievable Control Technology (MACT) Standards. Federal Register / Vol. 76, No. 95 / Tuesday, May 17, 2011 / Page 28318. The Environmental Protection Agency (EPA or Agency) denied in part and granted in part the petitions to reconsider the final revised National Emission Standards for Hazardous Air Pollutants emitted by the Portland Cement Industry. Federal Register / Vol. 75, No. 176 / Monday, September 13, 2010 / Page 55655. Action made changes in performance testing requirements. Federal Register / Vol. 75, No. 218 / Friday, November 12, 2010 / Page 69352. Action added address for EPA Region IX in paragraph (a). Federal Register / Vol. 75, No. 174 / Thursday, September 9, 2010 / Page 55051. Action added incorporations by reference to Section 64.14. Federal Register / Vol. 76, No. 15 / Monday, January 24, 2011 / Page 4176. This action promulgated amendments to the National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities, which EPA promulgated on January 10, 2008, and amended on March 7, 2008. In this action, EPA is finalizing amendments and clarifications to certain definitions and applicability provisions of the final rules in response to some of the issues raised in the petitions for reconsideration. In addition, several other compliance-related questions posed by various individual stakeholders and State and local agency representatives are addressed in this action. EPA also denied reconsideration on one issue raised in a petition for reconsideration received by the Agency on the final rules. Federal Register / Vol. 76, No. 33 / Thursday, February 17, 2011 / Page 9479. Incorporations by reference were amended in Section 63.14. Federal Register / Vol. 76, No. 54 / Monday, March 21, 2011 / Pages 15589 and 15662 and Federal Register / Vol. 76, No. 96 / Wednesday, May 18, 2011 / Page 28664 amends the incorporations by reference in Section 63.14. 28668 Federal Register / Vol. 76, No. 96 / Wednesday, May 18, 2011 / Page 28664. Action amended EPA's Method 302, Field Validation of Pollutant Measurement Methods from Various Waste Media. Federal Register / Vol. 75, No. 161 / Friday, August 20, 2010 / Page 51603. Action amended Part 63 by adding Method 323--Measurement of Formaldehyde Emissions From Natural Gas-Fired Stationary Sources--Acetyl Acetone Derivatization Method. Federal Register / Vol. 76, No. 102 / Thursday, May 26, 2011 / Page 30550. Action amended Section 63.14 by amending paragraph (d)(6). Federal Register / Vol. 75, No. 212 / Wednesday, November 3, 2010 / Page 67627. Section 63.99 was amended by revising the table of delegated federal authorities in paragraph (a)(29)(i). Federal Register / Vol. 76, No. 63 / Friday, April 1, 2011 / Page 18066. Section 63.14 was amended by revising the delegation of federal authorities table. Federal Register / Vol. 76, No. 77 / Thursday, April 21, 2011 / Page 22586. Section 63.480 was amended by revising the applicability and designation of affected sources. Federal Register / Vol. 76, No. 77 / Thursday, April 21, 2011 / Page 22587. Section 63.481 was amended by revising compliance dates and relationship of the subpart to existing applicable rules.

Federal Register / Vol. 76, No. 77 / Thursday, April 21, 2011 / Page 22587. Action amends the definitions found in Section 63.482. Federal Register / Vol. 76, No. 77 / Thursday, April 21, 2011 / Page 22588. The emission standards in Section 63.483 were amended. Federal Register / Vol. 76, No. 77 / Thursday, April 21, 2011 / Page 22588. Action amended the storage vessel provision Section 63.484. Federal Register / Vol. 76, No. 77 / Thursday, April 21, 2011 / Page 22588. Action amended the continuous front-end process vent provision in Section 63.485. Federal Register / Vol. 76, No. 77 / Thursday, April 21, 2011 / Page 22589. EPA took final action for four national emission standards for hazardous air pollutants (NESHAP) that regulate 12 industrial source categories evaluated in its risk and technology review. The four NESHAP include: National Emissions Standards for Group I Polymers and Resins (Butyl Rubber Production, Epichlorohydrin Elastomers Production, Ethylene Propylene Rubber Production, Hypalon™ Production, Neoprene Production, Nitrile Butadiene Rubber Production, Polybutadiene Rubber Production, Polysulfide Rubber Production, and Styrene Butadiene Rubber and Latex Production); Marine Tank Vessel Loading Operations; Pharmaceuticals Production; and The Printing and Publishing Industry. Federal Register / Vol. 75, No. 174 / Thursday, September 9, 2010 / Page 55051. EPA is finalizing amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) from the Portland Cement Manufacturing Industry and to the New Source Performance Standards (NSPS) for Portland Cement Plants. The final amendments to the NESHAP added or revised, as applicable, emission limits for mercury, total hydrocarbons (THC), and particulate matter (PM) from new and existing kilns located at major and area sources, and for hydrochloric acid (HCl) from new and existing kilns located at major sources. The standards for new kilns apply to facilities that commence construction, modification, or reconstruction after 05/06/2009. The final amendments to the NSPS add or revise, as applicable, emission limits for PM, opacity, nitrogen oxides (NOX), and sulfur dioxide (SO<sub>2</sub>) for facilities that commence construction, modification, or reconstruction after June 16, 2008. The final rule also includes additional testing and monitoring requirements for affected sources. Federal Register / Vol. 76, No. 46 / Wednesday, March 9, 2011 / Page 12866. The "What are my monitoring, installation, collection, operation, and maintenance requirements" section of Section 63.6625 was amended and the "How do I monitor and collect data to demonstrate continuous compliance" section of Section 63.6635 was amended. Federal Register / Vol. 76, No. 11 / Tuesday, January 18, 2011 / Page 2836. Action amended monitoring requirements in Section 63.1350. Federal Register / Vol. 76, No. 11 / Tuesday, January 18, 2011 / Page 2837. Action amended compliance dates in Section 63.1351. Federal Register / Vol. 75, No. 161 / Friday, August 20, 2010 / Page 51588. EPA is promulgating national emission standards for hazardous air pollutants for existing stationary spark ignition reciprocating internal combustion engines that either are located at area sources of hazardous air pollutant emissions or that have a site rating of less than or equal to 500 brake horsepower and are located at major

sources of hazardous air pollutant emissions. Federal Register / Vol. 76, No. 54 / Monday, March 21, 2011 / Page 15664. Part 63.7480--63.7575 was amended by revising subpart DDDDD. Federal Register / Vol. 76, No. 118 / Monday, June 20, 2011 / Page 35744. EPA took direct final action to amend the national emission standards for hazardous air pollutants (NESHAP) for the plating and polishing area source category. These final amendments clarify that the emission control requirements of the plating and polishing area source NESHAP do not apply to any bench-scale activities. Also, several technical corrections and clarifications that do not make significant changes in the rule's requirements were made to the rule text. The agency is making these amendments by direct final rule, without prior proposal, because EPA viewed the revisions as noncontroversial and anticipated no adverse comments. Federal Register / Vol. 76, No. 54 / Monday, March 21, 2011 / Page 15591. EPA amended Part 63 by adding Sections 63.111193--63.11237, Subpart JJJJJJ-National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area sources. Federal Register / Vol. 76, No. 33 / Thursday, February 17, 2011 / Page 9480. EPA amended Part 63 by adding Sections 63.11640--63.11653, Subpart EEEEEEE-National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(a)

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 40 CFR Parts 61 and 63, published by National Archives and Records Administration's Office of the Federal Register, July 1, 2011

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: No cost or savings are anticipated for state budget as this amendment does not create any new requirements.
- ◆ LOCAL GOVERNMENTS: No cost or savings are anticipated for local governments as this amendment does not create any new requirements.
- ◆ SMALL BUSINESSES: No cost or savings is anticipated for small businesses as this amendment does not create any new requirements.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No cost or savings are anticipated for persons other than small businesses, businesses, or local government entities as this amendment does not create any new requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No cost or savings is anticipated for affected persons as this amendment does not create any new requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No cost or savings are anticipated for businesses as this amendment does not create any new requirements.

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 05/01/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2012

AUTHORIZED BY: Bryce Bird, Director

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**R307. Environmental Quality, Air Quality.**

**R307-214. National Emission Standards for Hazardous Air Pollutants.**

**R307-214-1. Pollutants Subject to Part 61.**

The provisions of Title 40 of the Code of Federal Regulations (40 CFR) Part 61, National Emission Standards for Hazardous Air Pollutants, effective as of July 1, 2011[+0], are incorporated into these rules by reference. For pollutant emission standards delegated to the State, references in 40 CFR Part 61 to "the Administrator" shall refer to the Executive Secretary.

**R307-214-2. Sources Subject to Part 63.**

The provisions listed below of 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories, effective as of July 1, 2011[+0], are incorporated into these rules by reference. References in 40 CFR Part 63 to "the Administrator" shall refer to the executive secretary, unless by federal law the authority is specific to the Administrator and cannot be delegated.

- (1) 40 CFR Part 63, Subpart A, General Provisions.
- (2) 40 CFR Part 63, Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance with 42 U.S.C. 7412(g) and (j).
- (3) 40 CFR Part 63, Subpart F, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.
- (4) 40 CFR Part 63, Subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.
- (5) 40 CFR Part 63, Subpart H, National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
- (6) 40 CFR Part 63, Subpart I, National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.

(7) 40 CFR Part 63, Subpart J, National Emission Standards for Polyvinyl Chloride and Copolymers Production.

(8) 40 CFR Part 63, Subpart L, National Emission Standards for Coke Oven Batteries.

(9) 40 CFR Part 63, Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.

(10) 40 CFR Part 63, Subpart N, National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

(11) 40 CFR Part 63, Subpart O, National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations.

(12) 40 CFR Part 63, Subpart Q, National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.

(13) 40 CFR Part 63, Subpart R, National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).

(14) 40 CFR Part 63, Subpart T, National Emission Standards for Halogenated Solvent Cleaning.

(15) 40 CFR Part 63, Subpart U, National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.

(16) 40 CFR Part 63, Subpart AA, National Emission Standards for Hazardous Air Pollutants for Phosphoric Acid Manufacturing.

(17) 40 CFR Part 63, Subpart BB, National Emission Standards for Hazardous Air Pollutants for Phosphate Fertilizer Production.

(18) 40 CFR Part 63, Subpart CC, National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.

(19) 40 CFR Part 63, Subpart DD, National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

(20) 40 CFR Part 63, Subpart EE, National Emission Standards for Magnetic Tape Manufacturing Operations.

(21) 40 CFR Part 63, Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities.

(22) 40 CFR Part 63, Subpart HH, National Emission Standards for Hazardous Air Pollutants for Oil and Natural Gas Production.

(23) 40 CFR Part 63, Subpart JJ, National Emission Standards for Wood Furniture Manufacturing Operations.

(24) 40 CFR Part 63, Subpart KK, National Emission Standards for the Printing and Publishing Industry.

(25) 40 CFR Part 63, Subpart MM, National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semicheical Pulp Mills.

(26) 40 CFR Part 63, Subpart OO, National Emission Standards for Tanks - Level 1.

(27) 40 CFR Part 63, Subpart PP, National Emission Standards for Containers.

(28) 40 CFR Part 63, Subpart QQ, National Emission Standards for Surface Impoundments.

(29) 40 CFR Part 63, Subpart RR, National Emission Standards for Individual Drain Systems.



(30) 40 CFR Part 63, Subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (Generic MACT).

(31) 40 CFR Part 63, Subpart TT, National Emission Standards for Equipment Leaks- Control Level 1 (Generic MACT).

(32) 40 CFR Part 63, Subpart UU, National Emission Standards for Equipment Leaks-Control Level 2 Standards (Generic MACT).

(33) 40 CFR Part 63, Subpart VV, National Emission Standards for Oil-Water Separators and Organic-Water Separators.

(34) 40 CFR Part 63, Subpart WW, National Emission Standards for Storage Vessels (Tanks)-Control Level 2 (Generic MACT).

(35) 40 CFR Part 63, Subpart XX, National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.

(36) 40 CFR Part 63, Subpart YY, National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic MACT.

(37) 40 CFR Part 63, Subpart CCC, National Emission Standards for Hazardous Air Pollutants for Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants.

(38) 40 CFR Part 63, Subpart DDD, National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.

(39) 40 CFR Part 63, Subpart EEE, National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.

(40) 40 CFR Part 63, Subpart GGG, National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production.

(41) 40 CFR Part 63, Subpart HHH, National Emission Standards for Hazardous Air Pollutants for Natural Gas Transmission and Storage.

(42) 40 CFR Part 63, Subpart III, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.

(43) 40 CFR Part 63, Subpart JJJ, National Emission Standards for Hazardous Air Pollutants for Group IV Polymers and Resins.

