

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114-1201, telephone 801-538-3764, FAX 801-359-0759. Additional rulemaking information, and electronic versions of all administrative rule publications are available at: <http://www.rules.utah.gov/>

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

Division of Administrative Rules, Salt Lake City 84114

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EXECUTIVE DOCUMENTS

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

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

Governor's Proclamation 2010/09/E: Calling Fifty-Eighth Legislature Into the Ninth Extraordinary Session

PROCLAMATION

WHEREAS, since the close of the 2010 General Session of the 58th Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

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

NOW, THEREFORE, I, GARY R. HERBERT, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 58th Legislature into the Ninth Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 23rd day of June, 2010, at 12:00 noon, for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2010 General Session of the Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 8th day of June, 2010.

(State Seal)

Gary R. Herbert
Governor

Greg Bell
Lieutenant Governor

2010/09/E

Governor's Executive Order EO/005/2010: Wildland Fire Management

EXECUTIVE ORDER

Wildland Fire Management

WHEREAS, the danger from wildland fires is extremely high throughout the State of Utah;

WHEREAS, wildland fires are burning and continue to burn in various areas statewide and present a serious threat to public safety, property, natural resources and the environment;

WHEREAS, some of the areas are extremely remote and inaccessible and the situation has the potential to greatly worsen if left unattended;

WHEREAS, immediate action is required to suppress the fires and mitigate post-burn flash floods to protect public safety, property, natural resources and the environment;

WHEREAS, these conditions do create a disaster emergency within the intent of the Disaster Response and Recovery Act of 1981,

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

It is found, determined and declared that a "State of Emergency" exists statewide due to the threat to public safety, property, natural resources and the environment for thirty days, effective as of June 10, 2010 requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

IN TESTIMONY, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 10th day of June 2010

(State Seal)

Gary R. Herbert
Governor

Attest:

Lieutenant Governor
Greg Bell

EO/005/2010

End of the Executive Documents Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between June 02, 2010, 12:00 a.m., and June 15, 2010, 11:59 p.m. are included in this, the July 01, 2010 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 August 2, 2010. 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 October 29, 2010, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF a CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses and the agency must start the process over.

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

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

The Proposed Rules Begin on the Following Page

Administrative Services, Fleet
Operations, Surplus Property

R28-2
Surplus Firearms

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33706

FILED: 06/03/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change updates the procedures and requirements for disposal of handguns.

SUMMARY OF THE RULE OR CHANGE: This rule change allows for disposal of handguns through destruction, trade-in to a licensed firearms dealer, sale to a legally constituted law enforcement agency, or sale to a POST-certified individual as authorized by the owning agency.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-9-801

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** By easing the restrictions, owning agencies will have the opportunity to retain more of the surplus value of handguns. This will result in a savings to the agency budget.

◆ **LOCAL GOVERNMENTS:** There are no anticipated savings or costs to local governments associated with this rule change.

◆ **SMALL BUSINESSES:** There are no anticipated savings or costs to small businesses associated with this rule change.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated savings or costs to persons other than small businesses, businesses, or local government entities associated with this rule change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs associated with this rule change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact on businesses associated with this rule change.

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

ADMINISTRATIVE SERVICES
FLEET OPERATIONS, SURPLUS PROPERTY

ROOM 4120 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Sam Lee, Assistant Director

R28. Administrative Services, Fleet Operations, Surplus Property.

R28-2. Surplus Firearms.

R28-2-1. Purpose and Authority.

This rule sets forth policies and procedures for disposing of surplus firearms from state agencies and participating local agencies, as authorized in the Utah Code, Title 63A, Chapter 9, Part 8. This rule governs the destruction, sale, transfer, or donation of surplus firearms to any agency or to the general public.

R28-2-2. Definitions.

(1) As used in this rule:

(a) ~~["Firearms"]~~ "Firearm" means ~~any~~ state owned ~~firearms~~firearm, including any confiscated or seized ~~firearms~~firearm over which the state has disposal authority, and any ~~firearms~~firearm declared surplus by a ~~local subdivisions~~subdivision.

(b) "USASP" means Utah State Agency for Surplus Property.

(c) ~~["h"]~~ "Handgun" means ~~any [pistols and revolvers]~~pistol or revolver.

(d) ~~["h"]~~ "Hunting ~~[and]or~~ sporting ~~[rifles]~~rifle" means ~~any~~ long barreled ~~[shotguns and rifles]~~shotgun or rifle manufactured for hunting or sporting purposes.

(e) "Licensed firearms dealer" means a ~~firearms dealers~~ licensed by the Federal Bureau of Alcohol, Tobacco and Firearms. ~~["nonlicensee" means an individual or organization not licensed by the Federal Bureau of Alcohol, Tobacco and Firearms to buy or sell firearms.~~

R28-2-3. Procedures.

(1)~~[A-]~~ All state owned firearms shall be disposed of under the general provisions of Rule R28-1.

(a)~~[1-]~~ As an exception to the purchase priority listed in Section R28-1-5, the sale of firearms directly to the general public by the USASP is prohibited.

(b)~~[2-]~~ Hunting and sporting rifles meeting Federal Firearms regulations may be sold only to firearms dealers licensed by the Federal Bureau of Alcohol, Tobacco and Firearms. All sales will be accomplished by either auction or sealed bid.

~~[3. Handguns may only be transferred to a firearms dealer through sale or exchange when:~~

- ~~a. There is a change in the standard handgun and;~~
- ~~b. An agency is replacing more than half of the agency's handguns.]~~~~(c) Except as provided in this Subsection (c), handguns shall be transferred to the Utah State Public Safety Crime Lab for use or to be destroyed.~~

~~(i) The owning agency may trade a handgun into a licensed firearm dealer for credit toward the current purchase of a new handgun.~~

~~(ii) USASP may authorize the sale of a handgun to a legally constituted law enforcement agency.~~

~~(iii) USASP may authorize the sale of a handgun to a POST certified individual if the owning agency submits a signed request that includes:~~

- ~~(A) the individual's name;~~
- ~~(B) the serial number of the handgun to be sold; and~~
- ~~(C) the signature of an authorized agent of the owning agency.~~

~~[4. Handguns not purchased by legally constituted state law enforcement agencies and all firearms not meeting Federal Firearms regulations will either be transferred to the Utah State Public Safety Crime Lab for use or be destroyed.~~

~~B. A peace officer retiring from state service and desiring to retain his service firearm, may purchase his assigned firearm at one-half of its current replacement cost.~~

~~1. Proof of intent to retire shall be sent to the USASP along with a completed standard form SP-1 and shall be signed by an authorized agent of the owning agency.~~

~~2. The replacement cost shall be determined by the most recent state purchase order or other documentation for the specified firearm(s) and a copy shall accompany the completed standard form SP-1.]~~

~~(2)[C.] All firearms retained by the USASP shall be in accordance with Federal Firearms regulations pursuant to Sections 921(a)(19) and 922(s) of Title 18, United States Code.~~

~~(a)[I.] Written certification that surplus firearms meet federal firearms regulations shall be provided by the owning agency or a qualified armorer.~~

~~(3)[D.] All firearms retained by the USASP shall be in good working condition.~~

~~(a)[A.] Written certification specifying the condition of surplus firearms shall be provided by the owning agency or a qualified armorer.~~

KEY: firearms

Date of Enactment or Last Substantive Amendment: ~~[May 11, 2009]~~2010

Notice of Continuation: February 7, 2006

Authorizing, and Implemented or Interpreted Law: 63A-9-801

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

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33729

FILED: 06/10/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Due to changes in the Utah Code resulting from H.B. 51, H.B. 129, H.B. 250, H.B. 352, and S.B. 187 in the 2009 legislative session and H.B. 277 in the 2010 legislative session, the Alcoholic Beverage Control (ABC) Commission unanimously agreed to amend the Alcoholic Beverage Control Commission Violation Grid to include new violations and penalties. Subsection R81-1-1(6) requires the Violation Grid go through the rulemaking process if changes establish or adjust the degree of seriousness of a violation. The Violation Grid is incorporated by reference as part of this rule. (DAR NOTE: H.B. 51 (2009) is found at Chapter 160, Laws of Utah 2009, and was effective 05/12/2009. H.B. 129 (2009) is found at Chapter 353, Laws of Utah 2009, and was effective 05/12/2009. H.B. 250 (2009) is found at Chapter 356, Laws of Utah 2009, and was effective 05/12/2009. H.B. 352 (2009) is found at Chapter 190, Laws of Utah 2009, and was effective 05/12/2009. S.B. 197 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009. H.B. 277 (2010) is found at Chapter 329, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: The Alcoholic Beverage Control Commission Violation Grid, which is incorporated in the rule by reference, will be amended as follows: All Licenses: knowingly allowing illegal drug activity on premise, assigning a grave penalty; and misrepresenting the brand of beer or alcohol being served, assigning a grave penalty. Clubs: serving a "sidecar" (second drink contains the primary liquor of first drink), assigning a serious penalty; failure to remain open on additional hour for consumption, assigning a serious penalty; allowing consumption between 2 a.m. and 10 a.m., assigning a serious penalty; temporarily renting or leasing premises without written agreement to comply with all operational restrictions, assigning a serious penalty; admitting a minor into a dining club without being accompanied by an adult, assigning a serious penalty; and

failure to verify proof of age under the electronic verification program, assigning a serious penalty. Full-Service and Limited-Service Restaurants: serving alcohol to a patron at a bar structure that is not "grandfathered" assigning a moderate penalty; allowing a minor to be seated at a bar structure, assigning a moderate penalty; selling any brand of alcohol not identical to that ordered by the patron, assigning a grave penalty; and for Limited Restaurants: spirituous liquor or flavored malt beverages on premises, assigning a serious penalty.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--The cost to the state is in holding a violation pre-hearing. The cost is the same regardless of the classification of the violation.
- ◆ LOCAL GOVERNMENTS: None--This rule amendment affects DABC's adjudication of violations. These proceedings take place on the state level and do not affect local governments.
- ◆ SMALL BUSINESSES: Though it is not possible to determine an exact dollar amount, this amendment may affect restaurants, clubs, and other DABC licensees, including those with fewer than 50 employees, who are cited and fined or required to serve a suspension.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Though it is not possible to determine an exact dollar amount, this amendment may affect employees who are cited and fined or required to serve a suspension.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There are no compliance costs involved in this proposed amendment to the Violation Grid. The amendment simply establishes new rules for how violations of the law are handled.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to the Violation Grid address legislation passed in the 2009 and 2010 sessions such as Section 32A-1-304.5 which requires dining and social clubs to verify proof of age of individuals who appear 35 years of age or younger under an electronic verification program. Licensees and employees may be negatively affected by the proposed amendments if they are cited and fined or required to serve a suspension.

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:

◆ Vickie Ashby by phone at 801-977-6801, by FAX at 801-977-6889, or by Internet E-mail at vickieashby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Dennis Kellen, Director

R81. Alcoholic Beverage Control, Administration.

R81-1. Scope, Definitions, and General Provisions.

R81-1-6. Violation Schedule.

(1) Authority. This rule is pursuant to Sections 32A-1-107(1)(c)(i), 32A-1-107(1)(e), 32A-1-107(4)(b), 32A-1-119(5), (6) and (7). These provisions authorize the commission to establish criteria and procedures for imposing sanctions against licensees and permittees and their officers, employees and agents who violate statutes and commission rules relating to alcoholic beverages. For purposes of this rule, holders of certificates of approval are also considered licensees. The commission may revoke or suspend the licenses or permits, and may impose a fine against a licensee or permittee in addition to or in lieu of a suspension. The commission also may impose a fine against an officer, employee or agent of a licensee or permittee. Violations are adjudicated under procedures contained in Section 32A-1-119 and disciplinary hearing Section R81-1-7.

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

(3) Application of Rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

compliance officer(s) shall notify management of the licensee or permittee when verbal warnings are given.

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

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

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

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

(b) Moderate Violations. Violations of this category demonstrate a general disregard for the laws or rules. Although the gravity of the acts are not viewed in the same light as in the serious and grave categories, they are still sufficient cause for action. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a letter of admonishment to revocation of the license or permit and/or up to a \$25,000 fine.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) First occurrence involving a grave violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a ten day suspension to revocation of the license or permit and a 10 to 120 day suspension of the employment

of the officer, employee or agent, and/or a \$1000 to \$25,000 fine to the licensee or permittee and up to a \$300 fine for the officer, employee or agent.