(44) 40 CFR Part 63, Subpart LLL, National Emission Standards for Hazardous Air Pollutants for Portland Cement Manufacturing Industry.

(45) 40 CFR Part 63, Subpart MMM, National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.

(46) 40 CFR Part 63, Subpart NNN, National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.

(47) 40 CFR Part 63, Subpart OOO, National Emission Standards for Hazardous Air Pollutants for Amino/Phenolic Resins Production (Resin III).

(48) 40 CFR Part 63, Subpart PPP, National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production.

(49) 40 CFR Part 63, Subpart QQQ, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelters.

(50) 40 CFR Part 63, Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.

(51) 40 CFR Part 63, Subpart TTT, National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.

(52) 40 CFR Part 63, Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

(53) 40 CFR Part 63, Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.

(54) 40 CFR Part 63, Subpart AAAA, National Emission Standards for Hazardous Air Pollutants for Municipal Solid Waste Landfills.

(55) 40 CFR Part 63, Subpart CCCC, National Emission Standards for Manufacturing of Nutritional Yeast.

(56) 40 CFR Part 63, Subpart DDDD, National Emission Standards for Hazardous Air Pollutants for Plywood and Composite Wood Products.

(57) 40 CFR Part 63, Subpart EEEE, National Emission Standards for Hazardous Air Pollutants for Organic Liquids Distribution (non-gasoline).

(58) 40 CFR Part 63, Subpart FFFF, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Organic Chemical Manufacturing.

(59) 40 CFR Part 63, Subpart GGGG, National Emission Standards for Vegetable Oil Production; Solvent Extraction.

(60) 40 CFR Part 63, Subpart HHHH, National Emission Standards for Wet-Formed Fiberglass Mat Production.

(61) 40 CFR Part 63, Subpart IIII, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Automobiles and Light-Duty Trucks.

(62) 40 CFR Part 63, Subpart JJJJ, National Emission Standards for Hazardous Air Pollutants for Paper and Other Web Surface Coating Operations.

(63) 40 CFR Part 63, Subpart KKKK, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Metal Cans.

(64) 40 CFR Part 63, Subpart MMMM, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.

(65) 40 CFR Part 63, Subpart NNNN, National Emission Standards for Large Appliances Surface Coating Operations.

(66) 40 CFR Part 63, Subpart OOOO, National Emission Standards for Hazardous Air Pollutants for Fabric Printing, Coating and Dyeing Surface Coating Operations.

(67) 40 CFR Part 63, Subpart PPPP, National Emissions Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products.

(68) 40 CFR Part 63, Subpart QQQQ, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Wood Building Products.

(69) 40 CFR Part 63, Subpart RRRR, National Emission Standards for Hazardous Air Pollutants for Metal Furniture Surface Coating Operations.

(70) 40 CFR Part 63, Subpart SSSS, National Emission Standards for Metal Coil Surface Coating Operations.

(71) 40 CFR Part 63, Subpart TTTT, National Emission Standards for Leather Tanning and Finishing Operations.

(72) 40 CFR Part 63, Subpart UUUU, National Emission Standards for Cellulose Product Manufacturing.

(73) 40 CFR Part 63, Subpart VVVV, National Emission Standards for Boat Manufacturing.

(74) 40 CFR Part 63, Subpart WWWW, National Emission Standards for Hazardous Air Pollutants for Reinforced Plastic Composites Production.

(75) 40 CFR Part 63, Subpart XXXX, National Emission Standards for Tire Manufacturing.

(76) 40 CFR Part 63, Subpart YYYYY, National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.

(77) 40 CFR Part 63, Subpart ZZZZ, National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.

(78) 40 CFR Part 63, Subpart AAAAA, National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.

(79) 40 CFR Part 63, Subpart BBBBB, National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.

(80) 40 CFR Part 63, Subpart CCCCC, National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.

(81) 40 CFR Part 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters.

(82) 40 CFR Part 63, Subpart EEEEE, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.

(83) 40 CFR Part 63, Subpart FFFFF, National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing.

(84) 40 CFR Part 63, Subpart GGGGG, National Emission Standards for Hazardous Air Pollutants for Site Remediation.

(85) 40 CFR Part 63, Subpart HHHHH, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Coating Manufacturing.

(86) 40 CFR Part 63, Subpart IIIII, National Emission Standards for Hazardous Air Pollutants for Mercury Emissions from Mercury Cell Chlor-Alkali Plants.

(87) 40 CFR Part 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.

(88) 40 CFR Part 63, Subpart KKKKK, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.

(89) 40 CFR Part 63, Subpart LLLLL, National Emission Standards for Hazardous Air Pollutants for Asphalt Processing and Asphalt Roofing Manufacturing.

(90) 40 CFR Part 63, Subpart MMMMM, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Fabrication Operations.

(91) 40 CFR Part 63, Subpart NNNNN, National Emission Standards for Hazardous Air Pollutants for Hydrochloric Acid Production.

(92) 40 CFR Part 63, Subpart PTTTT, National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands.

(93) 40 CFR Part 63, Subpart QQQQQ, National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.

(94) 40 CFR Part 63, Subpart RRRRR, National Emission Standards for Hazardous Air Pollutants for Taconite Iron Ore Processing.

(95) 40 CFR Part 63, Subpart SSSSS, National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.

(96) 40 CFR Part 63, Subpart TTTTT, National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining.

(97) 40 CFR Part 63, Subpart WWWW, National Emission Standards for Hospital Ethylene Oxide Sterilizers.

(98) 40 CFR Part 63, Subpart YYYYY, National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities.

(99) 40 CFR Part 63, Subpart ZZZZZ, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources.

(100) 40 CFR Part 63 Subpart BBBBBB National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities

(101) 40 CFR Part 63 Subpart CCCCC National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities.

(102) 40 CFR Part 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources.

(103) 40 CFR Part 63, Subpart EEEEE, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources.

(104) 40 CFR Part 63, Subpart FFFFF, National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources.

(105) 40 CFR Part 63, Subpart GGGGG, National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources--Zinc, Cadmium, and Beryllium.

(106) 40 CFR Part 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources.

(107[+06]) 40 CFR Part 63, Subpart LLLLL, National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources.

(108[+07]) 40 CFR Part 63, Subpart MMMMM, National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources.

(109[+08]) 40 CFR Part 63, Subpart NNNNN, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds.

(110[+09]) 40 CFR Part 63, Subpart OOOOO, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources.

(111[+H0]) 40 CFR Part 63, Subpart PPPPPP, National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources.

(112[+H1]) 40 CFR Part 63, Subpart QQQQQQ, National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources.

(113[+H2]) 40 CFR Part 63, Subpart RRRRRR, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources.

(114[+H3]) 40 CFR Part 63, Subpart SSSSSS, National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources.

(115[+H4]) 40 CFR Part 63, Subpart VVVVVV, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources.

(116[+H5]) 40 CFR Part 63, Subpart TTTTTT, National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources.

(117[+H6]) 40 CFR Part 63, Subpart WWWWWW, National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations.

(118[+H7]) 40 CFR Part 63, Subpart XXXXXX, National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories.

(119[+H8]) 40 CFR Part 63, Subpart YYYYYY, National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities.

(120[+H9]) 40 CFR Part 63, Subpart ZZZZZZ, National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries.

(121[+20]) 40 CFR Part 63, Subpart AAAAAA, National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing.

(122[+21]) 40 CFR Part 63, Subpart BBBBBB, National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry.

(123[+22]) 40 CFR Part 63, Subpart CCCCCC, National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing.

(124[+23]) 40 CFR Part 63, Subpart DDDDDD, National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing.

(125) 40 CFR Part 63, Subpart EEEEEEE, National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category.

**KEY: air pollution, hazardous air pollutant, MACT**  
**Date of Enactment or Last Substantive Amendment: [~~June 1, 2011~~2012**  
**Notice of Continuation: January 11, 2008**  
**Authorizing, and Implemented or Interpreted Law: 19-2-104(1)**  
**(a)**

**Human Services, Child and Family Services**  
**R512-60**  
**Children's Trust Account**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 35931  
 FILED: 03/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being revised to bring the rule in line with current statute and change funding language around availability of funds.

**SUMMARY OF THE RULE OR CHANGE:** The proposed rule changes the name from the Children's Trust Account to the Children's Account per S.B. 191 of the 2010 General Session of the Utah State Legislature, strengthens conflict of interest language, adds cash-match provisions contained in statute, and changes funding language around availability of funds.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-4a-102 and Section 62A-4a-305 and Section 62A-4a-309 and Section 62A-4a-310 and Section 62A-4a-311

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There will be no increase in cost or savings to the state budget because these proposed changes update citation information and add rulemaking authority for Child and Family Services, but do not increase workload that would require additional staff or other costs.
- ◆ **LOCAL GOVERNMENTS:** There may be an increase in costs or savings to local government if there is any change in the amount of match they might have to provide based on the distribution of funds. These amounts cannot be determined until the grant funding is issued by the Council.
- ◆ **SMALL BUSINESSES:** There may be an increase in costs or savings to small businesses if there is any change in the amount of match they might have to provide based on the distribution of funds. These amounts cannot be determined until the grant funding is issued by the Council.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There may be an increase in costs or savings to persons other than small businesses, businesses, or local government entities if there is any change in the amount of match they might have to provide based on the distribution of funds. These amounts cannot be determined until the grant funding is issued by the Council.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons associated with implementing the changes to this rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There will be no costs or savings on businesses.

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

HUMAN SERVICES  
CHILD AND FAMILY SERVICES  
195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov  
♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2012**

**AUTHORIZED BY: Brent Platt, Director**

**R512. Human Services, Child and Family Services.**

**R512-60. Children's ~~Trust~~ Account.**

**R512-60-1. Purpose, Authority, Definitions, and Scope.**

(1) Purpose. The purpose of this rule is to specify the requirements for carrying out the purposes of the Children's ~~Trust~~ Account, with the funding specified in Section 62A-4a-309.

(2) Authority. This rule is authorized by Section 62A-4a-102.

(3) Definitions. For the purposes of this ~~section~~ rule:

(a) "Administrator" means the employee of Child and Family Services appointed by the Director to administer the Children's ~~Trust~~ Account.

(b) "CA" is the Children's Account.

(c) "Child and Family Services" means the Division of Child and Family Services.

(d) "Conflict of Interest" is defined as a situation where a Council member's private or outside economic, social, political, or volunteer interests interfere (or have the potential to, or may appear to, interfere) with that council member's duties and responsibilities.

(e) "Council" means the Child Abuse Advisory Council established under Section 62A-4a-311.

(f) "Director" means Director of Child and Family Services.

(g) "RGA" stands for Request for Grant Application.

(4) Scope. Funds from the CA shall be used for community-based education, service, and treatment programs to prevent the occurrence and recurrence of child abuse and neglect, as specified in Section 62A-4a-305.

**R512-60-2. Functions of the Council.**

(1) The Council shall advise Child and Family Services on matters relating to abuse and neglect and recommend how funds contained in the CA should be allocated.

**R512-60-3. Conflict of Interest.**

(1) Child and Family Services shall obtain written disclosure of any potential conflicts of interest from a prospective member prior to appointment to Council membership.

(2) Council members shall provide written disclosure of any potential conflicts of interest to Child and Family Services for annual review and approval.

(3) A Council member affiliated with an individual or organization that may bid on or receive a contract shall immediately provide written disclosure of this potential conflict of interest to Child and Family Services.

(4) Child and Family Services may appoint a prospective member who may have a conflict of interest on condition that they may only participate on the Council as it advises Child and Family Services on matters relating to abuse and neglect. A Council member with a conflict of interest shall not receive any information, nor participate in any discussion, presentation, consideration, or vote regarding the Council's recommendations regarding the allocation of CA funds, including any information related to RGA or contract development or review.

(5) A Council member shall not exert influence or make any requests for favored consideration from any individual on the Council or from Child and Family Services to receive a contract award. Council members participating in the development of fund allocation recommendations or RGA shall keep confidential any information prior to official public release by Child and Family Services.

**R512-60-4. Responsibilities of the Director.**

(1) In addition to the responsibilities defined in Section 62A-4a-303, the Director shall:

(a) Designate a staff member to serve as the Administrator of the CA and as the liaison with the Council.

(b) Review policies and procedures regarding the administration of the CA which have been developed by the Council.

(c) Hold a public hearing for comments on the CA allocation plan and prevention priorities. This shall meet the requirement of Section 62A-4a-306 requiring public comments on the specific program or service.

(d) Approve the allocation plan and prevention priorities prior to implementation.

(e) Approve policies of the CA.