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

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

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

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

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

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

Violation Degree and Frequency	Warning Verbal/Written	Fine \$ Amount	Suspension No. of Days
Minor			
1st	X X		
2nd		to 25	
3rd		to 50	1 to 5
Over 3		to 75	6 to 10
Moderate			
1st	X	to 50	
2nd		to 75	3 to 10
3rd		to 100	10 to 20
Over 3		to 150	15 to 30

Serious 1st 2nd Over 2 Grave 1st Over 1	to 100 to 150 to 500 to 300 to 500	5 to 30 10 to 90 15 to 120 10 to 120 15 to 180
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32A-6-103(2)(a); 32A-7-103(2)(a); 32A-7-106(5); 32A-8-103(1)(a); 32A-8-503(1)(a); 32A-9-103(1)(a); 32A-10-203(1)(a); 32A-10-206(14); 32A-10-303(1)(a); 32A-10-306(5); 32A-11-103(1)(a); 32A-12-212(1)(b) and (c)

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

(a) Examples of mitigating circumstances are:

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

conduct;

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

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

(b) Examples of aggravating circumstances are:

- (i) prior warnings about compliance problems;
- (ii) prior violation history;
- (iii) lack of written policies governing employee conduct;
- (iv) multiple violations during the course of the

investigation;

(v) efforts to conceal a violation;

(vi) intentional nature of the violation;

(vii) the violation involved more than one patron or employee;

(viii) the violation involved a minor and, if so, the age of the minor; and

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

(6) Violation Grid. Any proposed substantive change to the violation grid that would establish or adjust the degree of seriousness of a violation shall require rulemaking in compliance with title 63G-3, the Utah Administrative Rulemaking Act. A violation grid describing each violation of the alcoholic beverage control laws, the statutory and rule reference, and the degree of seriousness of each violation is available for public inspection in the department's administrative office. A copy will be provided upon request at reproduction cost. It is entitled "Alcoholic Beverage Control Commission Violation Grid" ([2008] May 2010 edition) and is incorporated by reference as part of this rule.

KEY: alcoholic beverages

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

Notice of Continuation: August 31, 2006

Authorizing, and Implemented or Interpreted Law:
 32A-1-106(9); 32A-1-107; 32A-1-119(5)(c); 32A-1-702; 32-1-703;
 32A-1-704; 32A-1-807; 32A-3-103(1)(a); 32A-4-103(1)(a);
 32A-4-106(1)(a); 32A-4-203(1)(a); 32A-4-304(1)(a);
 32A-4-307(1)(a); 32A-4-401(1)(a); 32A-5-103(1)(a);

Alcoholic Beverage Control, Administration **R81-4C-1** Licensing

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33731

FILED: 06/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The current rule allows a licensee to hold dual on-premise beer and full-service restaurant licenses. This rule amendment will allow licensees to hold dual on-premise beer and limited-service restaurant licenses. This allows the licensee to serve beer during the day under the operational guidelines of a beer license and to serve beer, heavy beer, and wine during the night under the operational guidelines of a limited-service restaurant license.

SUMMARY OF THE RULE OR CHANGE: This rule amendment will allow licensees to hold dual on-premise beer retailer and limited-service restaurant licenses. It will allow limited-restaurant licensees to operate under the operational restrictions of an on-premise beer retailer during certain designated periods of the day.

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** Though it is not possible to determine an exact dollar amount, the state may benefit from the additional application and licensing fees for licensees that choose to operate with dual on-premise beer retailer and limited-restaurant licenses.

♦ **LOCAL GOVERNMENTS:** None. This amendment only involves the Department of Alcoholic Beverage Control's (DABC) licensing department and does not involve local government agencies.

♦ **SMALL BUSINESSES:** Though it is not possible to determine an exact dollar amount, this amendment may affect DABC licensees, including those with fewer than 50 employees, if they elect to hold dual licenses. The additional fiscal impact would be the licensing (\$150) and application (\$250) fees.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Licensees must have a current local business license.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There should be no additional compliance costs since the dual licenses are optional.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Licensees involved in tourism, such as ski resorts, would like the option to serve beer during the day without requiring patrons to purchase food. This rule amendment will allow licensees to hold dual limited-restaurant and on-premise beer retailer licenses. The licensing and application fees will have a minimal fiscal impact on the licensees and potentially increase their business during the day substantially.

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:

◆ Vickie Ashby by phone at 801-977-6801, by FAX at 801-977-6889, or by Internet E-mail at vickieashby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Dennis Kellen, Director

R81. Alcoholic Beverage Control, Administration.

R81-4C. Limited Restaurant Licenses.

R81-4C-1. Licensing.

(1) Limited restaurant licenses are issued to persons as defined in Section 32A-1-105(44). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32A-4-303(3), 32A-4-304, and 32A-4-307(25).

(2) A limited restaurant license that wishes to operate the same licensed premises under the operational restrictions of an on-premise beer retailer during certain designated periods of the day or night, must apply for and be issued a separate on-premise beer retailer license subject to the following:

(a) The same limited restaurant licensee must separately apply for a state on-premise beer retailer license pursuant to the requirements of Sections 32A-10-202, -203, and -205.

(b) Licensees applying for dually licensed premises must notify the department of the time periods under which each license will be operational at the time application is made. Changes must be requested in writing and approved in advance by the department. Licensees may operate sequentially under either license, but not concurrently.

(c) Limited restaurant licensees holding a separate on-premise beer retailer license must operate in accordance with 32A-10-206 and R81-10 during the hours the on-premise beer retailer license is active.

(d) Liquor storage areas on the limited restaurant premises shall be deemed to remain on the floor plan of the limited restaurant premises and shall be kept locked during the hours the on-premise beer retailer license is active.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: ~~June 24, 2009~~ **2010**

Notice of Continuation: July 31, 2008

Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-4-307(7)(a)(i)(B)(I)(Bb); 32A-4-407(7)(a)(ii)

Alcoholic Beverage Control, Administration **R81-10A-1** Licensing

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 33732

FILED: 06/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Current rule allows a licensee to hold dual on-premise beer and full-service restaurant licenses. This rule amendment will allow licensees to hold dual on-premise beer and limited-service restaurant licenses. This allows the licensee to serve beer during the day under the operational guidelines of a beer license and to serve beer, heavy beer, and wine during the night under the operational guidelines of a limited-service restaurant license.

SUMMARY OF THE RULE OR CHANGE: This rule amendment will allow licensees to hold dual on-premise beer retailer and limited-service restaurant licenses. It will allow limited restaurant licensees to operate under the operational restrictions of an on-premise beer retailer during certain designated periods of the day.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Though it is not possible to determine an exact dollar amount, the state may benefit from the additional application and licensing fees for licensees that choose to operate with dual on-premise beer retailer and limited-restaurant licenses.

◆ **LOCAL GOVERNMENTS:** None--This amendment only involves the Department of Alcoholic Beverage Control's (DABC) licensing department and does not involve local government agencies.

◆ **SMALL BUSINESSES:** Though it is not possible to determine an exact dollar amount, this amendment may affect DABC licensees, including those with fewer than 50 employees, if they elect to hold dual licenses. The additional fiscal impact would be the licensing (\$150) and application (\$250) fees.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Licensees must have a current local business license.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There should be no additional compliance costs since the dual licenses are optional.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Licensees involved in tourism, such as ski resorts, would like the option to serve beer during the day without requiring patrons to purchase food. This rule amendment will allow licensees to hold dual limited-restaurant and on-premise beer retailer licenses. The licensing and application fees will have a minimal impact on the licensees and potentially increase their business during the day substantially.

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:

◆ Vickie Ashby by phone at 801-977-6801, by FAX at 801-977-6889, or by Internet E-mail at vickieashby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Dennis Kellen , Director

R81. Alcoholic Beverage Control, Administration.

R81-10A. On-Premise Beer Retailer Licenses.

R81-10A-1. Licensing.

(1) On-premise beer retailer licenses are issued to persons as defined in Section 32A-1-105(44). The department must be immediately notified of any action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued to ensure there is no violation of Sections 32A-10-202 (3), 32A-10-203, and 32A-10-206(17).

(2) An on-premise beer retailer licensee that wishes to operate the same licensed premises under the operational restrictions of a restaurant liquor license or a limited restaurant license during certain designated periods of the day or night, must apply for and be issued a separate restaurant liquor license or a limited restaurant license subject to the following:

(a) The same on-premise beer retailer licensee must separately apply for a state restaurant liquor license pursuant to the requirements of Sections 32A-4-102, -103, and -105 or a limited restaurant license pursuant to the requirements of Sections 32A-4-303, -304, and -306.

(b) Licensees applying for dually licensed premises must notify the department of the time periods under which each license will be operational at the time application is made. Changes must be requested in writing and approved in advance by the department. Licensees may operate sequentially under either license, but not concurrently.

(c) On-premise beer retailer licensees holding a separate restaurant liquor license must operate in accordance with 32A-4-106 and R81-4A during the hours the restaurant liquor license is active.

(d) On-premise beer retailer licensees holding a separate limited restaurant license must operate in accordance with 32A-4-307 and R81-4C during the hours the limited restaurant license is active.

~~(d)~~(e) Liquor storage areas on the restaurant or limited restaurant premises shall be deemed to remain on the floor plan of the restaurant or limited restaurant premises and shall be kept locked during the hours the on-premise beer retailer license is active.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: ~~August 1, 2003~~ **2010**

Notice of Continuation: December 6, 2005

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

Commerce, Consumer Protection
R152-11-9
Direct Solicitations

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33769

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to provide a definitive definition of "business day" in the Consumer Sales Practices Act Direct Solicitations rule.

SUMMARY OF THE RULE OR CHANGE: Business day is defined as any calendar day except Sunday or any federal or state holiday.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-2-5 and Section 63G-4-3 and Title 13, Chapter 11

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The state budget will not be affected by defining what constitutes a business day.
- ◆ **LOCAL GOVERNMENTS:** Local government will not be affected by defining what constitutes a business day.
- ◆ **SMALL BUSINESSES:** It is likely that defining what constitutes a business day will save costs for small businesses that engage in direct solicitations by eliminating a common basis for dispute when consumers attempt to rescind transactions.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is likely that defining what constitutes a business day will save costs for persons that engage in direct solicitations by eliminating a common basis for dispute when consumers attempt to rescind transactions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is likely that defining what constitutes a business day will save costs for affected persons that engage in direct solicitations by eliminating a common basis for dispute when consumers attempt to rescind transactions.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this filing which clarifies what constitutes a "business day" as that phrase is used in the rule.

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

COMMERCE
CONSUMER PROTECTION
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:

◆ Angela Hendricks by phone at 801-530-6035, by FAX at 801-538-6001, or by Internet E-mail at ahendricks@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Kevin Olsen, Director

R152. Commerce, Consumer Protection.**R152-11. Utah Consumer Sales Practices Act.****R152-11-9. Direct Solicitations.**

A. It shall be a deceptive act or practice in connection with a consumer transaction involving any direct solicitation sale for a supplier to do any of the following:

(1) Solicit a sale without clearly, affirmatively, and expressly revealing at the time the seller initially contacts the consumer or prospective consumer, and before making any other statements or asking any questions, except for a greeting: the name of the seller, the name or trade name of the company, corporation or partnership the seller represents, and stating in general terms the nature of the consumer commodities the seller wishes to show or demonstrate.

(2) Represent that the consumer or prospective consumer will receive a discount, rebate, or other benefit for permitting his home or other property, real or personal, to be used as a so-called "model home" or "model property" for demonstration or advertising purposes when such, in fact, is not true;

(3) Represent that the consumer or prospective consumer has been specially selected to receive a bargain, discount, or other advantage when such, in fact, is not true;

(4) Represent that the consumer or prospective consumer is a winner of a contest when such, in fact, is not true;

(5) Represent that the consumer commodities that are being offered for sale cannot be purchased in any place of business, but only through direct solicitation, when such, in fact, is not true;

(6) Represent that the salesman representative, or agent has authority to negotiate the final terms of a consumer transaction when such, in fact, is not true;

(7) Sell, lease, or rent consumer goods or services with a purchase price of \$25 or more and fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution which is in the same language (e.g. Spanish) as that principally used in the oral sales presentation and which shows the date of the transaction and the name and address of the seller.

(8) Except as otherwise provided in the "Home Solicitations Sales Act", Section 70C-5-102(5) and or the "Telephone Fraud Prevention Act", Section 13-26-5, to fail to provide a notice of the buyer's right to cancel within three (3) business days at the time of purchase if the total of the sale exceeds \$25, unless the supplier's cancellation policy is communicated to the buyer and the policy offers greater rights to the buyer than three

days, which notice shall be in conspicuous statement written in dark bold at least 12 point type on the front page of the purchase documentation, and shall read as follows: "You, the Buyer, May Cancel This Transaction At Any Time Prior to Midnight of the Third Business Day (or Time Period Reflecting the Supplier's Cancellation Policy But Not Less Than Three Business Days) After the Date of This Transaction or Receipt of The Product, Whichever is Later."

(a) Paragraph (8) shall not apply to "fixture" solicitation sales where the supplier:

(i) automatically provides the buyer a right to cancel within three (3) or more business days from the time of purchase; or

(ii) automatically provides a refund for return of goods within three (3) or more business days from the time of purchase, but prior to installation as a fixture; or

(iii) supplies merchandise to a buyer without prior full payment and allows the buyer three (3) or more business days from the time of receipt of the merchandise, but prior to installation as a fixture to cancel the order and return the merchandise; or

(iv) discloses its refund/return policy in its advertising, catalog and contract, and that policy provides for a return of merchandise within a period of three (3) or more business days from the time of purchase, but prior to installation as a fixture or that policy indicates no return or refund will be offered or made on special merchandise (such as uniquely sized items, custom made or special ordered items); or

(9) Fail or refuse to honor any valid notice of cancellation by a consumer and within 30 calendar days after the receipt of such notice, to: (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the supplier; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

B. "Direct Solicitation" means solicitation of a consumer transaction initiated by a supplier, at the residence or place of employment of any consumer, and includes a sale or solicitation of sale made by the supplier by direct mail or telephone or personal contact at the residence or place of employment of any consumer. In the case of a subscription or club membership (e.g., tape, book, or record club) solicitation, "direct solicitation" means solicitation of the initial consumer transaction pursuant to a subscription or club membership agreement, made by the supplier at the residence or place of employment of any consumer, and includes a solicitation of an initial sale made by the supplier by direct mail or telephone or personal contact at the residence or place of employment of any consumer, but excludes all subsequent consumer transactions which are provided for in the subscription or club membership agreement.

C. "Time of Purchase" is defined as the day on which the buyer signs an agreement or accepts an offer to purchase consumer goods or services where the total of the sale is \$25 or more.

D. "Business day" is defined as any calendar day except Sunday or any federal or state holiday.

KEY: advertising, bait and switch, consumer protection, ~~negative options~~ direct solicitations
Date of Enactment or Last Substantive Amendment: [February 8], 2010

Notice of Continuation: February 1, 2007

Authorizing, and Implemented or Interpreted Law: 63G-3-201; 13-2-5; 13-11

Commerce, Consumer Protection **R152-23** Utah Health Spa Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33771

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Various revisions were made to make the rule more clear and concise.

SUMMARY OF THE RULE OR CHANGE: The changes: 1) remove duplicative definitions already contained within the statute; 2) add the definitions for "facility", "operate", and "personal trainer"; 3) include an email address in information required on the Health Spa application; 4) add a requirement for separate registration for each health spa facility; 5) require that any changes to the information contained in the Health Spa application be corrected with the Division; 6) impose a time limit for the Division to process Health Spa applications; 7) clarify the separate disclosures that must be contained in membership contracts for bonded facilities, facilities exempt from surety requirement, or advanced sales contracts; 8) simplify and clarify the right of rescission; and 9) simplify and clarify the procedure to be followed upon the closing of a facility.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-2-5 and Section 13-23-1 and Section 63G-3-201

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The state budget will not be affected by the various amendments to this rule.

◆ **LOCAL GOVERNMENTS:** Local government will not be affected by the various amendments to this rule.

◆ **SMALL BUSINESSES:** To the extent that a health spa employs fewer than fifty (50) people and operates more than one facility, there will be an additional \$100 application fee for each additional facility that must now be registered.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** To the extent that a health spa operates more than one facility, there will be an additional \$100 application fee for each additional facility that must now be registered.

COMPLIANCE COSTS FOR AFFECTED PERSONS: To the extent that a health spa operates more than one facility, there will be an additional \$100 application fee for each additional facility that must now be registered.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Two aspects of this rule filing could have a fiscal impact on businesses. This filing clarifies that each separate facility must have its own registration and bond. That fiscal impact is mitigated because the filing simply clarifies existing enforcement practice. The filing also clarifies contract requirements. Health spas may incur a cost to update their contract to be in compliance, which will also bring greater clarity and transparency to consumers.

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

COMMERCE
CONSUMER PROTECTION
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:

◆ Angela Hendricks by phone at 801-530-6035, by FAX at 801-538-6001, or by Internet E-mail at ahendricks@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Kevin Olsen, Director

R152. Commerce, Consumer Protection.

R152-23. Utah Health Spa Services.

R152-23-1. Authority.

These Rules are promulgated in accordance with the provisions of Section 63G-3-201 and Section 13-2-5, Utah Code Ann. (1953), as amended, to prescribe for the administration of the [Utah] Health Spa Services Protection Act, Section 13-23-1, et seq., Utah Code Ann. (1953), as amended[, the "Act"].

R152-23-2. Scope and Applicability.

These rules shall apply to the conduct of every Health Spa [Business] within the State of Utah.

R152-23-3. Definitions.

In addition to the definitions set forth in Section 13-23-2, the following definitions shall apply to these Rules.

[A.](1) "Advance Sales[;]" shall mean sales of membership contracts on any date prior to the date a health spa facility [shall be open and available to provide services to purchasers] becomes fully operational and available for use.

[B. "Bond", "Letter of Credit", or "Certificate of Deposit" shall mean an instrument containing a promise from a third party to pay to the Division of Consumer Protection for the benefit of purchasers of membership contracts the dollar value of the unused portion of such purchaser's membership in the event the health spa facility shall be unable to or refuse to provide health services pursuant to such Membership Contract.

————C.](2) "Costs" shall mean those costs incurred by the Division in investigating complaints, [administering rescission of membership contracts or] in collecting and distributing funds, and in otherwise fulfilling its responsibilities under the [Utah] Health Spa Services Protection Act or these Rules[promulgated thereunder].

[D. ——"Department" shall mean the Department of Commerce of the State of Utah.

————E. "Division" shall mean the Division of Consumer Protection of the Department of Commerce of the State of Utah.

————F. "Health Spa Business" shall mean the business of buying, operating and selling health spa facilities and shall include all acts related thereto.

————G. "Health Spa Facility" shall mean the physical facilities at which the services of a health spa business are provided to its members.

————H. "Member" shall mean the purchaser of a Membership contract pursuant to which the member anticipates receipt of health spa services in exchange for consideration given by such purchaser.

————I. "Membership Contract" shall mean a legally binding obligation pursuant to which a purchaser agrees to give consideration in exchange for membership privileges which the seller shall be obligated to provide.

————J. "Rescission" shall mean the process of canceling a membership contract and refunding to the purchaser thereof the dollar value of the consideration paid for services which have not been provided as of the date of cancellation.](3) "Facility" means the physical building where the health spa services are provided.

————(4) "Operate" means to advertise health spa services, to sell memberships, or to perform any other function of business by a Health Spa that is doing business in Utah.

————(5) "Personal Trainer" means an individual who is a health spa under Section 13-23-2 because the individual (1) hires another individual, either as an employee or an independent contractor, to provide instruction to assist patrons to improve their physical condition or appearance through aerobic conditioning, strength training, fitness training or other exercise, and (2) is granted the use of a facility that contains exercise equipment.

R152-23-4. Registration Requirements[— and Contracts for Health Spa Services].

[A. Prior to selling or attempting to sell a Membership Contract, a health spa facility must file the following documentation with the Division:](1) A Health Spa may not operate in this state without first having received a registration permit from the Division. The application for a permit shall be completed on the form provided by the Division.

[1. A completed application on the form prescribed and furnished by the Division which shall include:](2) The application shall request the following items:

[a.](a) Name, addresses, email address and telephone numbers of owner(s) of the Health Spa Facility and the facility

address, telephone number, email address, and name of contact person at the facility.

~~[b.](b)~~ ~~[A check or money order for a \$100 non-refundable application fee.]~~ Payment of the non-refundable application fee.

~~[e.](c)~~ A current pricing structure for membership services.

~~[d.](d)~~ A copy of the contract~~(s)~~ that will be utilized by the facility containing the ~~[language required by the Act]~~ provisions required by law. The required provisions shall be highlighted for easy reference.

~~[e.](e)~~ The ~~[original or certified copy of the surety bond, letter of credit, or certificate of deposit in the required amount or, if applicable, the information set out in the application as the basis for a claim of exemption from registration.]~~ documents necessary to satisfy the surety requirement of Section 13-23-5(2)(a). If the Health Spa claims that it is exempt from providing the surety, then it must provide the Division with sufficient evidence that each requirement of Section 13-23-6 is satisfied.

~~[f.](f)~~ The number of membership contracts that relate to each facility.

~~(g)~~ The name, address, email address, and telephone number of each Personal Trainer who will use the Health Spa's facilities during the year.

(3) A separate registration shall be required for each facility that is maintained and operated by a Health Spa.

(4) If any information contained in the application becomes incorrect or incomplete, then the Health Spa shall, within thirty (30) days of the information becoming incorrect or incomplete, correct the application or file the complete information.

(5) All initial applications and renewal applications shall be processed within twenty (20) business days after their receipt by the Division.

~~[~~ 2. Notice of intent to sell memberships. ~~]~~

R152-23-5. Health Spa Membership Contracts.

(1) Health Spa membership contracts shall contain the following provisions:

(a) Each membership contract shall contain:

(i) the date of the transaction;

(ii) the name and address of the Health Spa; and

(iii) the name, address, email address (if available), and telephone number of the consumer.

~~[B.](b)~~ Each ~~[Membership Contract]~~ membership contract shall contain one of the following provisions, printed in capital letters, regarding closure of the facility:

(i) Health Spas that are required to comply with the surety requirement shall contain a provision~~, printed in all capital letters which reads substantially~~ that states as follows: "IN THE EVENT THE HEALTH SPA FACILITY CLOSES AND ANOTHER HEALTH SPA FACILITY OPERATED BY THE SELLER, OR ASSIGNS OF THE SELLER, OF THIS CONTRACT IS NOT AVAILABLE WITHIN FIVE (5) MILES OF THE LOCATION THE MEMBER INTENDS TO PATRONIZE, SELLER WILL REFUND TO MEMBER A PRORATA SHARE OF THE MEMBERSHIP COST, BASED UPON THE UNUSED MEMBERSHIP TIME REMAINING ACCORDING TO THE CONTRACT."

(ii) Health Spas that are not required to comply with the surety requirement shall contain a provision that states as follows: "IF THIS HEALTH SPA CEASES OPERATION AND FAILS TO OFFER AN ALTERNATE LOCATION WITHIN FIVE MILES, NO FURTHER PAYMENTS UNDER THIS CONTRACT SHALL BE DUE TO ANYONE, INCLUDING ANY PURCHASER OF ANY NOTE ASSOCIATED WITH OR CONTAINED IN THIS CONTRACT."

~~[E.](c)~~ All ~~[Membership Contracts]~~ membership contracts shall specify what items of equipment or services provided by the health spa facility on the date of the execution of the membership contract are subject to deletion or change at the discretion of the facility.

~~[D.](d)~~ [All Membership Contracts sold prior to opening of the health spa facility shall allow the buyer a three (3) day right of rescission in accordance with Section 13-23-4 of the Act, or Section 13-11-4(m) of the Utah Consumer Sales Practices Act.] Each membership contract shall include one of the following provisions regarding the consumer's right of rescission under Section 13-23-3(6). The provision shall be bolded and printed in capital letters with at least 12 point font and shall be located on the first page of the contract and just above the signature line.

(i) Membership contracts sold in advance sales shall contain a provision that states as follows: "YOU, THE CONSUMER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE HEALTH SPA BECOMES FULLY OPERATIONAL AND AVAILABLE FOR USE. IF THE HEALTH SPA DOES NOT BECOME FULLY OPERATIONAL AND AVAILABLE FOR USE WITHIN 60 DAYS AFTER THE DATE OF THE CONTRACT, YOU MAY CANCEL THIS CONTRACT AT ANY TIME."