**R512-60-5. Proposal Requirements.**

(1) A RGA shall be developed by Child and Family Services based upon the approved allocation plan and prevention priorities, and in accordance with State Purchasing Guidelines. RGA shall specify the purposes and eligibility requirements for projects or programs to be funded through the CA. The proposal requirements may vary from year to year.

(2) Child and Family Services shall widely disseminate RGA. Project or program proposals shall be submitted as specified in the RGA.

**R512-60-6. Funding Limitations and Requirements.**

(1) Funding for individual projects shall be recommended by the Council and approved by Child and Family Services based on availability of funds and identified prevention priorities, with consideration for programs or projects that serve the largest portion of the population, serve segments of the population at highest risk for abuse and neglect, or are of exceptional merit as evidence-based or evidence-informed in prevention of abuse or neglect.

(a) Contracts may be renewed according to the terms of the procurement.

(2) Each program or project funded through the CA shall provide a dollar-for-dollar match from private or local government sources.

(a) In-kind contributions may be used as part of the local match requirement. No more than 50% of the local match requirement may be in-kind. The entity that receives the statewide evaluation contract is excepted from the cash-match provisions contained in Section 62A-4a-309. Upon recommendation of the executive director and the Council, Child and Family Services may reduce or waive the match requirements for an entity, if Child and Family Services determines that imposing the requirements would prohibit or limit the provisions of services needed in a particular geographic area (Section 62A-4a-309).

(b) Items that may be used as in-kind match are contributed services of support personnel, office space, furniture and equipment, utility costs, vehicles, contributed services of professional personnel including physicians, nurses, social workers, psychologists, educators, public accountants, and lawyers who are performing services for which they would normally be paid. The source of original funding for this in-kind match shall not be state or federal monies.

**R512-60-7. Procedures in Selecting Programs or Projects to be Supported by the Children's Account.**

(1) Proposals received by Child and Family Services in response to the RGA shall be reviewed according to the criteria specified in the RGA, consistent with Section 62A-4a-307.

(2) The Administrator or other Child and Family Services designees shall negotiate contracts with successful offerors based on State Purchasing Guidelines.

**R512-60-8. Evaluation.**

(1) Each program or project funded through the CA shall be evaluated at least once each year to determine if the purposes and goals of the project have been met. This evaluation may be done by personnel within Child and Family Services or by contract with a qualified individual, non-profit organization, or agency. A copy of the written evaluation shall be provided to Child and Family Services, who will provide evaluation information to the Council.

**R512-60-9. Research.**

(1) CA funds may be used for research programs consistent with Section 62A-4a-305 at funding levels the Council deems appropriate. Basic or applied research programs or projects that provide empirical data to support efforts to prevent the occurrence or recurrence of child abuse and neglect in any of its basic forms, including physical abuse, neglect or abandonment, sexual maltreatment, psychological abuse, or educational or medical neglect, may be funded.

~~\_\_\_\_\_ (b) "Child and Family Services" means the Division of Child and Family Services.~~

~~\_\_\_\_\_ (c) "Council" means the Child Abuse Advisory Council established under Section 62A-4a-311.~~

~~\_\_\_\_\_ (d) "Director" means Director of Child and Family Services.~~

~~\_\_\_\_\_ (4) Scope. Funds from the Children's Trust Account shall be used for community-based education, service, and treatment programs to prevent the occurrence and recurrence of child abuse and neglect, as specified in 62A-4a-305.~~

**R512-60-2. Functions of the Council.**

~~\_\_\_\_\_ The Council shall advise the Director regarding policies and procedures for the administration of the Children's Trust Account.~~

**R512-60-3. Conflict of Interest.**

~~\_\_\_\_\_ (1) A Council member affiliated with an organization bidding for a trust account contract shall openly declare this conflict of interest.~~

~~\_\_\_\_\_ (2) A Council member with a conflict of interest shall be excused from the discussion, consideration, or voting on any project or proposal in which the Council member has an affiliation.~~

~~\_\_\_\_\_ (3) A Council member shall not exert undue influence or make any requests for favored consideration from the Council or Child and Family Services to receive a contract award from the State.~~

**R512-60-4. Responsibilities of the Director.**

~~\_\_\_\_\_ In addition to the responsibilities defined in Section 62A-4a-303, the Director shall:~~

~~\_\_\_\_\_ (1) Designate a staff member to serve as the Administrator of the Children's Trust Account and as the liaison with the Council.~~

~~\_\_\_\_\_ (2) Review policies and procedures regarding the administration of the Children's Trust Account which have been developed by the Council.~~

~~\_\_\_\_\_ (3) Hold a public hearing for comments on the Children's Trust Account allocation plan and prevention priorities. This shall meet the requirement of Section 62A-4a-306 requiring public comments on the specific program or service.~~

~~\_\_\_\_\_ (4) Approve the allocation plan and prevention priorities prior to implementation.~~

~~\_\_\_\_\_ (5) Approve policies of the Children's Trust Account.~~

**R512-60-5. Proposal Requirements.**

~~\_\_\_\_\_ (1) A request for proposals (RFPs) shall be developed by the Administrator based upon the approved allocation plan and prevention priorities, and in accordance with State Purchasing Guidelines. The request for proposals shall specify the purposes and eligibility requirements for projects or programs to be funded through the Children's Trust Account. The proposal requirements may vary from year to year.~~

~~\_\_\_\_\_ (2) The Administrator shall widely disseminate the RFPs. Project or program proposals shall be submitted as specified in the RFPs.~~

**R512-60-6. Funding Limitations and Requirements.**

(1) Funding for individual projects shall be at least \$4,000 and shall not exceed \$20,000 per year, and may have the option of being renewed according to the terms of the request for proposals. The Director may approve a funding level, recommended by the Council, which varies from this requirement for a program or project serving a geographical area encompassing more than one community or for a program or project of exceptional merit. If unobligated account revenues for a given year are less than \$50,000, the Council may forego the RFP process for that year.

(2) Each program or project funded through the Children's Trust Account shall provide a dollar for dollar match from private or local government sources.

(a) In-kind contributions may be used as part of the local match requirement. No more than 50% of the local match requirement may be in-kind.

(b) Items that may be used as in-kind match are contributed services of support personnel, office space, furniture and equipment, utility costs, vehicles, contributed services of professional personnel including physicians, nurses, social workers, psychologists, educators, public accountants, and lawyers who are performing services for which they would normally be paid. The source of original funding for this in-kind match shall not be state or federal monies.

(3) Of the total monies available for allocation in the Children's Trust Account, 10% to 15% shall be for statewide programs.

(4) The remaining funds shall be awarded according to the allocation plan approved by the Director. This plan shall be based on monies available for allocation, the population percentage count by area, and a base amount of \$1,000 to \$2,000 recommended by the Children's Trust Fund Administrator.

**R512-60-7. Procedures in Selecting Programs or Projects to be Supported by the Children's Trust Account.**

(1) Proposals received by Child and Family Services in response to the RFPs shall be reviewed according to the criteria specified in the RFPs, consistent with Section 62A-4a-307.

(2) The Administrator or Child and Family Services contract monitors shall negotiate contracts with successful offerors, based on State Purchasing Guidelines.

**R512-60-8. Evaluation.**

(1) Each program or project funded through the Children's Trust Account shall be evaluated at least once each year to determine if the purposes and goals of the project have been met. This evaluation may be done by personnel within Child and Family Services or by contract with a qualified individual, non-profit organization, or agency. The evaluation shall be completed at least 60 working days prior to the end of the contract year. A copy of the written evaluation shall be sent to the Administrator who will provide evaluation information to the Council.

(2) If the Director contracts for evaluation services, the contract may not exceed \$500 per grantee per year.

**R512-60-9. Research.**

(1) Children's Trust Account funds may be used for research programs consistent with Section 62A-4a-305 at funding

levels the Council deems appropriate. Basic or applied research programs or projects that provide empirical data to support efforts to prevent the occurrence or recurrence of child abuse and neglect in any of its basic forms, including physical abuse, neglect or abandonment, sexual maltreatment, psychological abuse, or educational or medical neglect, may be funded.

**]KEY: child welfare, child abuse, children's [trust]account**  
**Date of Enactment or Last Substantive Amendment: [October 22, 2009]2012**

**Notice of Continuation: September 19, 2011**

**Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-305; 62A-4a-309; 62A-4a-310; 62A-4a-311**

## Judicial Performance Evaluation Commission, Administration **R597-3**

### Judicial Performance Evaluations

#### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 35934

FILED: 03/15/2012

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of the rule is to change the start date for the retention evaluation cycle for judges standing for retention election in 2014. This is necessary because production difficulties delayed the distribution of midterm reports, and judges must have time to incorporate suggestions from the midterm reports before the retention cycle begins.

**SUMMARY OF THE RULE OR CHANGE:** The change will delay the start date for the retention evaluation cycle for judges standing for retention election in 2014 from from 07/01/2011 to 06/01/2012. (DAR NOTE: A corresponding 120-day (emergency) rule that is effective as of 03/15/2012 is under DAR No. 35930 in this issue, April 1, 2012, of the Bulletin.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 78a-12-102 to 78a-12-206

#### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The change simply adjusts the start date of an evaluation period for state court judges. Because the change does not involve any costs or savings, there is no impact on the state budget.

◆ **LOCAL GOVERNMENTS:** The change simply adjusts the start date of an evaluation period for state court judges and so does not involve any costs or savings. Thus, there is no impact on local government.

♦ **SMALL BUSINESSES:** The change adjusts the start date of an evaluation period for state court judges. It does not involve any costs or savings. Thus, there is no impact on small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The change adjusts the start date of an evaluation period for state court judges. It does not involve any costs or savings. Thus, there is no impact on small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Judges are the only persons affected by this change, and no compliance costs are associated with this change.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This change has no fiscal impact on businesses.

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

JUDICIAL PERFORMANCE EVALUATION  
COMMISSION  
ADMINISTRATION  
ROOM B-330 SENATE BUILDING  
420 N STATE ST  
SENATE BUILDING B-330  
SALT LAKE CITY, UT 84114  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Joanne Slotnik by phone at 801-538-1652, by FAX at 801-538-1024, or by Internet E-mail at jslotnik@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012**

**AUTHORIZED BY: Anthony Schofield, Chair**

**R597. Judicial Performance Evaluation Commission, Administration.**

**R597-3. Judicial Performance Evaluations.**

**R597-3-1. Evaluation Cycles.**

(1) For judges not serving on the supreme court:

(a) The mid-term evaluation cycle. Except as provided in subsection (3) the mid-term evaluation cycle begins upon the appointment of the judge or on the first Monday in January following the retention election of the judge and ends 2 1/2 years later, on June 30th of the third year preceding the year of the judge's next retention election.

(b) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the judge's next retention election.

(2) For justices serving on the supreme court:

(a) The initial evaluation cycle. The initial evaluation cycle begins upon the appointment of the justice or on the first Monday in January following the retention election of the justice and ends 2 1/2 years later, on June 30th of the seventh year preceding the year of the justice's next retention election.

(b) The mid-term evaluation cycle. The mid-term evaluation cycle begins the day after the initial evaluation cycle is finished and ends four years later, on June 30th of the third year preceding the year of the justice's next retention election.

(c) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the justice's next retention election.

(3) Transition Evaluation Cycles

(a) For judges standing for retention election in 2012:

(i) The mid-term evaluation cycle for attorney surveys shall begin on January 1, 2008 and end on December 31, 2009.

(ii) The mid-term evaluation cycle for all other survey categories shall begin in 2009 and end on January 31, 2010.

(iii) The retention evaluation cycle for all surveys shall begin no later than July 1, 2010, and end on June 30, 2011.

(b) For judges not on the supreme court standing for retention election in 2014:

(i) The mid-term evaluation cycle for surveys of attorneys and jurors shall begin in 2009 and finish on June 30, 2011.

(ii) The mid-term evaluation cycle for all pilot program categories shall begin no later than July 1, 2010, and end on June 30, 2011.

(iii) The retention evaluation cycle [~~will be as described in R597-3-1(1)(b), supra.~~] shall begin on June 1, 2012 and end on June 30, 2013.

(c) For supreme court justices standing for retention election in 2014:

(i) The mid-term evaluation cycle for surveys of attorneys shall begin in 2009 and end on June 30, 2011.

(ii) The mid-term evaluation cycle for relevant pilot programs categories shall begin no later than July 1, 2010, and end on June 30, 2011.

(iii) The retention evaluation cycle shall [~~be as described in R597-3-1(2)(b)-(e).~~] begin on June 1, 2012 and end on June 30, 2013.

(d) For judges not on the supreme court standing for retention election in 2016:

(i) Except as provided in subsection (3), the mid-term evaluation cycle shall begin on July 1, 2011 and end two years later on June 30, 2013.