~~[E. The right of rescission set out in Section 13-23-3(6) shall:~~

~~1. be a conspicuous statement written in dark bold with at least 12 point type on the first page of the contract; and~~

~~2. read](ii) All other membership contracts shall contain a provision that states as follows: "YOU, THE CONSUMER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE ON WHICH THE CONTRACT IS EXECUTED."~~

~~[F. No fee may be charged if a consumer exercises the consumer's right to rescind the contract pursuant to Section 13-23-3(6).~~

~~G.](e)~~ [The dollar value of a Membership Contract shall be clearly stated on the face of the contract.] All membership contracts shall itemize the costs to the consumer and shall include a statement as to the total cost of the contract. These costs shall be clearly stated on the first page of the contract.

~~[H.](f)~~ Every membership contract shall clearly state the beginning and expiration dates of its term. In any event, no ~~[Membership Contract shall be sold which provides]~~ membership contract shall provide for a membership term of longer than thirty-six (36) months.

(2) The membership contract or any attachment to it shall clearly state any rules of the Health Spa that apply to:

(a) the consumer's use of its facilities and services; and

(b) cancellation and refund policies of the Health Spa.

(3) Each membership contract shall specify which equipment or facility of the Health Spa is omitted from the contract's coverage.

~~I. The purchaser of a Health Spa Facility shall replace the Seller as a party to any unexpired Membership Contract and shall honor all Membership Contracts of the purchased facility in effect at the time of purchase, pursuant to Section 13-23-5(2) of the Act. In the event a Health Spa Facility shall be sold under circumstances which will result in its closure and the purchaser shall not operate a Health Spa Facility within 5 miles thereof, purchaser must notify Members of such closure in writing within 10 days of the date of sale. Members may cancel their outstanding Membership Contracts or may choose to continue their Membership Contract in foree. Notice of such election shall be in writing mailed to the purchaser within 30 days of the receipt of notice of closure of the acquired Health Spa Facility.~~

~~J. The notice required in Section 13-23-5(7) shall be in writing and shall include the following:~~

~~1. The date on which the health spa will cease operations or relocate and fail to offer an alternative location within five miles;~~

~~2. Information concerning the members of the health spa, including:~~

- ~~a. the total number of members;~~
- ~~b. the name and address of each member;~~
- ~~c. the total cost of each membership; and~~
- ~~d. the effective dates of each membership;~~

~~3. Proof of the bond, letter of credit, or certificate of deposit required under Section 13-23-5(2)(a) and proof that the bond, letter of credit, or certificate of deposit will remain in force for one year after the health spa notifies the division that it has ceased all activities regulated by Title 13, Chapter 23 of the Utah code;~~

~~4. A description of what action the health spa plans to take with regard to its members, including:~~

- ~~a. the amount of each member's refund;~~
- ~~b. any reason refunds are not to be made;~~
- ~~c. an explanation of how refunds are to be calculated; and~~
- ~~d. copies of the refund checks that the health spa has issued; and~~

~~5. Any complaints that the health spa has received from the members and how the complaints were resolved.~~

~~K. A separate registration shall be required for each separate location maintained by a health spa business.~~

R152-23-[5]6. Rescission.

(1) Except where advanced sales are involved, no fee may be charged if a consumer exercises the consumer's right to rescind the contract pursuant to Section 13-23-3(6).

(2) When the membership contract is the result of the Health Spa's advance sales and the consumer exercises the consumer's right to rescind, then a fee may be charged against the payments made by the consumer to the extent allowed by Section 13-23-4.

R152-23-7. Procedure When Facility Closes.

[A-](1) In the event a Health Spa [Facility] shall, for any reason, close, discontinue normal operations for a period of ten (10) business days, or otherwise cease to do business at any of its facilities while having outstanding obligations to provide

~~[membership]health spa services to members holding valid membership contracts, the Health Spa [Facility must]shall[- offer, in writing, to rescind all such membership contracts and to], after obtaining the Division's approval, immediately refund the unused portion of all [Member's-]membership fees, including the proration of any fees paid up front. The proration of fees paid up front is required only on initial contracts unless similar fees were charged when the contracts were renewed. [-Such written offer of rescission shall establish the procedure and time limit for acceptance of the rescission offer and obtaining the desired refund.~~

~~B.](2) [An offer of rescission shall be made to each purchaser whose Membership Contract is valid on the last day the Health Spa Facility is open for business.]Within ten (10) business days of the closure of its facility, [F]the Health Spa[-Facility] shall provide the Division with a [list of Membership Contracts]copy of each membership contract that was valid on the date of closure[- valid on the date of closure 10 business days before such closure].~~

~~[C. Money to be refunded to members upon closure of a Health Spa Facility under these Rules shall be placed in escrow with a bank or other financial institution previously approved by the Division. Such funds shall come from a Bond, Letter of Credit, or Certificate of Deposit payable to the Division.~~

~~D.](3) The Division shall determine the amount of refunds that shall be made and to whom. [Refunds shall be made to Members who submit claims within a time period to be prescribed by the Division.] Such refunds shall be made under the supervision and with the prior approval of the Division.[-and shall, if insufficient funds are available for full refund, be made.] If sufficient funds are not available to make a full refund, then the refund shall be made from the surety proceeds on a prorata basis based upon the full amount [due a claimant][that is determined to be due to all members]. The refund amount due shall be determined by multiplying the number of [months]days remaining on [claimant's membership]the member's contract term as of the date of closure by the [monthly]daily cost of such membership to the member at the time of purchase. [Periods of less than a full month shall be compensated by determining a daily cost of membership and multiplying such daily cost by the number of unused membership days in such period.]The Health Spa shall remain responsible for the balance.~~

~~[E. Refunds shall be made to claimants within 90 days following the final date for submission of claims in accordance with the procedures specified above.~~

~~F. The Division may recover from the funds deposited in escrow pursuant to this Rule, its costs, including investigative costs, processing costs, attorneys fees and other expenses related to administration of rescissions made under these rules.~~

~~G. In the event there shall be funds remaining after full refund to all claimants and payment of costs of the Division, such excess shall be returned to Owners of the Health Spa Facility.~~

~~](4) For purposes of Sections 13-23-5(6) and (7), the distance of five miles shall be calculated by the distance traveled by an automobile over a public road.~~

~~(5) The notice required in Section 13-23-5(7) shall be in writing and shall include the following:~~

~~(a) The date on which the health spa will cease operations or relocate and fail to offer an alternative location within five miles;~~

(b) Information concerning the members of the health spa, including:

(i) the total number of members;

(ii) the name, address, email address, and telephone number of each member;

(iii) the total cost of each membership; and

(iv) the effective beginning and ending dates of each membership;

(c) Proof of the bond, letter of credit, or certificate of deposit required under Section 13-23- 5(2)(a) and proof that the bond, letter of credit, or certificate of deposit will remain in force for one year after the health spa notifies the Division that it has ceased all activities regulated by Title 13, Chapter 23 of the Utah Code;

(d) A description of what action the health spa plans to take with regard to its members, including:

(i) the amount of each member's refund;

(ii) any reason refunds are not to be made;

(iii) an explanation of how refunds are to be calculated; and

(iv) copies of the refund checks that the health spa has issued; and

(e) Any complaints that the health spa has received from the members and how the complaints were resolved.

R152-23-[6]8. Bond, Irrevocable Letter of Credit, or Certificate of Deposit [Required].

~~[A. Except as provided in Section 13-23-6, of the Act, all Health Spa Facilities shall be covered by a performance Bond, Letter of Credit, or Certificate of Deposit payable to the Division in an amount to be determined by the number and cost of membership contracts sold by the Health Spa Facility.~~

~~B.-(1) [Originals or certified copies of such Bonds, Letters of Credit, or Certificates of Deposit]The surety required by Section 13-23-5(2) shall be provided to the Division not less than [40]30 days in advance of [the first sale or attempt to sell made by any Health Spa]any advanced sales by any Health Spa [Facility]. Annual renewals of such Bonds, Irrevocable Letters of Credit, or Certificates of Deposit shall be filed with the Division [at least]not less than 30 days in advance of expiration of existing Bonds, Irrevocable Letters of Credit, or Certificates of Deposit.~~

~~C.-(2) The Division shall have the right to approve or reject Bonds, Irrevocable Letters of Credit, or Certificates of Deposit submitted [in compliance with this Rule]to the Division. In the event a Bond, Irrevocable Letter of Credit, or Certificate of Deposit is rejected by the Division, the Health Spa [Facility]shall submit another surety within 15 days following notice by the Division. In no event shall a Health Spa [Facility conduct business]operate without having a Bond, Irrevocable Letter of Credit, or Certificate of Deposit in effect or establishing an exemption pursuant to Section 13-23-6.~~

~~D. A Health Spa Facility which allows Bonds, Letters of Credit, or Certificates of Deposit to expire without filing renewal as provided herein, may be allowed, at the discretion of the Division, to register as a new Health Spa Facility pursuant to the provisions of R152-7-4 and R152-7-6, hereof.-(3) In addition to the members' refunds, the Division shall be entitled to recover from the surety proceeds all of its costs and fines as allowed by Sections 13-23-5(2) (c) and (e).~~

[R152-23-7. Enforcement.

~~A. The Division may be entitled to recover costs, including investigative costs, processing costs, attorneys fees and other costs incurred in administration of these rules. Upon election of the parties, payment of such costs shall be made from the proceeds of the Bond, Letter of Credit, or Certificate of Deposit.~~

~~B. Any payment made to the Division shall be approved by the Executive Director of the Department of Commerce.~~

]

KEY: consumer protection, health spas

Date of Enactment or Last Substantive Amendment: [January 23, 2007]2010

Notice of Continuation: June 22, 2007

Authorizing, and Implemented or Interpreted Law: 63G-3-201; 13-2-5; 13-23-1

Commerce, Consumer Protection
R152-32a
 Pawnshop and Secondhand
 Merchandise Transaction Information
 Act Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33768

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule needed to be amended to reference correctly the definition of scrap metal processors in Title 76, Chapter 10.

SUMMARY OF THE RULE OR CHANGE: The reference to the definition of scrap metal processors was amended from Subsection 76-10-901(4) to Subsection 76-10-901(10).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-2-5 and Section 13-32a-102

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The state budget will not be affected by correcting the cross reference in the rule.
- ◆ **LOCAL GOVERNMENTS:** Local government will not be affected by correcting the cross reference in the rule.
- ◆ **SMALL BUSINESSES:** Small business will not be affected by correcting the cross reference in the rule.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Other persons will not be affected by correcting the cross reference in the rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS:
Compliance costs for affected persons will not be affected by correcting the cross reference in the rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
This rule filing updates and corrects statutory references. No fiscal impact to businesses is anticipated from this amendment.

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

COMMERCE
CONSUMER PROTECTION
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:

♦ Angela Hendricks by phone at 801-530-6035, by FAX at 801-538-6001, or by Internet E-mail at ahendricks@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Kevin Olsen, Director

R152. Commerce, Consumer Protection.

R152-32a. Pawnshop and Secondhand Merchandise Transaction Information Act Rules.

R152-32a-1. Authority.

These rules are promulgated pursuant to Utah Code 13-2-5(1) and 13-32a-102.5(1) to facilitate the orderly administration of the Pawnshop and Secondhand Merchandise Transaction Information Act, Utah Code Title 13, Section 32a.

R152-32a-2. Exempt Businesses.

In accordance with Section 13-32a-~~102(19)(b)(ii)~~112.5, the definition of "Secondhand merchandise dealer" does not include:

- (1) Scrap metal processors as defined by Section 76-10-901(~~4~~)10;
- (2) Dealers of used appliances; and
- (3) Dealers of used furniture.

KEY: pawnshops, consumer protection, second hand merchandise dealer

Date of Enactment or Last Substantive Amendment:
~~November 4, 2008~~2010

Authorizing, and Implemented or Interpreted Law: 13-2-5; 13-32a-~~102(19)~~112.5

Commerce, Consumer Protection
R152-34-7
Rules Relating to the Operation of
Proprietary Schools under Section
13-34-107

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33773

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify and amend the financial documentation required for postsecondary proprietary school registration; and to raise the surety requirement to an amount reflective of current receipts by postsecondary proprietary schools.

SUMMARY OF THE RULE OR CHANGE: Pro forma financial statements and Profit and Loss Statements were replaced by Income Statements and Statement of Stockholders' Equity as acceptable financial statements. The surety requirement after the first year of a postsecondary proprietary school's operation was raised to \$300,000.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-2-5 and Section 63G-4-3 and Title 13, Chapter 34

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The state budget will not be affected by changing the financial statement forms that postsecondary schools are required to provide. The state budget will not be affected by raising the surety requirement for postsecondary proprietary schools.

♦ **LOCAL GOVERNMENTS:** Local government will not be affected by changing the financial statement forms that postsecondary schools are required to provide. Local government will not be affected by raising the surety requirement for postsecondary proprietary schools.

♦ **SMALL BUSINESSES:** To the extent that postsecondary proprietary schools employ fewer than fifty (50) persons, there will be increased costs associated with the increased surety requirement. This cost impact is difficult to quantify as it will vary based on factors such as the school's credit worthiness, how long the school has been operating, the financial soundness of school operators, etc. However, Division records indicate that only three (3) registered schools will be required to increase their surety amount.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be increased costs associated with the increased surety requirement. This cost impact is difficult to quantify as

it will vary based on factors such as the school's credit worthiness, how long the school has been operating, the financial soundness of school operators, etc. However, Division records indicate that only three (3) registered schools will be required to increase their surety amount.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be increased costs associated with the increased surety requirement. This cost impact is difficult to quantify as it will vary based on factors such as the school's credit worthiness, how long the school has been operating, the financial soundness of school operators, etc. However, Division records indicate that only three (3) registered schools will be required to increase their surety amount.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In addition to the fiscal impact noted in the rule summary, there may be some benefit to the insurance or surety industry due to the requirement that postsecondary proprietary schools in operation for more than a year must obtain an increased surety. However, it is not expected to be an appreciable impact as only three registered schools are affected.

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

COMMERCE
CONSUMER PROTECTION
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:

♦ Angela Hendricks by phone at 801-530-6035, by FAX at 801-538-6001, or by Internet E-mail at ahendricks@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Kevin Olsen, Director

R152. Commerce, Consumer Protection.

R152-34. Postsecondary Proprietary School Act Rules.

R152-34-7. Rules Relating to the Operation of Proprietary Schools under Section 13-34-107.

(1) An authorized officer of the institution to be registered under this chapter shall sign a disclosure as to whether the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules as determined in a criminal, civil or administrative proceeding.

(2) The [d]Division shall refuse to register an institution when the [d]Division:

(a) determines that the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules, as determined in a criminal, civil or administrative proceeding;

(b) determines the violation(s) to be relevant to the appropriate operation of the school; and

(c) has a reasonable doubt that the institution will function in accordance with these laws and rules or provide students with an appropriate learning experience.

(3) A change in the ownership of an institution, as defined in Section 13-34-103(8), occurs when there is a merger or change in the controlling interest of the entity or if there is a transfer of more than 50 percent of the its assets within a three-year period. When this occurs the following information is submitted to the [d]Division for its review:

(a) a copy of any new articles of incorporation;

(b) a current financial statement, as outlined in subsection (8) below;

(c) a listing of all institutional personnel that have changed as a result of the ownership transaction, together with complete resumes and qualifications;

(d) a detailed description of any material modifications to be made in the operation of the institution; and

(e) payment of the appropriate fee.

(i) The [d]Division collects the following fees in accordance with U.C.A. [Subs]Section 13-34-107(5):

(A) Initial registration application fees will be based on the expected gross income of the registered program during the first year of operation. The initial application fee shall be computed as one-half of one percent of the gross tuition income of the registered program(s) expected during the first year, but not less than \$100 or more than \$2,000. The institution shall provide documentation to substantiate the amount of the fee, in a form specified by the [d]Division.

(B) The [d]Division also collects annual registration fees computed as one-half of one percent of the gross tuition income of the registered program(s) during the previous year, but not less than \$100 or more than \$2,000. The institution shall provide documentation to substantiate the amount of the fee, in a form specified by the [d]Division. The annual registration fee is due on the anniversary date of the institution's certificate of registration.

(C) All registration fees collected by the [d]Division will be used to enhance the administration of the Act and Rules.

(4) The institution shall submit to the [d]Division its renewal registration statement application, along with the appropriate fee, no later than thirty (30) days prior to the expiration date of the current certificate of registration.

(5) In addition to the annual registration fee, an institution failing to file a renewal registration application by the due date or filing an incomplete registration application or renewal shall pay an additional fee of \$25 for each month or part of a month after the date on which the registration statement application or renewal were due to be filed.

(6) Within thirty (30) days after receipt of an initial or renewal registration statement application and its attachments, the [d]Division shall do one of the following:

(a) issue a certificate of registration;

(b) request further information and, if needed, conduct a site visit to the institution as detailed in R152-34-10(1); or

(c) refuse to accept the registration statement based on Sections 13-34-107 and 113.

(7) Although a certificate of registration is valid for two (2) years, the [d]Division may periodically request updates of financial statements, surety requirements and the following statistical information:

(a) The number of students enrolled from September 1 through August 31;

(b) The number of students who completed and received a credential;

(c) The number of students who terminated or withdrew;

(d) The number of administrators, faculty, supporting staff, and agents; and

(e) The new catalog, information bulletin, or supplements.

(8) The institution ~~must~~ shall have, in addition to other criteria contained in this rule, sufficient financial resources to fulfill its commitments to students and staff members, and to meet its other obligations as evidenced by the following financial statements:

(a) ~~(i)~~ A current financial statement prepared in accordance with generally accepted accounting principles including a balance sheet, ~~a profit and loss statement~~ an income statement, a statement of stockholders' equity, and a statement of cash flows for the most recent fiscal year with all applicable footnotes; ~~or~~

~~(ii) Pro forma financial statements until actual information is available when an institution has not operated long enough to complete a fiscal year; and either:~~

~~(b)(i) A certified fiscal audit of the institution's financial statement performed by a certified or licensed public accountant; or~~

~~(ii) A review of the institution's financial statement performed by a certified or licensed public accountant, which shall include at least a statement by the accountant that there are not material modifications that should be made to the financial statement for it to be in conformity with generally accepted accounting principles;].~~

~~(b) If the institution has been determined to be bond exempt under Subsection (14) and has total gross tuition income that does not exceed \$50,000, the institution may, in lieu of the financial statements set forth in Subsection (8)(a), provide to the Division:~~

~~(i) a copy of the institution's most recently filed federal tax return; or~~

~~(ii) if the institution is not required to file a return, then a copy of the owner's most recently filed federal tax return.~~

(9)(a) A satisfactory surety in the form of a bond, certificate of deposit, or irrevocable letter of credit ~~must~~ shall be provided by the institution before a certificate of registration will be issued by the [d]Division.

(b) The obligation of the surety will be that the institution, its officers, agents, and employees will:

(i) faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the institution and persons enrolling as students; and

(ii) conform to the provisions of the Utah Postsecondary Proprietary School Act and Rules.

(c) The bond, certificate of deposit, or letter of credit ~~must~~ shall be in a form approved by the [d]Division and issued by a company authorized to do such business in Utah.

(d)(i) The bond, certificate of deposit, or letter of credit ~~must~~ shall be payable to the [d]Division to be used for creating teach-out opportunities or for refunding tuition, book fees, supply fees, equipment fees, and other instructional fees paid by a student or potential student, enrollee, or his or her parent or guardian.

(ii) In each instance the [d]Division may determine:

(A) which of the uses listed in Subsection (9)(d)(i) are appropriate; and

(B) if the [d]Division creates teach-out opportunities, the appropriate institution to provide the instruction.

(e) An institution that closes or otherwise discontinues operations shall maintain the institution's surety until:

(i) at least one year has passed since the institution has notified the [d]Division in writing that the institution has closed or discontinued operation; and

(ii) the institution has satisfied the requirements of Section R152-34-9.

(10)(a) The surety company may not be relieved of liability on the surety unless it gives the institution and the [d]Division ninety calendar days notice by certified mail of the company's intent to cancel the surety.

(b) The cancellation or discontinuance of surety coverage after such notice does not discharge or otherwise affect any claim filed by a student, enrollee or his/her parent or guardian for damage resulting from any act of the institution alleged to have occurred while the surety was in effect, or for an institution's ceasing operations during the term for which tuition had been paid while the surety was in force.

(c) If at any time the company that issued the surety cancels or discontinues the coverage, the institution's registration is revoked as a matter of law on the effective date of the cancellation or discontinuance of surety coverage unless a replacement surety is obtained and provided to the [d]Division.

(11)(a) Before an original registration is issued, and except as otherwise provided in this rule, the institution shall secure and submit to the [d]Division a surety in the form of a bond, certificate of deposit or letter of credit in an amount of one hundred and eighty-seven thousand, five-hundred dollars (\$187,500) for schools expecting to enroll more than 100 separate individual students (non-duplicated enrollments) during the first year of operation, one hundred and twenty-five thousand dollars (\$125,000) for schools expecting to enroll between 50 and 99 separate individual students during the first year, and sixty-two thousand, five-hundred dollars (\$62,500) for institutions expecting to enroll less than 50 separate individual students during the first year.

(b) Institutions that submit evidence acceptable to the [d]Division that the school's gross tuition income from any source during the first year will be less than twenty-five thousand dollars (\$25,000) may provide a surety of twelve thousand, five hundred dollars (\$12,500) for the first year of operation.

(12)(a) Except as otherwise provided in this rule, the minimum amount of the required surety to be submitted annually after the first year of operation will be based on twenty-five percent of the annual gross tuition income from registered program(s) for the previous year (rounded to the nearest \$1,000), with a minimum surety amount of twelve thousand, five hundred dollars (\$12,500) and a maximum surety amount of ~~one hundred and eighty-seven thousand, five hundred dollars (\$187,500)~~ three hundred thousand dollars (\$300,000).

(b) The surety ~~[must]~~shall be renewed each year by the anniversary date of the school's certificate of registration, and also included as a part of each two-year application for registration renewal.

(c) No additional programs may be offered without appropriate adjustment to the surety amount.

(13)(a) The institution shall provide a statement by a school official regarding the calculation of gross tuition income and written evidence confirming that the amount of the surety meets the requirements of this rule.

(b) The [d]Division may require that such statement be verified by an independent certified public accountant if the [d]Division determines that the written evidence confirming the amount of the surety is questionable.

(14) An institution with a total cost per program of five hundred dollars or less or a length of each such program of less than one month shall not be required to have a surety.

(15) The [d]Division will not register a program at a proprietary school if it determines that the educational credential associated with the program may be interpreted by employers and the public to represent the undertaking or completion of educational achievement that has not been undertaken and earned.

(16) Acceptance of registration statements and the issuing of certificates of registration to operate a school signifies that the legal requirements prescribed by statute and regulations have been satisfied. It does not mean that the [d]Division supervises, recommends, nor accredits institutions whose statements are on file and who have been issued certificates of registration to operate.