(ii) The retention evaluation cycle shall be as described in R597-3(1)(b), supra.

(e) For supreme court justices standing for retention election in 2016:

(i) The initial evaluation cycle shall be combined with the mid-term evaluation, beginning in 2009 and ending on June 30, 2013.

(ii) The combined initial/mid-term evaluation cycle for surveys of attorneys shall begin in 2009 and end on June 30, 2013.

(iii) The combined initial/mid-term evaluation cycle for relevant pilot programs categories shall begin no later than July 1, 2010.

(iv) The retention evaluation cycle shall be as described in R597-3-1(2)(c).

**R597-3-2. Survey.**

(1) General provisions.

(a) All surveys shall be conducted according to the evaluation cycles described in R597-3-1, supra.

(b) The commission shall post on its website the survey questionnaires upon which the judge shall be evaluated at the beginning of the survey cycle.

(c) The commission may select retention survey questions from among the midterm survey questions.

(d) Periodically, reviews may be conducted to ensure compliance with administrative rules governing the survey process.

(e) The commission may consider narrative survey comments that cannot be reduced to a numerical score.

(2) Respondent Classifications

(a) Attorneys

(i) Identification of survey respondents. Within 10 business days of the end of the evaluation cycle, the clerk of the judge or the Administrative Office of the Courts shall identify as potential respondents all attorneys who have appeared before the judge who is being evaluated at a minimum of one hearing or trial during the evaluation cycle. Attorneys who have been confirmed as judges during the evaluation cycle shall be excluded from the attorney pool.

(ii) Number of survey respondents.

(A) For each judge who is the subject of a survey, the surveyor shall identify the number of attorneys most likely to produce a response level yielding reliability at a 95% confidence level with a margin of error of +/- 5%.

(B) In the event that the attorney appearance list from the Administrative Office of the Courts contains an insufficient number of attorneys with one trial appearance or at least three total appearances before the evaluated judge to achieve the required confidence level, then the surveyor shall supplement the survey pool with other attorneys who have appeared before the judge during the evaluation cycle.

(iii) Sampling. The surveyor shall design the survey to comply with generally-accepted principles of surveying. All attorneys with one trial appearance or at least three total appearances before the evaluated judge shall be surveyed.

(iv) Distribution of surveys. Surveys shall be distributed by the third-party contractor engaged by the commission to conduct the survey. The contractor shall determine the maximum number of survey requests sent to a single attorney based on an analysis of the Administrative Office of the Courts appearance data at the time of the survey. In no event shall any attorney receive more than nine survey requests.

(b) Jurors

(i) Identification and number of survey respondents. All jurors who participate in deliberation shall be eligible to receive an online juror survey.

(ii) Distribution of surveys. Prior to the jury being dismissed, the bailiff or clerk in charge of the jury shall collect email addresses from all jurors. If email addresses are not available, street addresses shall be collected. The bailiff or clerk shall transmit all such addresses to the surveyor within 24 hours of collection. The surveyor shall administer the survey online and

deliver survey results electronically to each judge. Paper surveys may be sent to those jurors who do not have access to email.

(c) Court Staff

(i) Definition of court staff who have worked with the judge. Court staff who have worked with the judge refers to employees of the judiciary who have regular contact with the judge as the judge performs judicial duties and also includes those who are not employed by the judiciary but who have ongoing administrative duties in the courtroom.

(ii) Identification of survey respondents. Court staff who have worked with the judge include, but are not limited to:

(A) judicial assistants;

(B) case managers;

(C) clerks of court;

(D) trial court executives;

(E) interpreters;

(F) bailiffs;

(G) law clerks;

(H) central staff attorneys;

(I) juvenile probation and intake officers;

(J) other courthouse staff, as appropriate;

(K) Administrative Office of the Courts staff.

(f) Juvenile Court Professionals

(i) Definition of juvenile court professional. A juvenile court professional is someone whose professional duties place that individual in court on a regular and continuing basis to provide substantive input to the court.

(ii) Identification of survey respondents. Juvenile court professionals shall include, where applicable:

(A) Division of Child and Family Services ("DCFS") child protection services workers;

(B) Division of Child and Family Services ("DCFS") case workers;

(C) Juvenile Justice Services ("JJS") Observation and Assessment Staff;

(D) Juvenile Justice Services ("JJS") case managers;

(E) Juvenile Justice Services ("JJS") secure care staff;

(F) Others who provide substantive professional services on a regular basis to the juvenile court.

(iii) Beginning with juvenile court judges standing for retention in 2014, juvenile court professionals shall be included as an additional survey respondent group for both the midterm and retention evaluation cycles.

(3) Anonymity and Confidentiality

(a) Definitions

(i) Anonymous.

(A) "Anonymous" means that the identity of the individual who authors any survey response, including comments, will be protected from disclosure.

(B) The independent contractor conducting the surveys shall provide to the commission all written comments from the surveys, redacted to remove any information that identifies the person commenting. The contractor shall also redact any information that discloses the identity of any crime victims referenced in a written comment.

(C) The submission of a survey form containing an anonymous narrative comment does not preclude any survey respondent from submitting a public comment in writing pursuant to the Judicial Performance Evaluation Commission Act.



(ii) Confidentiality: Confidentiality means information obtained from a survey respondent that the respondent may reasonably expect will not be disclosed other than as indicated in the survey instrument.

(iii) The raw form of survey results consists of all quantitative survey data that contributes to the minimum score on the judicial performance survey.

(iv) The summary form of survey results consists of quantitative survey data in aggregated form.

### **R597-3-3. Courtroom Observation.**

#### (1) General Provisions.

(a) Courtroom observations shall be conducted according to the evaluation cycles described in R597-3-1(1) and (2), *supra*.

(b) The commission shall provide notice to each judge at the beginning of the survey cycle of the courtroom observation process and of the instrument to be used by the observers.

#### (2) Courtroom Observers.

##### (a) Selection of Observers

(i) Courtroom observers shall be volunteers, recruited by the commission through public outreach and advertising.

(ii) Courtroom observers shall be selected by the commission staff, based on written applications and an interview process.

(b) Selection Criteria. Observers with a broad and varied range of life experiences shall be sought. The following persons shall be excluded from eligibility as courtroom observers:

(i) persons with a professional involvement with the state court system, the justice courts, or the judge;

(ii) persons with a fiduciary relationship with the judge;

(iii) persons within the third degree of relationship with a state or justice court judge (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);

(iv) persons lacking computer access or basic computer literacy skills;

(v) persons currently involved in litigation in state or justice courts;

(vi) convicted felons;

(vii) persons whose background or experience suggests they may have a bias that would prevent them from objectively serving in the program.

##### (c) Terms and Conditions of Service

(i) Courtroom observers shall serve at the will of the commission staff.

(ii) Courtroom observers shall commit to one one-year term of service.

(iii) Courtroom observers may serve up to three one-year terms, subject to annual renewal at the discretion of the commission.

(iv) Courtroom observers shall not disclose the content of their courtroom evaluations in any form or to any person except as designated by the commission.

##### (d) Training of Observers

(i) Courtroom observers must satisfactorily complete a training program developed by the commission before engaging in courtroom observation.

(ii) Elements of the training program shall include:

(A) Orientation and overview of the commission process and the courtroom observation program;

(B) Classroom training addressing each level of court;

(C) In-court group observations, with subsequent classroom discussions, for each level of court;

(D) Training on proper use of observation instrument;

(E) Training on confidentiality and non-disclosure issues;

(F) Such other periodic trainings as are necessary for effective observations.

#### (3) Courtroom Observation Program.

##### (a) Courtroom Requirements

(i) During each midterm and retention evaluation cycle, a minimum of four different observers shall observe each judge subject to that evaluation cycle.

(ii) Each observer shall observe each judge in person while the judge is in the courtroom and for a minimum of two hours while court is in session. The observations may be completed in one sitting or over several courtroom visits.

(iii) If a judge sits in more than one geographic location at the judge's appointed level or a justice court judge serves in more than one jurisdiction, the judge may be observed in any location or combination of locations in which the judge holds court.

(iv) When the observer completes the observation of a judge, the observer shall complete the observation instrument, which will be electronically transferred to the commission or the third party contractor for processing.

##### (b) Travel and Reimbursement

(i) All travel must be preapproved by the executive director.

(ii) All per diem and lodging will be reimbursed, when appropriate, in accordance with Utah state travel rules and regulations.

(iii) Travel reimbursement forms shall be submitted on a monthly basis or whenever the observer has accumulated a minimum of 200 miles of travel.

(iv) Travel may be reimbursed only after the observer has satisfactorily completed and successfully submitted the courtroom observation report for which the reimbursement is sought.

##### (v) Overnight lodging

(A) Overnight lodging is reimbursable when the courtroom is located over 100 miles from home base and court is scheduled to begin before 9:30 a.m., with any exceptions preapproved by commission staff.

(B) Multiple overnight lodging is reimbursable where the commission staff determines it is cost-effective to observe several courtrooms in a single trip.

(v) Each courtroom observer must provide a social security number or tax identification number to the commission in order to process state reimbursement.

(4) Principles and Standards used to evaluate the behavior observed.

(a) Procedural fairness, which focuses on the treatment judges accord people in their courts, shall be used to evaluate the judicial behavior observed in the courtroom observation program.

(b) To assess a judge's conduct in court with respect to procedural fairness, observers shall respond in narrative form to the following principles and behavioral standards:

(i) Neutrality, including but not limited to:

(A) displaying fairness and impartiality toward all court participants;

(B) acting as a fair and principled decision maker who applies rules consistently across court participants and cases;

(C) explaining transparently and openly how rules are applied and how decisions are reached.

(D) listening carefully and impartially;

(ii) Respect, including but not limited to:

(A) demonstrating courtesy toward attorneys, court staff, and others in the court;

(B) treating all people with dignity;

(C) helping interested parties understand decisions and what the parties must do as a result;

(D) maintaining decorum in the courtroom.

(E) demonstrating adequate preparation to hear scheduled cases;

(F) acting in the interests of the parties, not out of demonstrated personal prejudices;

(G) managing the caseload efficiently and demonstrating awareness of the effect of delay on court participants;

(H) demonstrating interest in the needs, problems, and concerns of court participants.

(iii) Voice, including but not limited to:

(A) giving parties the opportunity, where appropriate, to give voice to their perspectives or situations and demonstrating that they have been heard;

(B) behaving in a manner that demonstrates full consideration of the case as presented through witnesses, arguments, pleadings, and other documents.

(C) attending, where appropriate, to the participants' comprehension of the proceedings.

(c) Courtroom observers may also be asked questions to help the commission assess the overall performance of the judge with respect to procedural fairness.

#### **R597-3-4. Minimum Performance Standards.**

(1) In addition to the minimum performance standards specified by statute or administrative rule, the judge shall:

(a) Demonstrate by a preponderance of the evidence, based on courtroom observations and relevant survey responses, that the judge's conduct in court promotes procedural fairness for court participants.

(b) Meet all performance standards established by the Judicial Council, including but not limited to:

(i) annual judicial education hourly requirement;

(ii) case-under-advisement standard; and

(iii) physical and mental competence to hold office.

(2) No later than October 1st of the year preceding each general election year, the Judicial Council shall certify to the commission whether each judge standing for retention election in the next general election has satisfied its performance standards.

#### **R597-3-5. Public Comments.**

(1) Persons desiring to comment about a particular judge with whom they have had first-hand experience may do so at any time, either by submitting such comments on the commission website or by mailing them to the executive director.

(2) In order for the commission to consider comments in making its retention recommendation on a particular judge, comments about that judge must be received no later than

November 1st of the year preceding the election in which the judge's name appears on the ballot.

(3) Persons submitting comments pursuant to this section must include their full name, address, and telephone number with the submission.

(4) All comments must be based upon first-hand experience with the judge.

**KEY: judicial performance evaluations, judges, evaluation cycles, surveys**

**Date of Enactment or Last Substantive Amendment: [November 23, 2011]2012**

**Authorizing, and Implemented or Interpreted Law: 78A-12**

## Workforce Services, Employment Development **R986-200-214** Assistance for Specified Relatives

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35919

FILED: 03/06/2012

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to allow the Department to accept a finding of specified relative as made by the Division of Child and Family Services (DCFS).

**SUMMARY OF THE RULE OR CHANGE:** Some specified relatives are unable to provide verification of relationship status to the children in their care. Once DCFS has made the determination of relationship status, the Department would like to accept that determination and provide benefits. Also, the proposed amendment will hold DCFS harmless in the event of an overpayment from an incorrect finding.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 35A-1-104 and Section 35A-3-302

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This applies to federally-funded programs so there are no costs or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs or savings to the local government.