KEY: education, postsecondary proprietary schools, registration requirements, consumer protection

Date of Enactment or Last Substantive Amendment: ~~May 22, 2007~~2010

Notice of Continuation: June 15, 2007

Authorizing, and Implemented or Interpreted Law: 13-2-5(1)

**Commerce, Occupational and
 Professional Licensing
 R156-11a
 Barber, Cosmetologist/Barber,
 Esthetician, Electrologist, and Nail
 Technician Licensing Act Rule**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33704

FILED: 06/03/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this filing is to implement the changes in the Barber, Cosmetologist/Barber, Esthetician, Electrologist and Nail Technician Licensing Act (Title 58, Chapter 11a) as amended by H.B. 379 passed by the 2010 Legislature. This filing also makes certain changes overlooked in previous rule filings and makes technical corrections and clarifications. (DAR NOTE: H.B. 379 (2010) is found at Chapter 145, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: In Section R156-11a-102, the definition of "health care practitioner" has been expanded to include a physician assistant. Subsection R156-11a-302a(1)(c) added an additional choice of examination for licensure as an electrologist. Section R156-11a-302b is being added to specify the approved evaluation services who may provide education or credential equivalency evaluations of foreign school education compared with a licensed school under Title 58, Chapter 11a. In Section R156-11a-502, amendments add failing as a supervisor to maintain the appropriate supervision levels and performing services without the appropriate levels of supervision as unprofessional conduct. Added Subsection R156-11a-503(3) about possessing at least 10% methyl methacrylate solution to the administrative penalties for unlawful conduct. In Section R156-11a-605, the amendment requires schools to provide a copy of the written contract with a student to be provided to the student. In Section R156-11a-606, the amendments clarify acceptance of student transfers from other schools with the same license classification and also acceptance of credit hours from schools with a different license classification as required in H.B. 379. In Sections R156-11a-706, R156-11a-800, and R156-11a-901, minor technical changes are made.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-11a-101 and Subsection 58-1-106(1) (a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

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

◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensees in various license classifications provided in Title 58, Chapter 11a, and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** The proposed amendments only apply to licensees in various license classifications provided in Title 58, Chapter 11a, and applicants for licensure in those classifications. Licensees and applicants for licensure may work in a small business; however, the proposed

amendments would not directly affect the business. Also, these proposed amendments will not result in any increased costs beyond the impact anticipated by the statutory change in H.B. 379.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments only apply to licensees in various license classifications provided in Title 58, Chapter 11a, and applicants for licensure in those classifications. These proposed amendments will not result in any increased costs beyond the impact anticipated by the statutory change in H.B. 379.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensees in various license classifications provided in Title 58, Chapter 11a, and applicants for licensure in those classifications. These proposed amendments will not result in any increased costs beyond the impact anticipated by the statutory change in H.B. 379.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule filing beyond those addressed in the passage of recent statutory changes.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Sally Stewart by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at [sstewart@utah.gov](mailto:ss Stewart@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 07/12/2010 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Mark Steinagel , Director

**R156. Commerce, Occupational and Professional Licensing.
R156-11a. Barber, Cosmetologist/Barber, Esthetician,
Electrologist, and Nail Technician Licensing Act Rule.
R156-11a-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 11a, as used in Title 58, Chapters 1 and 11a or this rule:

(1) "Advanced pedicures", as used in Subsection 58-11a-102(31)(a)(i)(D), means any of the following while caring for the nails, cuticles or calluses of the feet:

(a) utilizing manual instruments, implements, advanced electrical equipment, tools, or microdermabrasion for cleaning, trimming, softening, smoothing, or buffing;

(b) utilizing blades, including corn or callus planer or rasp, for smoothing, shaving or removing dead skin from the feet as defined in Section R156-11a-611; or

(c) utilizing topical products and preparations for chemical exfoliation as defined in Subsection R156-11a-610(4).

(2) "Aroma therapy" means the application of essential oils which are applied directly to the skin, undiluted or in a misted dilution with a carrier oil or lotion, for varied applications such as massage, hot packs, cold packs, compress, inhalation, steam or air diffusion, or in hydrotherapy services.

(3) "BCA acid" means bicloroacetic acid.

(4) "Body wraps", as used in Subsection 58-11a-102(31)(a)(i)(A), means body treatments utilizing products or equipment to enhance and maintain the texture, contour, integrity and health of the skin and body.

(5) "Chemical exfoliation", as defined in Subsections 58-11a-102(31)(a)(i)(C) and R156-11a-610(4), means a resurfacing procedure performed with a chemical solution or product for the purpose of removing superficial layers of the epidermis to a point no deeper than the stratum corneum.

(6) "Dermabrasion or open dermabrasion" means the surgical application of a wire or diamond frieze by a physician to abrade the skin to the epidermis and possibly down to the papillary dermis.

(7) "Dermaplane" means the use of a scalpel or bladed instrument under the direct supervision of a health care practitioner to shave the upper layers of the stratum corneum.

(8) "Direct supervision by a licensed health care practitioner" means a health care practitioner who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4)(a).

(9) "Equivalent number of credit hours" means:

(a) the following conversion table if on a semester basis:

(i) theory - 1 credit hour - 30 clock hours;

(ii) practice - 1 credit hour - 30 clock hours; and

(iii) clinical experience - 1 credit hour - 45 clock hours;

and

(b) the following conversion table if on a quarter basis:

(i) theory - 1 credit hour - 20 clock hours;

(ii) practice - 1 credit hour - 20 clock hours; and

(iii) clinical experience - 1 credit hour - 30 clock hours.

(10) "Exfoliation" means the sloughing off of non-living skin cells by superficial and non-invasive means.

(11) "Extraction" means the following:

(a) "advanced extraction", as used in Subsections 58-11a-102(31)(a)(i)(F) and R156-11a-611(2)(b), means to perform extraction with a lancet or device that removes impurities from the skin;

(b) "manual extraction", as used in Subsection 58-11a-102(25)(a), means to remove impurities from the skin with protected fingertips, cotton swabs or a loop comedone extractor.

(12) "Galvanic current" means a constant low-voltage direct current.

(13) "General supervision by a licensed health care practitioner" means a health care practitioner who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4)(c).

(14) "Health care practitioner" means a physician/surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, [or] an advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Practice Act.

(15) "Hydrotherapy", as used in Subsection 58-11a-102(31)(a)(i)(B), means the use of water for cosmetic purposes or beautification of the body.

(16) "Indirect supervision" means the supervising instructor who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4)(b).

(17) "Limited chemical exfoliation" means a non-invasive chemical exfoliation and is further defined in Subsection R156-11a-610(3).

(18) "Lymphatic massage", as used in Subsections 58-11a-102(31)(a)(ii) and 58-11a-302(11)(a)(i)(C), means a method using a light rhythmic pressure applied by manual or other means to the skin using specific lymphatic maneuvers to promote drainage of the lymphatic fluid through the tissue.

(19) "Manipulating", as used in Subsection 58-11a-102(25)(a), means applying a light pressure by the hands to the skin.

(20) "Microdermabrasion", as used in Subsection 58-11a-102(31)(a)(i)(E), means a gentle, progressive, superficial, mechanical exfoliation of the uppermost layers of the stratum corneum using a closed-loop vacuum system.

(21) "Patch test" or "predisposition test" means applying a small amount of a chemical preparation to the skin of the arm or behind the ear to determine possible allergies of the client to the chemical preparation.

(22) "Pedicure" means any of the following:

(a) cleaning, trimming, softening, or caring for the nails, cuticles, or calluses of the feet;

(b) the use of manual instruments or implements on the nails, cuticles, or calluses of the feet;

(c) callus removal by sanding, buffing, or filing; or

(d) massaging of the feet or lower portion of the leg.

(23) "TCA acid" means trichloroacetic acid.

(24) "Unprofessional conduct" is further defined, in accordance with Section 58-1-501, in Section R156-11a-502.

R156-11a-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Section 58-11a-302, the examination requirements for licensure are established as follows:

(1) Applicants for each classification listed below shall pass within one year prior to the date of application, the respective examination with a passing score as determined by the examination provider.

(a) Applicants for licensure as a barber shall pass the National Interstate Council of State Boards of Cosmetology (NIC) Barber Theory and Practical Examinations.

(b) Applicants for licensure as a cosmetologist/barber shall pass the NIC Cosmetology/Barber Theory and Practical Examinations.

(c) Applicants for licensure as an electrologist shall pass the NIC Electrologist Theory and Practical Examinations or the Utah Electrologist Theory and Practical Examinations.

(d) Applicants for licensure as a basic esthetician shall pass the NIC Esthetics Theory and Practical Examinations.

(e) Applicants for licensure as a master esthetician shall pass the NIC Master Esthetician Theory and Esthetics Practical Examinations.

(f) Applicants for licensure as a barber instructor, cosmetologist/barber instructor, electrology instructor, esthetician instructor, or nail technology instructor shall pass the NIC Instructor Examination.

(g) Applicants for licensure as a nail technician shall pass the NIC Nail Technician Theory and Practical Examinations.

(2) Any equivalent theory, practical or instructor examination approved by the licensing authority of any other state is acceptable for any of the examinations specified in Subsection(1).

R156-11a-302b. Qualifications for Licensure - Equivalency of Foreign School Education.

(1) In accordance with Subsection 58-11a-302(17), an applicant shall submit documentation of education equivalency for a foreign school education with a licensed barber school, a licensed cosmetology/barber school, a license esthetics school, a licensed electrology school, or a licensed nail technology school.

(2) The documentation shall be an education or credential evaluation from one of the following approved credential evaluation services:

(a) Josef Silny & Associates Incorporated, International Education Consultants; or

(b) Educational Credential Evaluators Incorporated.

R156-11a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to provide direct supervision of an apprentice, a student attending a barber, cosmetology/barber, esthetics, electrology, or nail technology school, or a student instructor;

(2) failing to obtain accreditation as a barber, cosmetology/barber, esthetics, electrology, or nail technology school in accordance with the requirements of Section R156-11a-601;

(3) failing to maintain accreditation as a barber, cosmetology/barber, esthetics, electrology or nail technology school after having been approved for accreditation;

(4) failing to comply with the standards of accreditation applicable to barber, cosmetology/barber, esthetics, electrology, or nail technology schools;

(5) failing to provide adequate instruction or training as applicable to a student of a barber, cosmetology/barber, esthetics, electrology, or nail technology school, or in an approved barber, cosmetology/barber, esthetics, or nail technology apprenticeship;

(6) failing to comply with Title 26, Utah Health Code;

(7) failing to comply with the apprenticeship requirements applicable to barber, cosmetologist/barber, basic esthetician, master esthetician, or nail technician apprenticeships as set forth in Sections R156-11a-800 through R156-11a-804;

(8) failing to comply with the standards for curriculums applicable to barber, cosmetology/barber, esthetics, electrology, or nail technology schools as set forth in Sections R156-11a-700 through R156-11a-706;

(9) using any device classified by the Food and Drug Administration as a prescriptive medical device without the appropriate level of supervision by a licensed health care practitioner acting within the licensed health care practitioner's scope of practice;

(10) performing services within the scope of practice as a basic esthetician, or a master esthetician without having been adequately trained to perform such services;

(11) failing as a supervisor to maintain the appropriate level of supervision while a basic esthetician, an electrologist or a master esthetician is performing service within the scope of practice as set forth in Subsections 58-11a-102(25), (28) and (31);

(12) performing services within the scope of practice as a basic esthetician, a master esthetician or an electrologist without having the appropriate level of supervision as required by Subsection 58-11a-102(25), (28) and (31);

~~(13)~~ violating any standard established in Sections R156-11a-601 through R156-11a-612;

~~(14)~~ performing a procedure while the licensee has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the licensee takes medically approved measures to prevent transmission of the disease; and

~~(15)~~ performing a procedure on a client who has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the licensee takes medically approved measures to prevent transmission of the disease.

R156-11a-503. Administrative Penalties - Unlawful Conduct.

In accordance with Subsections 58-1-501(1)(a) and (c), 58-11a-301(1) and (2), 58-11-502(1), (2) or (4), and 58-11a-503(4), unless otherwise ordered by the presiding officer, the following fine schedule shall apply to citations issued under Title 58, Chapter 11a.

(1) Practicing or engaging in, or attempting to practice or engage in activity for which a license is required under Title 58, Chapter 11a in violation of Subsection 58-11a-502(1).

First Offense: \$200

Second Offense: \$300

(2) Knowingly employing any other person to engage in or practice or attempt to engage in or practice any occupation or profession for which a license is required under Title 58, Chapter 11a in violation of Subsection 58-11a-502(2).

First Offense: \$400

Second Offense: \$800

(3) Using or possessing as a nail technician a solution composed of at least 10% methyl methacrylate on a client in violation of Subsection 58-11a-~~501~~502(4)

First Offense: \$500

Second Offense: \$1,000

(4) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-11a-503(4) (h).

(5) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(6) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(7) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-11a-605. Standards for Protection of Students.

In accordance with Subsections 58-11a-302(3)(c)(iii) and (iv), (6)(c)(iii) and (iv), (9)(c)(iii) and (iv), (13)(c)(iii) and (iv), (16)(c)(iii) and (iv), standards for the protection of students shall include the following:

(1) In the event a school ceases to operate for any reason, the school shall notify the division within 15 days by registered or certified mail and shall name a trustee who ~~will be~~is responsible ~~to~~for maintaining the student records. Upon request, the trustee shall provide information such as accumulated student hours and dates of attendance.

(2) Schools shall provide a copy of the written contract prepared in accordance with Section R156-11a-607 to each student.

~~(3)~~ Schools shall not use students to perform maintenance, janitorial or remodeling work such as scrubbing floor, walls or toilets, cleaning windows, waxing floors, painting, decorating, or performing any outside work on the grounds or building. Students may be required to clean up after themselves and to perform or participate in daily cleanup of work areas, including the floor space, shampoo bowls, laundering of towels and linen and other general cleanup duties that are related to the performance of client services.

~~(4)~~ Schools shall not require students to sell products applicable to their industry as a condition to graduate, but may provide instruction in product sales techniques as part of their curriculums.

~~(5)~~ Schools shall keep a daily written record of student attendance.

~~(6)~~ Schools shall not be permitted to remove hours earned by a student. If a student is late for class, the school may require the student to retake the class before giving credit for the class.

~~(7)~~ In accordance with Subsection 58-11a-502(3)(a), schools shall not require students to participate in hair removal training that pertains to the genitals or anus of a client.

R156-11a-606. Standards for Protection of Schools.

In accordance with Subsections 58-11a-302(3)(c)(iv), (6)(c)(iv), (9)(c)(iv), (13)(c)(iv), and (16)(c)(iv), standards for the protection of barber, cosmetology/barber, electrology, esthetics, and nail technology schools shall include the following:

(1) Schools shall not be required to release documentation of hours earned to a student until the student has paid the tuition or fees owed to the school as provided in the terms of the contract.

(2) Schools may accept transfer students from schools with the same license classification. Schools shall determine the amount of hours to be accepted toward graduation based upon an evaluation of the student's level of training.

(3) Schools may accept credit hours from schools with different license classifications as specified in Subsection 58-11a-302(18).

~~(3)~~(4) Hours obtained while enrolled in a barber, cosmetology/barber, esthetics, master esthetics, or nail technology apprenticeship shall not be used to satisfy any of the required hours of school instruction.

R156-11a-706. Curriculum for Instructor[s] Schools.

In accordance with Subsections 58-11a-302(2)(e)(i), (5)(e)(i), (8)(e)(i), (12)(e)(i) and (15)(e)(i), the curriculum for an approved instructor school shall consist of instructor training in the following subjects:

- (1) motivation and the learning process;
- (2) teacher preparation;
- (3) teaching methods;
- (4) classroom management;
- (5) testing;
- (6) instructional evaluation;
- (7) laws, rules and regulations; and

(8) Utah Barber, Cosmetology/Barber, Esthetics (Master level), Electrology and Nail Technology Instructors Examination review.

R156-11a-800. Approved Barber Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(1), the requirements for an approved barber apprenticeship shall include the following:

(1) The instructor shall have only one apprentice at a time.

(2) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training".

(3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services which will document the total number of hours of training. The record shall be available to the Division upon request.

(4) A complete set of barber texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The instructor shall provide training and technical instruction of 1,250 hours using the curriculum defined in Section R156-11a-700.

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-700.

(9) Any hours obtained while enrolled in a barber school or a cosmetology/barber school shall not be used to satisfy the required 1,250 hours of apprentice training.

R156-11a-901. Standards for an On the Job Training Internship.

In accordance with Subsection 58-11a-304(8), students enrolled in a licensed cosmetology/barber school may participate in an on the job training internship if they meet the following requirements:

(1) The on the job training intern shall have completed at least 1,000 hours of the training contracted with a cosmetology/barber school, of which 400 hours shall be clinical hours.

(2) There shall be a conspicuous sign near the work station of the on the job training intern stating "Intern in Training".

(3) A licensed "on-site" cosmetology/barber shall supervise only one on the job training intern at a time.

(4) An on the job training intern, while working under the direct supervision of an "on-site" licensed cosmetologist/barber, may perform the following procedures:

- (a) draping;
- (b) shampooing;
- (c) roller setting;
- (d) blow drying styling;
- (e) applying color;
- (f) removing color by rinsing and shampooing;
- (g) removing permanent chemicals;
- (h) removing permanent rods;
- (i) removing rollers;
- (j) applying temporary rinses, reconditioners, and

rebuilders;

- (k) acting as receptionists;
- (l) doing retail sales;
- (m) sanitizing the salon;
- (o) doing inventory and ordering supplies; and
- (p) handing equipment to the cosmetologist/barber

supervisor.

(5) The "on-site" cosmetologist/barber supervisor shall have in the supervisor's possession a letter, which must be updated on a quarterly basis, from the school where the on the job training intern is enrolled stating that the on the job training intern is currently in good standing at the school and is complying with school requirements.

(6) Hours of training spent while performing on the job training as an intern shall not apply towards credits required for graduation.

KEY: cosmetologists/barbers, estheticians, electrologists, nail technicians

Date of Enactment or Last Substantive Amendment: [~~August 10, 2009~~]2010

Notice of Continuation: April 12, 2007
Authorizing, and Implemented or Interpreted Law:
58-11a-101; 58-1-106(1)(a); 58-1-202(1)(a)

**Commerce, Occupational and
Professional Licensing
R156-31c
Nurse Licensure Compact Rule**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 33705
FILED: 06/03/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this filing is to better define the term "business day" as used in this rule and to update a statutory citation.

SUMMARY OF THE RULE OR CHANGE: Section R156-31c-102 adds a definition for the term "business days" as used in Subsection R156-31c-201(9) to mean scheduled work days for the nurse licensing agency of the new home state. In Section R156-31c-103, the statutory citation is updated.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-31c-103 and Subsection 58-1-106(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division will incur minimal costs to print and distribute the rule once the proposed amendments are made effective. However, costs will be nominal since this rule isn't a typical licensing act rule and thus will have a more limited distribution. When the "new home state" is Utah, this rule change merely clarifies that "business days" are the State's four-day work week day. Any minimal costs will be absorbed in the Division's current budget.

◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed nurses and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments. The proposed amendments are essentially a clarification and will not affect local governments.

◆ **SMALL BUSINESSES:** The proposed amendments only apply to licensed nurses and applicants for licensure in those classifications. Licensees and applicants for licensure may work in a small business; however, the proposed

amendments would not directly affect the business as the proposed amendments are essentially only a clarification.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to licensed nurses and applicants for licensure in those classifications. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business as the proposed amendments are essentially only a clarification. For other states when they are the new home state, this rule change merely clarifies that their scheduled work days constitute "business days" as used in the rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed nurses and applicants for licensure in those classifications. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business as the proposed amendments are essentially only a clarification. For other states when they are the new home state, this rule change merely clarifies that their scheduled work days constitute "business days" as used in the rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing clarifies the definition of "business days" to account for this State's four-day work week. No fiscal impact to businesses is anticipated.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ W. Ray Walker by phone at 801-530-6256, by FAX at 801-530-6511, or by Internet E-mail at raywalker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-31c. Nurse Licensure Compact Rule.
R156-31c-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 31c, as used in Title 58, Chapter 31c or this rule:

(1) "Board", as used in this rule, means the party state's regulatory body responsible for issuing nurse licenses.

(2) "Business days", as used in Subsection R156-31c-201(9), means scheduled work days for the nurse licensing agency of the new home state.

(3) "Information system", as used in this rule, means the coordinated licensure information system as defined in Section 58-31c-102.

(4) "Primary state of residence", as used in this rule, means the state of a person's declared fixed permanent and principal home for legal purposes; domicile.

(5) "Public", as used in this rule, means any individual or entity other than designated staff or representatives of party state Boards or the National Council of State Boards of Nursing, Inc.

R156-31c-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 31c.

KEY: nurses, licensing

Date of Enactment or Last Substantive Amendment: ~~May 11, 2009~~ 2010

Notice of Continuation: September 21, 2009

Authorizing, and Implemented or Interpreted Law: 58-31c-103; 58-1-106(1)(a)

Commerce, Occupational and Professional Licensing
R156-38b
State Construction Registry Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33736

FILED: 06/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this filing is to better define the term "business day" as used in this rule and to make other technical changes.

SUMMARY OF THE RULE OR CHANGE: Throughout the rule, the term "rules" is changed to "rule" where appropriate and "division" is changed to "Division". In Subsection R156-38b-401(5), an addition is made to clarify the term "business days" means Mondays through Fridays with legal holidays excluded.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 38-1-30(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$75 to print and distribute the rule once the proposed amendments are made effective. Any minimal printing and mailing costs will be absorbed in the Division's current budget. Otherwise this proposed rule change is essentially a clarification and technical changes resulting in no impact to the state budget. The main purpose of the filing is merely to clarify that the three business days for system recovery of the State Construction Registry (SCR) by the Division's designated agent means Mondays through Fridays with legal holidays excluded. The Division's designated agent operates the SCR as a 24/7 online application and this rule change clarifying the term business days merely conforms to the normal meaning of business days for the purposes of the Division's designated agent, as opposed to the Division's current four-day work week. This rule was written before the state converted to a four-day work week and so this clarification matches what was the original meaning of the term.

◆ **LOCAL GOVERNMENTS:** The proposed amendments are essentially a clarification and technical changes and will not affect local governments.

◆ **SMALL BUSINESSES:** The proposed amendments are essentially a clarification and technical changes and will not affect small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments are essentially a clarification and technical changes and will not affect other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments are essentially a clarification and technical changes and will not result in any additional compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing clarifies a deadline for the Division's agent who administers the State Construction Registry - if there is a system failure, the agent must restore full production within three business days, which are defined as Mondays through Fridays excluding legal holidays as opposed to Utah's four-day work week. No fiscal impact to businesses is anticipated from this clarification.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ W. Ray Walker by phone at 801-530-6256, by FAX at 801-530-6511, or by Internet E-mail at raywalker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-38b. State Construction Registry Rule[s].

R156-38b-101. Title.

~~[These rules are]~~This rule is known as the "State Construction Registry Rule[s]".

R156-38b-102. Definitions.

In addition to the definitions in Section 38-1-27, State Construction Registry -- Form and contents of notice of commencement, preliminary notice, and notice of completion; Title 58, Chapter 1, Division of Occupational and Professional Licensing Act; and Rule R156-1, General Rule[s] of the Division of Occupational and Professional Licensing; which shall apply to these rules, as used in the referenced statutes or ~~[these rules]~~this rule:

(1) "Alternate method or process" means transmission by telefax, by U.S. mail, or by private commercial courier.

(2) "Electronic" or "Electronically" means transmission by Internet or by electronic mail and does not mean a transmission by alternate methods or process.

(3) "J2EE" means SUN Microsystem's Java 2 Platform, Enterprise Edition, for multi-tier server-oriented enterprise applications.

(4) "Merge" means to link two or more filings together under a unique project number as required by Subsection 38-1-31(1)(d).

(5) "SCR" means the State Construction Registry established in Sections 38-1-27 and 38-1-30 through 38-1-37.

R156-38b-103. Authority - Purpose.

~~[These rules are]~~This rule is adopted by the Division under the authority of Sections 38-1-27 and 38-1-30 through 38-1-37 to administer the SCR.

R156-38b-401. Reliability, Availability and Security Standards.

The designated agent shall provide a reliable hosting environment which shall contain the following elements:

(1) Operating Standard. The SCR shall initially adhere to the J2EE standard and such standard in the future as the Division shall designate in cooperation with the designated agent.

(2) System Upgrades. The designated agent shall notify the Division when the SCR requires an update that may cause significant service interruption. Functional or structural changes that impact the system requirements shall require prior approval from the Division.

(3) Security. The designated agent shall take commercially reasonable steps to provide that the information contained in the SCR is secure and protected from unauthorized entry.

(4) System Backup. The designated agent shall provide adequate backup of the system and its data, including the following:

(a) Redundant Servers. There shall be multiple servers running the SCR and Internet environments, but no more than two sets of servers.

(b) Data Backup Environment. There shall be facilities to continuously back up data contained in the SCR. This backed-up data must be easily retrieved and either viewed or placed back into the SCR if required.

(c) Redundant Power Supply. Provide a single reliable redundant power supply for entire environment.

(5) System Recovery. In the event of a system failure, the designated agent shall provide system recovery and re-deployment to meet a standard that will result in restoration into full production within a maximum of three business days which are defined as Mondays through Fridays with legal holidays excluded. In the event of destruction of the designated agent's primary hosting facility, the designated agent shall meet a standard whereby complete service restoration could be implemented within two weeks provided the telecommunications and data center vendor can meet this schedule.

(6) Software Licensing. The designated agent shall maintain legitimate software licenses for all purchased software used for the SCR.

(7) System Monitoring. Provide continuous monitoring of SCR environment.

(8) System Support. Provide appropriate personnel to continuously maintain the SCR environment.