◆ **SMALL BUSINESSES:** There will be no costs to small businesses to comply with these changes because this is a federally-funded program.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs to persons other than small

businesses, businesses, or local government entities to comply with these changes because this is a federally-funded program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no costs to persons to comply with these changes because there are no costs or fees associated with these proposed changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with these changes for any affected persons because this is a federally-funded program and there are no fees or costs associated with these proposed changes. There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 WORKFORCE SERVICES  
 EMPLOYMENT DEVELOPMENT  
 140 E 300 S  
 SALT LAKE CITY, UT 84111-2333  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2012

AUTHORIZED BY: Kristen Cox, Executive Director

**R986. Workforce Services, Employment Development.  
 R986-200. Family Employment Program.  
 R986-200-214. Assistance for Specified Relatives.**

- (1) Specified relatives include:
  - (a) grandparents;
  - (b) brothers and sisters;
  - (c) stepbrothers and stepsisters;
  - (d) aunts and uncles;
  - (e) first cousins;
  - (f) first cousins once removed;
  - (g) nephews and nieces;
  - (h) people of prior generations as designated by the prefix grand, great, great-great, or great- great-great;
  - (i) brothers and sisters by legal adoption;
  - (j) the spouse of any person listed above;

- (k) the former spouse of any person listed above;
- (l) individuals who can prove they met one of the above mentioned relationships via a blood relationship even though the legal relationship has been terminated; and

(m) former stepparents.  
(2) The specified relative must provide proof of relationship to the child. If the specified relative is unable to provide proof, but DCFS has determined that one of the relationships in subparagraph (1) of this section exists, the Department will accept the DCFS determination. DCFS will not be liable for any potential overpayment resulting from a determination made regarding relationship.

([2]3) The Department shall require compliance with Section 30-1-4.5

([3]4) A specified relative may apply for financial assistance for the child. If the child is otherwise eligible, the FEP rules apply with the following exceptions:

- (a) The child must have a blood or a legal relationship to the specified relative even if the legal relationship has been terminated or have a blood relationship to a dependent child who in the home and who is included in the household for assistance purposes;
- (b) Both parents must be absent from the home where the child lives. This is true even for a parent who has had his or her parental rights terminated;
- (c) The child must be currently living with, and not just visiting, the specified relative;
- (d) The parents' obligation to financially support their child will be enforced and the specified relative must cooperate with child support enforcement; and
- (e) If the parent(s) state they are willing to support the child if the child would return to live with the parent(s), the child is ineligible unless there is a court order removing the child from the parent(s)' home.

([4]5) If the specified relative is currently receiving FEP or FEPTP, the child must be included in that household assistance unit.

([5]6) The income and resources of the specified relative are not counted unless the specified relative requests inclusion in the household assistance unit.

([6]7) If the specified relative is not currently receiving FEP or FEPTP, and the specified relative does not want to be included in the financial assistance payment, the specified relative shall be paid, on behalf of the child, the full standard financial assistance payment for one person. The size of the financial assistance payment shall be increased accordingly for each additional eligible child in the household assistance unit excluding the dependent child(ren) of the specified relative. Since the specified relative is not included in the household assistance unit, the income and assets of the specified relative, or the relative's spouse, are not counted.

([7]8) The specified relative may request to be included in the household assistance unit. If the specified relative is included in the household assistance unit, the household must meet all FEP eligibility requirements including participation requirements and asset limits.

([8]2) Income eligibility for a specified relative who wants to be included in the household assistance unit is calculated according to R986-200-241.

**Notice of Continuation: September 8, 2010**  
**Authorizing, and Implemented or Interpreted Law: 35A-3-301 et seq.**

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**KEY: family employment program**

**Date of Enactment or Last Substantive Amendment: [February 1, 2012**

**End of the Notices of Proposed Rules Section**

## NOTICES OF 120-DAY (EMERGENCY) RULES

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An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (. . . . .) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule.

Because **120-DAY RULES** are effective immediately, the law does not require a public comment period. However, when an agency files a **120-DAY RULE**, it usually files a **PROPOSED RULE** at the same time, to make the requirements permanent. Comments may be made on the **PROPOSED RULE**. Emergency or **120-DAY RULES** are governed by Section 63G-3-304; and Section R15-4-8.

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### Judicial Performance Evaluation Commission, Administration **R597-3** Judicial Performance Evaluations

**NOTICE OF 120-DAY (EMERGENCY) RULE**  
DAR FILE NO.: 35930  
FILED: 03/14/2012

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of the change is to shorten the evaluation cycle for judges standing for retention election in 2014.

**SUMMARY OF THE RULE OR CHANGE:** The change shortens the retention evaluation period for 2014 judges from 07/01/2011 - 06/30/2013 to 06/01/2012 - 06/30/2013. (DAR NOTE: A corresponding proposed amendment is under DAR No. 35934 in this issue, April 1, 2012, of the Bulletin.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 78A-12-101 to 78A-12-206

**EMERGENCY RULE REASON AND JUSTIFICATION:** REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

**JUSTIFICATION:** Because technical production difficulties delayed the distribution of midterm evaluation reports to 2014 judges, the retention evaluation cycle for these judges must

be shortened. This will give the judges time to digest the results of the midterm reports before they are once again evaluated for the 2014 election.

#### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The rule only adjusts the length of an evaluation period for state court judges. It will not affect the state budget. Thus, there is no anticipated cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** The rule only deals with the length of an evaluation period for judges. It does not affect local government in any way. Consequently, there is no anticipated cost or savings to local government.

◆ **SMALL BUSINESSES:** The rule only deals with the length of an evaluation period for judges. It does not affect small businesses. Thus, there is no anticipated cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The rule only deals with the length of an evaluation period for state court judges. Persons other than small businesses, businesses, or local government entities are not affected by this change. Thus, there is no anticipated cost or savings to any of these entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The rule simply shortens an evaluation period that applies to judges. No compliance costs are associated with this change.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No fiscal impact on businesses as a result of this change.

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

JUDICIAL PERFORMANCE EVALUATION  
COMMISSION  
ADMINISTRATION  
ROOM B-330 SENATE BUILDING  
420 N STATE ST  
SENATE BUILDING B-330  
SALT LAKE CITY, UT 84114  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Joanne Slotnik by phone at 801-538-1652, by FAX at 801-538-1024, or by Internet E-mail at [jslotnik@utah.gov](mailto:jslotnik@utah.gov)

EFFECTIVE: 03/15/2012

AUTHORIZED BY: Anthony Schofield, Chair

**R597. Judicial Performance Evaluation Commission, Administration.**

**R597-3. Judicial Performance Evaluations.**

**R597-3-1. Evaluation Cycles.**

(1) For judges not serving on the supreme court:

(a) The mid-term evaluation cycle. Except as provided in subsection (3) the mid-term evaluation cycle begins upon the appointment of the judge or on the first Monday in January following the retention election of the judge and ends 2 1/2 years later, on June 30th of the third year preceding the year of the judge's next retention election.

(b) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the judge's next retention election.

(2) For justices serving on the supreme court:

(a) The initial evaluation cycle. The initial evaluation cycle begins upon the appointment of the justice or on the first Monday in January following the retention election of the justice and ends 2 1/2 years later, on June 30th of the seventh year preceding the year of the justice's next retention election.

(b) The mid-term evaluation cycle. The mid-term evaluation cycle begins the day after the initial evaluation cycle is finished and ends four years later, on June 30th of the third year preceding the year of the justice's next retention election.

(c) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the justice's next retention election.

(3) Transition Evaluation Cycles

(a) For judges standing for retention election in 2012:

(i) The mid-term evaluation cycle for attorney surveys shall begin on January 1, 2008 and end on December 31, 2009.

(ii) The mid-term evaluation cycle for all other survey categories shall begin in 2009 and end on January 31, 2010.

(iii) The retention evaluation cycle for all surveys shall begin no later than July 1, 2010, and end on June 30, 2011.

(b) For judges not on the supreme court standing for retention election in 2014:

(i) The mid-term evaluation cycle for surveys of attorneys and jurors shall begin in 2009 and finish on June 30, 2011.

(ii) The mid-term evaluation cycle for all pilot program categories shall begin no later than July 1, 2010, and end on June 30, 2011.

(iii) The retention evaluation cycle [~~will be as described in R597-3-1(1)(b), supra.~~] shall begin on June 1, 2012 and end on June 30, 2013.

(c) For supreme court justices standing for retention election in 2014:

(i) The mid-term evaluation cycle for surveys of attorneys shall begin in 2009 and end on June 30, 2011.

(ii) The mid-term evaluation cycle for relevant pilot programs categories shall begin no later than July 1, 2010, and end on June 30, 2011.

(iii) The retention evaluation cycle shall [~~be as described in R597-3-1(2)(b)-(e).~~] begin on June 1, 2012 and end on June 30, 2013.

(d) For judges not on the supreme court standing for retention election in 2016:

(i) Except as provided in subsection (3), the mid-term evaluation cycle shall begin on July 1, 2011 and end two years later on June 30, 2013.

(ii) The retention evaluation cycle shall be as described in R597-3(1)(b), supra.

(e) For supreme court justices standing for retention election in 2016:

(i) The initial evaluation cycle shall be combined with the mid-term evaluation, beginning in 2009 and ending on June 30, 2013.

(ii) The combined initial/mid-term evaluation cycle for surveys of attorneys shall begin in 2009 and end on June 30, 2013.

(iii) The combined initial/mid-term evaluation cycle for relevant pilot programs categories shall begin no later than July 1, 2010.

(iv) The retention evaluation cycle shall be as described in R597-3-1(2)(c).

**R597-3-2. Survey.**

(1) General provisions.

(a) All surveys shall be conducted according to the evaluation cycles described in R597-3-1, supra.

(b) The commission shall post on its website the survey questionnaires upon which the judge shall be evaluated at the beginning of the survey cycle.

(c) The commission may select retention survey questions from among the midterm survey questions.

(d) Periodically, reviews may be conducted to ensure compliance with administrative rules governing the survey process.

(e) The commission may consider narrative survey comments that cannot be reduced to a numerical score.

(2) Respondent Classifications

(a) Attorneys

(i) Identification of survey respondents. Within 10 business days of the end of the evaluation cycle, the clerk for the judge or the Administrative Office of the Courts shall identify as potential respondents all attorneys who have appeared before the judge who is being evaluated at a minimum of one hearing or trial during the evaluation cycle. Attorneys who have been confirmed as

judges during the evaluation cycle shall be excluded from the attorney pool.

(ii) Number of survey respondents.

(A) For each judge who is the subject of a survey, the surveyor shall identify the number of attorneys most likely to produce a response level yielding reliability at a 95% confidence level with a margin of error of +/- 5%.

(B) In the event that the attorney appearance list from the Administrative Office of the Courts contains an insufficient number of attorneys with one trial appearance or at least three total appearances before the evaluated judge to achieve the required confidence level, then the surveyor shall supplement the survey pool with other attorneys who have appeared before the judge during the evaluation cycle.

(iii) Sampling. The surveyor shall design the survey to comply with generally-accepted principles of surveying. All attorneys with one trial appearance or at least three total appearances before the evaluated judge shall be surveyed.

(iv) Distribution of surveys. Surveys shall be distributed by the third-party contractor engaged by the commission to conduct the survey. The contractor shall determine the maximum number of survey requests sent to a single attorney based on an analysis of the Administrative Office of the Courts appearance data at the time of the survey. In no event shall any attorney receive more than nine survey requests.

(b) Jurors

(i) Identification and number of survey respondents. All jurors who participate in deliberation shall be eligible to receive an online juror survey.

(ii) Distribution of surveys. Prior to the jury being dismissed, the bailiff or clerk in charge of the jury shall collect email addresses from all jurors. If email addresses are not available, street addresses shall be collected. The bailiff or clerk shall transmit all such addresses to the surveyor within 24 hours of collection. The surveyor shall administer the survey online and deliver survey results electronically to each judge. Paper surveys may be sent to those jurors who do not have access to email.

(c) Court Staff

(i) Definition of court staff who have worked with the judge. Court staff who have worked with the judge refers to employees of the judiciary who have regular contact with the judge as the judge performs judicial duties and also includes those who are not employed by the judiciary but who have ongoing administrative duties in the courtroom.

(ii) Identification of survey respondents. Court staff who have worked with the judge include, but are not limited to:

- (A) judicial assistants;
- (B) case managers;
- (C) clerks of court;
- (D) trial court executives;
- (E) interpreters;
- (F) bailiffs;
- (G) law clerks;
- (H) central staff attorneys;
- (I) juvenile probation and intake officers;
- (J) other courthouse staff, as appropriate;
- (K) Administrative Office of the Courts staff.
- (f) Juvenile Court Professionals

(i) Definition of juvenile court professional. A juvenile court professional is someone whose professional duties place that individual in court on a regular and continuing basis to provide substantive input to the court.

(ii) Identification of survey respondents. Juvenile court professionals shall include, where applicable:

(A) Division of Child and Family Services ("DCFS") child protection services workers;

(B) Division of Child and Family Services ("DCFS") case workers;

(C) Juvenile Justice Services ("JJS") Observation and Assessment Staff;

(D) Juvenile Justice Services ("JJS") case managers;

(E) Juvenile Justice Services ("JJS") secure care staff;

(F) Others who provide substantive professional services on a regular basis to the juvenile court.

(iii) Beginning with juvenile court judges standing for retention in 2014, juvenile court professionals shall be included as an additional survey respondent group for both the midterm and retention evaluation cycles.

(3) Anonymity and Confidentiality

(a) Definitions

(i) Anonymous.

(A) "Anonymous" means that the identity of the individual who authors any survey response, including comments, will be protected from disclosure.

(B) The independent contractor conducting the surveys shall provide to the commission all written comments from the surveys, redacted to remove any information that identifies the person commenting. The contractor shall also redact any information that discloses the identity of any crime victims referenced in a written comment.

(C) The submission of a survey form containing an anonymous narrative comment does not preclude any survey respondent from submitting a public comment in writing pursuant to the Judicial Performance Evaluation Commission Act.

(ii) Confidentiality: Confidentiality means information obtained from a survey respondent that the respondent may reasonably expect will not be disclosed other than as indicated in the survey instrument.

(iii) The raw form of survey results consists of all quantitative survey data that contributes to the minimum score on the judicial performance survey.

(iv) The summary form of survey results consists of quantitative survey data in aggregated form.

### **R597-3-3. Courtroom Observation.**

(1) General Provisions.

(a) Courtroom observations shall be conducted according to the evaluation cycles described in R597-3-1(1) and (2), *supra*.

(b) The commission shall provide notice to each judge at the beginning of the survey cycle of the courtroom observation process and of the instrument to be used by the observers.

(2) Courtroom Observers.

(a) Selection of Observers

(i) Courtroom observers shall be volunteers, recruited by the commission through public outreach and advertising.

(ii) Courtroom observers shall be selected by the commission staff, based on written applications and an interview process.

(b) Selection Criteria. Observers with a broad and varied range of life experiences shall be sought. The following persons shall be excluded from eligibility as courtroom observers:

(i) persons with a professional involvement with the state court system, the justice courts, or the judge;

(ii) persons with a fiduciary relationship with the judge;

(iii) persons within the third degree of relationship with a state or justice court judge (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);

(iv) persons lacking computer access or basic computer literacy skills;

(v) persons currently involved in litigation in state or justice courts;

(vi) convicted felons;

(vii) persons whose background or experience suggests they may have a bias that would prevent them from objectively serving in the program.

(c) Terms and Conditions of Service

(i) Courtroom observers shall serve at the will of the commission staff.

(ii) Courtroom observers shall commit to one one-year term of service.

(iii) Courtroom observers may serve up to three one-year terms, subject to annual renewal at the discretion of the commission.

(iv) Courtroom observers shall not disclose the content of their courtroom evaluations in any form or to any person except as designated by the commission.

(d) Training of Observers

(i) Courtroom observers must satisfactorily complete a training program developed by the commission before engaging in courtroom observation.

(ii) Elements of the training program shall include:

(A) Orientation and overview of the commission process and the courtroom observation program;

(B) Classroom training addressing each level of court;

(C) In-court group observations, with subsequent classroom discussions, for each level of court;

(D) Training on proper use of observation instrument;

(E) Training on confidentiality and non-disclosure issues;

(F) Such other periodic trainings as are necessary for effective observations.

(3) Courtroom Observation Program.

(a) Courtroom Requirements

(i) During each midterm and retention evaluation cycle, a minimum of four different observers shall observe each judge subject to that evaluation cycle.

(ii) Each observer shall observe each judge in person while the judge is in the courtroom and for a minimum of two hours while court is in session. The observations may be completed in one sitting or over several courtroom visits.

(iii) If a judge sits in more than one geographic location at the judge's appointed level or a justice court judge serves in more than one jurisdiction, the judge may be observed in any location or combination of locations in which the judge holds court.

(iv) When the observer completes the observation of a judge, the observer shall complete the observation instrument, which will be electronically transferred to the commission or the third party contractor for processing.

(b) Travel and Reimbursement

(i) All travel must be preapproved by the executive director.

(ii) All per diem and lodging will be reimbursed, when appropriate, in accordance with Utah state travel rules and regulations.

(iii) Travel reimbursement forms shall be submitted on a monthly basis or whenever the observer has accumulated a minimum of 200 miles of travel.

(iv) Travel may be reimbursed only after the observer has satisfactorily completed and successfully submitted the courtroom observation report for which the reimbursement is sought.

(v) Overnight lodging

(A) Overnight lodging is reimbursable when the courtroom is located over 100 miles from home base and court is scheduled to begin before 9:30 a.m., with any exceptions preapproved by commission staff.

(B) Multiple overnight lodging is reimbursable where the commission staff determines it is cost-effective to observe several courtrooms in a single trip.

(v) Each courtroom observer must provide a social security number or tax identification number to the commission in order to process state reimbursement.

(4) Principles and Standards used to evaluate the behavior observed.

(a) Procedural fairness, which focuses on the treatment judges accord people in their courts, shall be used to evaluate the judicial behavior observed in the courtroom observation program.

(b) To assess a judge's conduct in court with respect to procedural fairness, observers shall respond in narrative form to the following principles and behavioral standards:

(i) Neutrality, including but not limited to:

(A) displaying fairness and impartiality toward all court participants;

(B) acting as a fair and principled decision maker who applies rules consistently across court participants and cases;

(C) explaining transparently and openly how rules are applied and how decisions are reached.

(D) listening carefully and impartially;

(ii) Respect, including but not limited to:

(A) demonstrating courtesy toward attorneys, court staff, and others in the court;

(B) treating all people with dignity;

(C) helping interested parties understand decisions and what the parties must do as a result;

(D) maintaining decorum in the courtroom.

(E) demonstrating adequate preparation to hear scheduled cases;

(F) acting in the interests of the parties, not out of demonstrated personal prejudices;

(G) managing the caseload efficiently and demonstrating awareness of the effect of delay on court participants;

(H) demonstrating interest in the needs, problems, and concerns of court participants.



(iii) Voice, including but not limited to:

(A) giving parties the opportunity, where appropriate, to give voice to their perspectives or situations and demonstrating that they have been heard;

(B) behaving in a manner that demonstrates full consideration of the case as presented through witnesses, arguments, pleadings, and other documents.

(C) attending, where appropriate, to the participants' comprehension of the proceedings.

(c) Courtroom observers may also be asked questions to help the commission assess the overall performance of the judge with respect to procedural fairness.

**R597-3-4. Minimum Performance Standards.**

(1) In addition to the minimum performance standards specified by statute or administrative rule, the judge shall:

(a) Demonstrate by a preponderance of the evidence, based on courtroom observations and relevant survey responses, that the judge's conduct in court promotes procedural fairness for court participants.

(b) Meet all performance standards established by the Judicial Council, including but not limited to:

- (i) annual judicial education hourly requirement;
- (ii) case-under-advisement standard; and
- (iii) physical and mental competence to hold office.

(2) No later than October 1st of the year preceding each general election year, the Judicial Council shall certify to the

commission whether each judge standing for retention election in the next general election has satisfied its performance standards.

**R597-3-5. Public Comments.**

(1) Persons desiring to comment about a particular judge with whom they have had first-hand experience may do so at any time, either by submitting such comments on the commission website or by mailing them to the executive director.

(2) In order for the commission to consider comments in making its retention recommendation on a particular judge, comments about that judge must be received no later than November 1st of the year preceding the election in which the judge's name appears on the ballot.

(3) Persons submitting comments pursuant to this section must include their full name, address, and telephone number with the submission.

(4) All comments must be based upon first-hand experience with the judge.

**KEY: judicial performance evaluations, judges, evaluation cycles, surveys**

**Date of Enactment or Last Substantive Amendment: March 15, 2012**

**Authorizing, and Implemented or Interpreted Law: 78A-12**

**End of the Notices of 120-Day (Emergency) Rules Section**



# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to remove obsolete rules from the Utah Administrative Code. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **NOTICE**. By filing a Notice, the agency indicates that the rule is still necessary.

**NOTICES** are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. **NOTICES** are effective upon filing.

**NOTICES** are governed by Section 63G-3-305.

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## Agriculture and Food, Regulatory Services **R70-530** Food Protection

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35920  
FILED: 03/07/2012

### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 4-5-17 authorizes the Utah Department of Agriculture and Food (UDAF) to make and enforce rules. The department may adopt rules to efficiently enforce Title 4, Chapter 5, and if practicable, adopt rules that conform to the regulations adopted under the Federal Food, Drug, and Cosmetic Act, 21 USC Sec. 301 et seq. This statute gives UDAF the authority to adopt rules to enforce the Utah Wholesome Food Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is critical to the effectiveness of the Utah Wholesome Food Act. The rule provides the necessary specific regulations for places that manufacture, store, transport, or sell food to keep the food safe for consumption. It minimizes the risk of food borne illness that can be

conveyed in food. It provides a level playing field for the industry, both in Utah and in other states. Therefore, this rule should be continued.

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

AGRICULTURE AND FOOD  
REGULATORY SERVICES  
350 N REDWOOD RD  
SALT LAKE CITY, UT 84116-3034  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 03/07/2012

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## Education, Administration **R277-503** Licensing Routes

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35939  
FILED: 03/15/2012

### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS

ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-402(1)(a) directs the Utah State Board of Education to establish rules and minimum standards for the qualification and licensing of educators and ancillary personnel who provide direct student services, and Subsection 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides eligibility requirements for applicants for educator licenses and criteria and procedures for licensed teachers to earn endorsements. Therefore, this rule should be continued.

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

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

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

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

EFFECTIVE: 03/15/2012

**Education, Administration**  
**R277-507**  
**Driver Education Endorsement**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 35940  
FILED: 03/15/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(1)(a) directs the Utah State Board of Education to make rules

regarding licensure of educators, and Subsection 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides standards and procedures for high school teachers to qualify for the driver education endorsement. Therefore, this rule should be continued.

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

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

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

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

EFFECTIVE: 03/15/2012

**Education, Administration**  
**R277-519**  
**Educator Inservice Procedures and Credit**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 35941  
FILED: 03/15/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-402(1)(a) requires the Utah State Board of Education to make rules regarding the qualifications of personnel providing direct student services and the licensing of educators, and Subsection 53A-1-401(3) allows the Utah State Board of

Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides standards for professional development instruction as it relates to educator licensing. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

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

EFFECTIVE: 03/15/2012

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**Environmental Quality, Administration  
R305-1  
Records Access and Management**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35928  
FILED: 03/13/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The rule is enacted under the authority of the Government Records Access and Management Act (GRAMA), Subsections 63G-2-204(2)(d) and (7), which authorizes agencies to make rules specifying where a record request under GRAMA should be submitted. It is also enacted under the authority of Subsection 63A-12-104(2), which allows an agency to make rules specifying

which parts of the agency may share records without meeting the requirements of Section 63G-2-206.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments supporting or opposing this rule have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Specifying the address for receipt of GRAMA requests helps ensure that requests won't go astray and will get a timely response. In addition, under Subsection 63G-2-204(7), it ensures that DEQ and its divisions will get the full time established by statute to respond to a GRAMA request. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Laura Lockhart by phone at 801-366-0283, by FAX at 801-366-0292, or by Internet E-mail at llockhart@utah.gov

AUTHORIZED BY: Brad Johnson, Deputy Director

EFFECTIVE: 03/13/2012

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**Environmental Quality, Radiation  
Control  
R313-35**

**Requirements for X-Ray Equipment  
Used for Non-Medical Applications**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35906  
FILED: 03/02/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-1-106 establishes the Radiation Control Board within the Department of Environmental Quality. In accordance with Section 19-3-104,

the Board is authorized to make rules that are necessary for controlling exposure to sources of radiation that constitute a significant health hazard.

**SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE:** This was not a controversial rule, as no comments were received during and since the last five-year review. The Division of Radiation Control Director recommends continuation of this rule.

**REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY:** It is necessary to continue this rule because it establishes the radiation safety requirements for persons who use electronic sources of radiation for industrial radiography, analytical uses or other non-medical purposes. No opposing comments have been received.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Craig Jones by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at cwjones@utah.gov

AUTHORIZED BY: Rusty Lundberg, Director

EFFECTIVE: 03/02/2012

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**Health, Health Care Financing,  
 Coverage and Reimbursement Policy  
 R414-1  
 Utah Medicaid Program**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION  
 DAR FILE NO.: 35907  
 FILED: 03/02/2012**

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department to implement Medicaid policy through

administrative rules, which allow the Department to administer the Medicaid program. In addition, Section 26-1-5 authorizes the Department to adopt rules that provide services and eligibility requirements for Medicaid recipients.

**SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE:** The Department did not receive any written or oral comments regarding this rule.

**REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY:** This rule is necessary because it sets forth services and eligibility requirements for the entire Medicaid program. It also specifies provider and recipient policy, specifies the role of certain entities within the Medicaid program, specifies the availability of program manuals and policies, and serves as the basis for all other rules in the Medicaid program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HEALTH  
 HEALTH CARE FINANCING,  
 COVERAGE AND REIMBURSEMENT POLICY  
 CANNON HEALTH BLDG  
 288 N 1460 W  
 SALT LAKE CITY, UT 84116-3231  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 03/02/2012

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**Health, Health Care Financing,  
 Coverage and Reimbursement Policy  
 R414-21  
 Physical and Occupational Therapy**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION  
 DAR FILE NO.: 35908  
 FILED: 03/02/2012**

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS

ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department to implement Medicaid policy through administrative rules, which allow the Department to administer the Medicaid program. In addition, Section 26-1-5 authorizes the Department to adopt rules that provide services and eligibility requirements for Medicaid recipients. Further, 42 CFR 440.110 authorizes qualified physical and occupational therapists to provide services for Medicaid recipients.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because it provides physical and occupational therapy for Medicaid recipients who need these services. It is also important because it specifies eligibility requirements and service coverage for Medicaid recipients, and specifies how physical and occupational therapists are reimbursed for their services.

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

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 03/02/2012

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**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-38  
Personal Care Service**

## FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35921  
FILED: 03/07/2012

### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department to implement Medicaid policy through administrative rules, which allow the Department to administer the Medicaid program. In addition, Section 26-1-5 authorizes the Department to adopt rules that provide services and eligibility requirements for Medicaid recipients.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because it provides cost effective and quality personal care services for Medicaid recipients. It provides these services through its eligibility requirements, service coverage, provider qualifications, plan of care requirements, physician recertification, and supervision requirements for licensed registered nurses. Therefore, this rule should be continued.

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

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 03/07/2012

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**Human Services, Child and Family  
Services  
R512-2**

**Title IV-B Child Welfare/Family  
Preservation and Support Services and  
Title IV-E Foster Care, Adoption, and  
Independent Living**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 35910  
FILED: 03/05/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 62A-4a-102 and 62A-4a-105 authorize the Division of Child and Family Services to provide programs and services that support the strengthening of family values, including services which preserve and enhance family life and relationships; protect children, youth, and families; and advocate and defend family values established by public policy and advocacy and education.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary in order for the Division of Child and Family Services to continue to adopt federal requirements applicable to Titles IV-B and IV-E of the Social Security Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
HUMAN SERVICES  
CHILD AND FAMILY SERVICES  
195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov  
♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

AUTHORIZED BY: Brent Platt, Director  
EFFECTIVE: 03/05/2012

**Human Services, Child and Family  
Services  
R512-31  
Foster Parent Due Process**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 35911  
FILED: 03/05/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 62A-4a-102 and 62A-4a-105 authorize the Division of Child and Family Services to provide programs and services that support the strengthening of family values, including services which preserve and enhance family life and relationships; protect children, youth, and families; and advocate and defend family values established by public policy and advocacy and education.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary in order for the Division of Child and Family Services to continue to provide due process rights to foster parents when a decision is made to remove a foster child from their home.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
HUMAN SERVICES  
CHILD AND FAMILY SERVICES  
195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov  
♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov



AUTHORIZED BY: Brent Platt, Director

AUTHORIZED BY: Brent Platt, Director

EFFECTIVE: 03/05/2012

EFFECTIVE: 03/05/2012

**Human Services, Child and Family Services  
R512-32**

**Children with Reportable Communicable Diseases**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 35912  
FILED: 03/05/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 62A-4a-102 and 62A-4a-105 authorize the Division of Child and Family Services to provide programs and services that support the strengthening of family values, including services which preserve and enhance family life and relationships; protect children, youth, and families; and advocate and defend family values established by public policy and advocacy and education.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary in order for the Division of Child and Family Services to establish standards for confidentiality and testing of children with reportable communicable diseases.

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

HUMAN SERVICES  
CHILD AND FAMILY SERVICES  
195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
- ♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

**Human Services, Child and Family Services  
R512-40**

**Adoptive Home Studies, Recruitment, Approval**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 35913  
FILED: 03/05/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 62A-4a-102 and 62A-4a-106 authorize the Division of Child and Family Services to provide programs and services that support the strengthening of family values, including services which preserve and enhance family life and relationships; protect children, youth, and families; and advocate and defend family values established by public policy and advocacy and education.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary in order for the Division of Child and Family Services to establish standards for conducting adoptive home studies, recruitment of adoptive homes, and approval of adoptive homes.

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

HUMAN SERVICES  
CHILD AND FAMILY SERVICES  
195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
- ♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

AUTHORIZED BY: Brent Platt, Director

EFFECTIVE: 03/05/2012

**Human Services, Child and Family  
Services  
R512-42  
Adoption by Relatives**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 35914  
FILED: 03/05/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 62A-4a-102 and 62A-4a-105 authorize the Division of Child and Family Services to provide programs and services that support the strengthening of family values, including services which preserve and enhance family life and relationships; protect children, youth, and families; and advocate and defend family values established by public policy and advocacy and education.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary in order for the Division of Child and Family Services to specify requirements for relatives to adopt a child in the custody of the Division of Child and Family Services.

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

HUMAN SERVICES  
CHILD AND FAMILY SERVICES  
195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov  
♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhones@utah.gov

AUTHORIZED BY: Brent Platt, Director

EFFECTIVE: 03/05/2012

**Natural Resources, Wildlife Resources  
R657-43  
Landowner Permits**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 35909  
FILED: 03/05/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to provide rules to regulate the management of big game species. This rule provides the standards and procedures for private landowners to obtain landowner permits for taking specific big game species from the landowner's property.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments supporting or opposing Rule R657-43 were received since 03/01/2007, when the rule was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-43 provides the requirements, procedures, and standards for private landowners to obtain landowner permits for taking buck deer within a general regional hunt boundary where the landowner's property is located, and taking bull elk, buck deer, or buck pronghorn within a limited entry unit. This rule provides the opportunity for landowners, whose property provides habitat for deer, elk, or pronghorn, to benefit by obtaining landowner permits for use within a general regional hunt area or limited entry area where the landowner's property is located. The provisions adopted in this rule are effective in providing the requirements, procedures, and standards for managing the landowner permit 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: 03/05/2012

**Public Safety, Fire Marshal**  
**R710-8**  
**Day Care Rules**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35929  
FILED: 03/13/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53-7-204(1)(b) is the specific statute that authorizes the Utah Fire Prevention Board to make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act that establishes standards for the prevention of fire and for the protection of life and property against fire and panic in any building or structure used or intended for use as an asylum, a mental hospital, a hospital, a sanitarium, a home for the elderly, an assisted living facility, a children's home or day care center, or any building or structure used for a similar purpose.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments received since the last five-year review on 03/16/2007. The Utah Fire Prevention Board has a policy that requires all that will be affected with a rule amendment to be notified if possible, so that they can participate and comment on any proposed amendments to the rule. The Utah Fire Prevention Board believes that any concerns or disagreements on rule amendments will be expressed at the Board meeting, thereby eliminating any opposition to the filed rule and preventing the need to reconvene the Board to hear any disagreements.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: There should be a continuation of the

administrative rule that regulates day care in the State of Utah. This then allows parents to place their children in the possession of a caregiver, and know that the child will be safe and not fall into harm's way by being placed in a facility that is not fire safe or does not allow a reasoned and professional evacuation from the facility if a fire or other panic occurs. Day care facilities also need to have the correct staff to child ratio so that the children are properly cared for and there is sufficient staffing present to assist the child to exit the facility in the event of an emergency. There are no comments to the agency in opposition to the existing administrative since the last five-year review.

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

PUBLIC SAFETY  
FIRE MARSHAL  
ROOM 302  
5272 S COLLEGE DR  
MURRAY, UT 84123-2611  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Brent Halladay by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

AUTHORIZED BY: Brent Halladay, State Fire Marshal

EFFECTIVE: 03/13/2012

**Public Service Commission,  
Administration**  
**R746-349**  
**Competitive Entry and Reporting  
Requirements**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35916  
FILED: 03/06/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 54-8b-2.1 allows the Commission to issue certificates to multiple providers of telecommunications services. This rule identifies information that applicants should file in order to establish their qualifications for a certificate. The Federal Telecommunications Act of 1996 and Section 54-8b-2.2 require telecommunications providers to interconnect their networks and make their facilities available to one another. Sections 54-8b-16 and 54-8b-17 require the Commission to

resolve interconnection disputes and this rule identifies information that service providers should file in order for the commission to resolve service and interconnection disputes. Section 54-8b-2.3 deals with pricing flexibility and maintenance of that authority. This rule addresses the information and processes used by the commission relative to service provider's pricing flexibility.

**SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE:** In January 2008, Level 3 Communications filed a petition for changes to Section R746-349-6. The desired changes would exempt local exchange carriers (LECs) from certain Utah statutes and administrative rules pertaining to merger and acquisition transactions involving LECs operating in Utah under certificates issued by this commission. Following reviews by the commission and the Division of Public Utilities, Section R746-349-7 was submitted for publication and public comment on 06/26/2008. In general, this new rule outlined a streamlined process for informal adjudication of qualifying LEC merger and acquisition transactions. Level 3 Communications submitted comments supporting the new rule. No other comments were submitted. The new section became effective on 08/25/2008.

**REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY:** Statutory provisions requiring commission regulation and resolution of disputes in the areas addressed by the rule continue in force and necessitate continuation of the rule. The only comments on the rule are those of Level 3 Communication discussed above. There have been no comments in opposition to the rule.

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
♦ David Clark by phone at 801-530-6708, by FAX at 801-530-6796, or by Internet E-mail at [drexclark@utah.gov](mailto:drexclark@utah.gov)  
♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at [sbintz@utah.gov](mailto:sbintz@utah.gov)

**AUTHORIZED BY:** David Clark, Legal Counsel

**EFFECTIVE:** 03/06/2012

**Public Service Commission,  
Administration  
R746-351  
Pricing Flexibility**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 35917  
FILED: 03/06/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

**CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE:** Section 54-8B-2.3 allows the Commission to grant or deny a petition for pricing flexibility to an incumbent telephone corporation for the same or substitutable public telecommunications services in the same defined geographic area. This rule clarifies the conditions and establishes the procedure by which the pricing flexibility granted to an incumbent telephone corporation becomes effective.

**SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE:** No comments have been submitted in the past five years.

**REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY:** The procedure described in this rule by which the pricing flexibility, granted by the commission to an incumbent telephone corporation, may become effective continues to be necessary. Therefore, this rule is continued.

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
♦ David Clark by phone at 801-530-6708, by FAX at 801-530-6796, or by Internet E-mail at [drexclark@utah.gov](mailto:drexclark@utah.gov)  
♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at [sbintz@utah.gov](mailto:sbintz@utah.gov)

AUTHORIZED BY: David Clark, Legal Counsel

EFFECTIVE: 03/06/2012

**Public Service Commission,  
Administration  
R746-440  
Voluntary Resource Decision**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35924  
FILED: 03/08/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 54-17-401 through 54-17-404 allow the Commission to establish the procedural and information requirements for approval of a utility's resource decision or when seeking an order to proceed with an approved resource decision.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR

OPPOSING THE RULE: No comments have been received since the rule was proposed and became effective in 2007.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R746-440 establishes the procedures and information requirements for approval of a utility's resource decision or for seeking an order to proceed with an approved resource decision. Rule R746-440 continues to be necessary because Sections 54-17-401 through 54-17-404 remain in force. Therefore, the rule should be continued.

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

PUBLIC SERVICE COMMISSION  
ADMINISTRATION  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ David Clark by phone at 801-530-6708, by FAX at 801-530-6796, or by Internet E-mail at [drexclark@utah.gov](mailto:drexclark@utah.gov)
- ◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at [sbintz@utah.gov](mailto:sbintz@utah.gov)

AUTHORIZED BY: David Clark, Legal Counsel

EFFECTIVE: 03/08/2012

**End of the Five-Year Notices of Review and Statements of Continuation Section**



## NOTICES OF RULE EFFECTIVE DATES

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State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a Notice of Effective Date within 120 days from the publication of a Proposed Rule or a related Change in Proposed Rule the rule lapses and the agency must start the rulemaking process over.

Notices of Effective Date are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

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### Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

### Agriculture and Food

#### Plant Industry

No. 35566 (REP): R68-21. Standard of Identity for Honey

Published: 01/15/2012

Effective: 03/07/2012

### Capitol Preservation Board (State)

#### Administration

No. 35686 (R&R): R131-9. State Capitol Preservation Board

Art Program and Policy

Published: 02/01/2012

Effective: 03/09/2012

### Commerce

#### Occupational and Professional Licensing

No. 35389 (AMD): R156-67-503. Administrative Penalties

Published: 11/15/2011

Effective: 03/09/2012

No. 35389 (CPR): R156-67-503. Administrative Penalties

Published: 02/01/2012

Effective: 03/09/2012

No. 35388 (AMD): R156-68-503. Administrative Penalties

Published: 11/15/2011

Effective: 03/09/2012

No. 35388 (CPR): R156-68-503. Administrative Penalties

Published: 02/01/2012

Effective: 03/09/2012

### Education

#### Administration

No. 35674 (AMD): R277-107. Educational Services Outside of Educator's Regular Employment

Published: 02/01/2012

Effective: 03/12/2012

No. 35675 (REP): R277-476. Incentives for Elementary Reading Program

Published: 02/01/2012

Effective: 03/12/2012

No. 35676 (AMD): R277-484-3. Deadlines for Data Submission

Published: 02/01/2012

Effective: 03/12/2012

No. 35677 (AMD): R277-503. Licensing Routes

Published: 02/01/2012

Effective: 03/12/2012

No. 35678 (REP): R277-511. Highly Qualified Teacher Grants

Published: 02/01/2012

Effective: 03/12/2012

No. 35679 (REP): R277-513. Dual Certification

Published: 02/01/2012

Effective: 03/12/2012

No. 35680 (AMD): R277-520. Appropriate Licensing and Assignment of Teachers

Published: 02/01/2012

Effective: 03/12/2012

No. 35681 (AMD): R277-714. Dissemination of Information About Juvenile Offenders

Published: 02/01/2012

Effective: 03/12/2012

No. 35682 (REP): R277-718. Utah Career Teaching Scholarship Program

Published: 02/01/2012

Effective: 03/12/2012

No. 35683 (AMD): R277-915. Work-based Learning Programs for Interns

Published: 02/01/2012

Effective: 03/12/2012

Environmental Quality

Air Quality

No. 35496 (AMD): R307-210-1. Standards of Performance for New Stationary Sources (NSPS)  
Published: 12/15/2011  
Effective: 03/07/2012

No. 35531 (AMD): R307-220-3. Section II, Hospital, Medical, Infectious Waste Incinerators  
Published: 01/01/2012  
Effective: 03/07/2012

No. 35530 (AMD): R307-222. Emission Standards: Existing Incinerators for Hospital, Medical, Infectious Waste  
Published: 01/01/2012  
Effective: 03/07/2012

No. 35529 (AMD): R307-415-2. Authority  
Published: 01/01/2012  
Effective: 03/07/2012

Environmental Response and Remediation  
No. 35668 (AMD): R311-200. Underground Storage Tanks: Definitions  
Published: 02/01/2012  
Effective: 03/09/2012

Radiation Control  
No. 35416 (AMD): R313-17. Administrative Procedures  
Published: 12/01/2011  
Effective: 03/19/2012

Financial Institutions

Administration

No. 35684 (AMD): R331-7. Rule Governing Leasing Transactions by Depository Institutions Subject to the Jurisdiction of the Department of Financial Institutions  
Published: 02/01/2012  
Effective: 03/09/2012

Health

Administration

No. 35571 (NEW): R380-60. Local Health Department Emergency Protocols  
Published: 01/15/2012  
Effective: 03/07/2012

Center for Health Data, Health Care Statistics  
No. 35616 (AMD): R428-15. Health Data Authority Health Insurance Claims Reporting  
Published: 02/01/2012  
Effective: 03/16/2012

Human Services

Child and Family Services

No. 35630 (NEW): R512-80. Definitions of Abuse, Neglect, and Dependency  
Published: 02/01/2012  
Effective: 03/15/2012

Substance Abuse and Mental Health

No. 35626 (AMD): R523-23-4. Provider Responsibilities  
Published: 02/01/2012  
Effective: 03/09/2012

No. 35625 (AMD): R523-24. Off Premise Retailer (Clerk, Licensee and Manager) Alcohol Training and Education Seminar Rules of Administration  
Published: 02/01/2012  
Effective: 03/09/2012

Insurance

Administration

No. 35201 (CPR): R590-262. Health Data Authority Health Insurance Claims Reporting  
Published: 12/15/2011  
Effective: 03/07/2012

No. 35201 (NEW): R590-262. Health Data Authority Health Insurance Claims Reporting  
Published: 09/15/2011  
Effective: 03/07/2012

Public Safety

Fire Marshal

No. 35690 (AMD): R710-2. Rules Pursuant to the Utah Fireworks Act  
Published: 02/01/2012  
Effective: 03/09/2012

Criminal Investigations and Technical Services, Criminal Identification

No. 35650 (AMD): R722-300. Concealed Firearm Permit and Instructor Rule  
Published: 02/01/2012  
Effective: 03/09/2012

Transportation

Administration

No. 35670 (REP): R907-60. Handling of Publications Prepared by the Utah Department of Transportation Either for Sale or Free Copy  
Published: 02/01/2012  
Effective: 03/12/2012

No. 35672 (NEW): R907-69. Records Access  
Published: 02/01/2012  
Effective: 03/12/2012

Operations, Maintenance

No. 35669 (AMD): R918-4. Using Volunteer Groups for the Adopt-a-Highway Program  
Published: 02/01/2012  
Effective: 03/12/2012



**RULES INDEX  
BY AGENCY (CODE NUMBER)  
AND  
BY KEYWORD (SUBJECT)**

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The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2012 through March 15, 2012. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

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## RULES INDEX - BY AGENCY (CODE NUMBER)

### ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>ADMINISTRATIVE SERVICES</b>					
<u>Archives</u>					
R17-9	Electronic Participation at Meetings	35304	NEW	01/30/2012	2011-20/6
<u>Child Welfare Parental Defense (Office of)</u>					
R19-1-6	Child Welfare Parental Defense Oversight Committee	35205	AMD	01/12/2012	2011-18/6
R19-1-7	Electronic Meetings	35206	AMD	01/12/2012	2011-18/7
<u>Finance</u>					
R25-14	Payment of Attorneys Fees in Death Penalty Cases	35663	5YR	01/12/2012	2012-3/105
<u>Fleet Operations</u>					
R27-4	Vehicle Replacement and Expansion of State Fleet	35622	5YR	01/05/2012	2012-3/105
R27-5	Fleet Tracking	35617	5YR	01/05/2012	2012-3/106
R27-5	Fleet Tracking	35623	NSC	01/31/2012	Not Printed
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<b>AGRICULTURE AND FOOD</b>					
<u>Administration</u>					
R51-2	Administrative Procedures for Informal Proceedings Before the Utah Department of Agriculture and Food	35614	5YR	01/04/2012	2012-3/107
<u>Animal Industry</u>					
R58-1	Admission and Inspection of Livestock, Poultry, and Other Animals	35691	5YR	01/18/2012	2012-4/59
R58-6	Poultry	35692	5YR	01/18/2012	2012-4/59
R58-18	Elk Farming	35695	5YR	01/18/2012	2012-4/60
R58-19	Compliance Procedures	35696	5YR	01/18/2012	2012-4/60
R58-22	Equine Infectious Anemia (EIA)	35694	5YR	01/18/2012	2012-4/61
R58-23	Equine Viral Arteritis (EVA)	35693	5YR	01/18/2012	2012-4/61
<u>Plant Industry</u>					
R68-19	Compliance Procedures	35697	5YR	01/18/2012	2012-4/62
R68-21	Standard of Identity for Honey	35566	REP	03/07/2012	2012-2/16
<u>Regulatory Services</u>					
R70-201	Compliance Procedures	35660	5YR	01/12/2012	2012-3/108
R70-320	Minimum Standards for Milk for Manufacturing Purposes, its Production and Processing	35661	5YR	01/12/2012	2012-3/109
R70-350	Ice Cream and Frozen Dairy Food Standards	35658	5YR	01/12/2012	2012-3/109
R70-360	Procedure for Obtaining a License to Test Milk for Payment	35657	5YR	01/12/2012	2012-3/110

R70-530	Food Protection	35920	5YR	03/07/2012	Not Printed
R70-550	Utah Inland Shellfish Safety Program	35659	5YR	01/12/2012	2012-3/110
R70-560	Inspection and Regulation of Cottage Food Production Operations	35662	5YR	01/12/2012	2012-3/111

ALCOHOLIC BEVERAGE CONTROL

Administration

R81-1-6	Violation Schedule	35588	AMD	03/01/2012	2012-2/20
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CAPITOL PRESERVATION BOARD (STATE)

Administration

R131-3	Use of Magnetometers on Capitol Grounds	35899	EXT	02/29/2012	2012-6/43
R131-9	State Capitol Preservation Board Art Program and Policy	35686	R&R	03/09/2012	2012-3/13
R131-10	Commercial Solicitations	35687	5YR	01/17/2012	2012-3/111
R131-11	Preservation of Free Speech Activities	35688	5YR	01/17/2012	2012-3/112
R131-13	Health Reform - Health Insurance Coverage in State Contracts - Implementation	35611	EMR	01/03/2012	2012-2/105
R131-13	Health Reform - Health Insurance Coverage in State Contracts - Implementation	35610	AMD	02/21/2012	2012-2/24

CAREER SERVICE REVIEW OFFICE

Administration

R137-1-21	The Evidentiary/Step 4 Adjudicatory Procedures	35559	AMD	02/21/2012	2012-2/26
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COMMERCE

Administration

R151-3	Americans With Disabilities Act Rule	35897	5YR	02/28/2012	2012-6/35
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Occupational and Professional Licensing

R156-1	General Rule of the Division of Occupational and Professional Licensing	35624	5YR	01/05/2012	2012-3/112
R156-11a	Barber, Cosmetologist/Barber, Esthetician, Electrologist and Nail Technician Licensing Act Rule	35853	5YR	02/06/2012	2012-5/101
R156-16a	Optometry Practice Act Rule	35893	5YR	02/21/2012	2012-6/35
R156-20a	Environmental Health Scientist Act Rule	35430	AMD	01/10/2012	2011-23/10
R156-37	Utah Controlled Substances Act Rule	35892	5YR	02/21/2012	2012-6/36
R156-47b-102	Definitions	35498	AMD	01/26/2012	2011-24/6
R156-55d	Burglar Alarm Licensing Rule	35860	5YR	02/07/2012	2012-5/102
R156-56	Building Inspector and Factory Built Housing Licensing Act Rule	35735	5YR	01/31/2012	2012-4/62
R156-64	Deception Detection Examiners Licensing Act Rule	35736	5YR	01/31/2012	2012-4/64
R156-67-503	Administrative Penalties	35389	AMD	03/09/2012	2011-22/14
R156-67-503	Administrative Penalties	35389	CPR	03/09/2012	2012-3/86
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### ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

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<u>adoption</u>					
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	35913	R512-40	5YR	03/05/2012	Not Printed
	35914	R512-42	5YR	03/05/2012	Not Printed
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	35775	R307-120	5YR	02/01/2012	2012-4/81
	35716	R307-121	5YR	01/23/2012	2012-4/81
	35718	R307-121-7	NSC	02/09/2012	Not Printed
	35776	R307-130	5YR	02/01/2012	2012-4/82
	35777	R307-135	5YR	02/01/2012	2012-4/82
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	35780	R307-325	5YR	02/01/2012	2012-4/84
	35781	R307-326	5YR	02/01/2012	2012-4/85
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	35787	R307-343	5YR	02/01/2012	2012-4/89
	35413	R307-405	AMD	02/02/2012	2011-23/42
	35872	R307-405-3	NSC	02/29/2012	Not Printed
	35529	R307-415-2	AMD	03/07/2012	2012-1/25
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	35909	R657-43	5YR	03/05/2012	Not Printed	
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	35911	R512-31	5YR	03/05/2012	Not Printed
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	35838	R645-300	5YR	02/03/2012	2012-5/118
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