(9) Continuity of Operations. In the event that, for whatever reason, operation and maintenance of the SCR is transferred to the state or another designated agent, continuity of the SCR shall be maintained in accordance with the governing contractual provisions with the designated agent.

(10) In the event that the Division elects to provide some of the services listed in (1) through (8) above, the designated agent will be relieved of the responsibilities for the services so assumed. Such election by the Division shall be in writing.

R156-38b-501. Notices of Commencement.

(1) Content Requirements. The content of notices of commencement shall be in accordance with Subsection 38-1-31(2).

(2) Persons Who Must File Notices. In accordance with Subsections 38-1-31(1)(a) and (b), the following are required to file a notice of commencement:

(a) For a construction project where a building permit is issued, within 15 days after the issuance of the building permit, the local government entity issuing that building permit shall input the data and transmit the building permit information to the database electronically or by alternate method and such building permit information shall form the basis of a notice of commencement. The local government entity may not transfer this responsibility to the person who is issued or is to be issued the building permit.

(b) For a construction project where a building permit is not issued, within 15 days after commencement of physical construction work at the project site, the original contractor shall file a notice of commencement with the SCR.

(3) Persons Who May File Notices.

(a) In accordance with Subsection 38-1-31(1)(c), an owner of a construction project or original contractor may but is not required to file a notice of commencement with the designated agent within the prescribed time set forth in Subsection 38-1-31(1)(a) or (b).

(b) The parties identified in R156-38b-501(3)(a) may authorize a third party to file a notice of commencement on its behalf, as established in Subsection 38-1-27(9).

(4) Methodology.

(a) Electronic notice of commencement filings shall be input into the SCR by the person making the filing and shall not be accepted by the SCR unless the person complies with the content requirements for filing a notice of commencement.

(b) Alternate method notice of commencement filings shall be in accordance with this Section and Section R156-38-505.

(c) Checking for Existing Notices. In order to prevent duplicate filings of notices of commencement, a search of the SCR shall be performed for any existing notices of commencement and existing filed amendments before creating a new notice of commencement for a project.

(i) If an existing notice of commencement is identified the following procedures apply:

(A) For an electronic filing by the person attempting to file the new notice of commencement, the SCR shall indicate that a notice of commencement may have already been filed for the project and display the possible notice or notices of commencement that may match the existing project filing. The SCR shall allow the user to review the content of any existing notices to determine whether a notice has already been filed for the project before allowing a new notice to be filed.

(I) If a notice of commencement already exists for the project but the person attempting to file the notice of commencement believes the content of the filing is not accurate, the person shall be given the option of submitting amendments to the content of the notice. The SCR shall reflect the submission date of the amendments, but the filing date of the notice shall remain unchanged. If the person attempting to file the new notice of commencement believes the existing notice is accurate, the system shall permit the proposed new filing to be terminated.

(B) For an alternate method filing, input by the designated agent for the person filing the notice of commencement, the designated agent shall notify the person by electronic or alternate method as specified by the filer, that a notice of commencement has already been filed for the particular project and include a copy of the existing notice of commencement. In addition, the user will be notified that the notice of commencement will be added to the construction project as an amendment to the original filing in the SCR and the appropriate fee will be charged.

(ii) As part of the process described in Subsection R156-38b-501(4)(c)(i), the SCR search for an existing notice of commencement shall display, for review by the person who submitted the search parameters, all notice of commencement filings that fit the search parameters indicated by the submission that prompted the search. The purpose of this requirement is to enable the person to properly identify any existing notice of commencement before a new notice of commencement is created, to avoid duplicate notice of commencement filings.

(iii) If no existing notice of commencement is identified for the particular project, the SCR shall allow the person who submitted the filing to file a new notice of commencement.

(d) Creation of New Notices.

(i) A new notice of commencement shall not be accepted into the SCR until the SCR system has checked for an existing notice in accordance with the procedures outlined in Subsection R156-38b-501(4).

(ii) In accordance with Subsection 38-1-31(1)(d), when a new notice of commencement filing is accepted into the SCR, the SCR shall assign the project a unique project number that identifies the project and can be associated with all future notices of commencement, preliminary notices, notices of completion, and requests for notification applicable to the project.

(e) Merging of Duplicate Filings. Duplicate filings shall be avoided to the extent possible in accordance with the procedure outlined in this Subsection. The SCR shall include functionality to allow a person who has successfully filed, amended or corrected a notice of commencement which duplicates another notice of commencement already in the SCR to merge the notice of commencement with the existing notice of commencement filing.

(i) The SCR shall reflect the effective date of the merger.

(ii) The SCR shall provide notification of the merger to all persons who are associated with either notice of commencement filing, including those who have filed preliminary notices.

(iii) The effective date of a merger reflects the date the unique merger number was cross-referenced to duplicate notice of commencement filings. A merger does not dissolve or affect the filing dates, or the consequences of the filing dates, of the notices being combined.

(f) Resolving Multiple or Inconsistent Property Descriptions.

(i) The person making a notice of commencement filing shall be responsible for correctly identifying a project, and for the consequences of failing to correctly identify a project.

(ii) Neither the [d]Division nor the designated agent shall be responsible for the consequences of a person making a notice of commencement filing that identifies a project in such a way that the SCR is unable to identify an existing notice of commencement for the project, according to the search criteria established by the Division in collaboration with the designated agent, nor for the SCR allowing the person to make a successful duplicate notice of commencement filing with a different description of the project.

R156-38b-505. Alternate Filings.

(1) Alternate Methods of Filing. The alternate methods of filing are those established by Subsections 38-1-27(2)(e)(ii), i.e., U.S. Mail and telefax. Private commercial courier is established as an additional alternate method of receipt by the designated agent, but not dispatch from the designated agent.

(2) Content Requirements. The content requirements for alternate method filings shall be the same as for electronic filings as set forth for Notices of Commencement, Preliminary Notices, and Notices of Completion in Sections 38-1-31, 38-1-32, and 38-1-33, respectively, or ~~these rules~~ this rule.

(3) Format Requirements. Alternate method filings shall be submitted in a standard format adopted by the Division in collaboration with the designated agent. Filings not submitted in the standard format, in the sole judgment of the designated agent,

shall be rejected and dispatched to the submitter. The filing fee shall be retained by the designated agent as a processing fee for rejecting and dispatching the filing. An additional filing fee shall be due upon resubmission.

(4) Methodology.

(a) U.S. Mail. An alternate method filing by U.S. Mail shall be submitted to the designated agent's mailing address by any method of U.S. Mail.

(b) Express Mail. An alternate method filing by commercial private courier shall be submitted to the designated agent's mailing address by any commercially available method of express mail.

(c) Telefax. An alternate method filing by telefax shall be submitted to the designated agent's toll-free unique SCR fax number.

(5) Processing Requirements.

(a) Transaction Receipt. The designated agent shall confirm a successful alternate method filing and fee payment receipt by sending a transaction receipt as specified in Section R156-38b-602.

(b) Creation of Electronic Image. The designated agent shall create and maintain an electronic image of alternate method filings that are accepted into the SCR. Once an electronic image has been created and the accepted alternate method filing has been entered into the SCR, the original version of the accepted alternate method filing may be destroyed. The electronic image shall remain accessible for audit purposes.

(6) Data Entry Standards.

(a) The designated agent shall meet or exceed the following data entry standards for alternate filings:

(i) a primary operator shall manually input information required by Subsection 38-1-31(2)(a);

(ii) a secondary operator shall independently input the construction project permit number and original contractor name;

(iii) the designated agent shall automatically compare all entries from the primary and secondary operators for consistency;

(iv) following the above procedures, the designated agent shall visually inspect at least 5% of all notices created by alternate filing; and

(v) these standards are to be met prior to Internet publication.

KEY: electronic preliminary lien filing, notice of commencement, preliminary notice, notice of completion

Date of Enactment or Last Substantive Amendment: [~~August 22, 2006~~2010]

Notice of Continuation: February 8, 2010

Authorizing, and Implemented or Interpreted Law: 38-1-30(3)

Commerce, Occupational And Professional Licensing **R156-55a**

Utah Construction Trades Licensing Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33737

FILED: 06/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule filing is to update the rule as necessitated by H.B. 11, H.B. 73, and H.B. 176 which were enacted during the 2010 Legislative Session and to further clarify qualifier requirements and continuing education requirements. (DAR NOTE: H.B. 11 (2010) is found at Chapter 227, Laws of Utah 2010, and was effective 05/11/2010. H.B. 73 (2010) is found at Chapter 53, Laws of Utah 2010, and was effective 05/11/2010. H.B. 176 (2010) is found at Chapter 57, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: Statutory citation references throughout the rule have been updated due to changes in Title 58, Chapter 55. The term "division" has been capitalized throughout the rule where appropriate. In Section R156-55a-301, amendments add a new contractor license classification for elevator contractors which was added by H.B. 11 and deletes elevator installation and maintenance from the list of activities that are not regulated under contractor license statutes and rules. In Section R156-55a-302b, amendments clarify that a proposed qualifier must obtain lawful experience as a W-2 employee or an owner of a licensed contractor which has appropriately employed a qualifier while the owner is obtaining experience. The amendments also clarify the comparable experience that may be obtained by a person who obtained experience out of state. These procedures have been followed for many years but have not been adequately stated in this rule. In Section R156-55a-303b, the proposed amendments provide that continuing education for electricians, plumbers, and elevator mechanics added by H.B. 176 and H.B. 11 in Section 58-55-302.7 and Subsection 58-55-303(6), respectively, completed by an employee or owner of a contractor will satisfy the contractor continuing education requirement codified by H.B. 73 in Section 58-55-302.5. In Section R156-55a-304, the proposed amendments clarify the minimum involvement a qualifier must have to exercise material authority as provided in statute.

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$75 to print and distribute the rule once the proposed amendments are made effective. Any costs

incurred will be absorbed in the Division's current budget. Also, the proposed amendments to the rule have been made to implement H.B. 11, H.B. 73, and H.B. 176 which were enacted during the 2010 Legislative Session and will not result in any additional impact to any party beyond what was identified in the legislative fiscal notes associated with those bills.

♦ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed contractors and applicants for licensure in that classification. As a result, the proposed amendments do not apply to local governments. Also, the proposed amendments to the rule have been made to implement H.B. 11, H.B. 73, and H.B. 176 which were enacted during the 2010 Legislative Session and will not result in any additional impact to any party beyond what was identified in the legislative fiscal notes associated with those bills.

♦ **SMALL BUSINESSES:** The proposed amendments to the rule have been made to implement H.B. 11, H.B. 73, and H.B. 176 which were enacted during the 2010 Legislative Session and will not result in any additional impact to any party beyond what was identified in the legislative fiscal notes associated with those bills.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments to the rule have been made to implement H.B. 11, H.B. 73, and H.B. 176 which were enacted during the 2010 Legislative Session and will not result in any additional impact to any party beyond what was identified in the legislative fiscal notes associated with those bills.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments to the rule have been made to implement H.B. 11, H.B. 73, and H.B. 176 which were enacted during the 2010 Legislative Session and will not result in any additional impact to any party beyond what was identified in the legislative fiscal notes associated with those bills. Contractors may be affected by the qualifier requirement clarifications; however, this impact should be minimal because qualifiers are already required to exercise material authority in the conduct of the contractors business.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing implements various statutory changes including a new elevator contractor licensing classification and new continuing education requirements for electricians and plumbers. No fiscal impact is anticipated beyond that addressed through umbrella legislation. The rule filing also clarifies contractor licensee qualifier requirements. No fiscal impact is anticipated as to this change, which codifies the existing practice regarding qualifiers.

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

COMMERCE
OCCUPATIONAL AND PROFESSIONAL
LICENSING

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 07/28/2010 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-55a. Utah Construction Trades Licensing Act Rule.

R156-55a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as defined or used in this rule:

(1) "Construction trades instructor", as used in Subsection 58-55-301(2)([e]p) is clarified to mean the education facility which is issued the license as a construction trades instructor. It does not mean individuals employed by the facility who may teach classes.

(2) "Construction trades instruction facility" means the facility which is granted the license as a construction trades instructor as specified in Subsection 58-55-301(2)([e]p) and as clarified in R156-55a-102(1).

(3) "Employee", as used in Subsections 58-55-102(12)(a) and 58-55-102([14]17), means a person providing labor services in the construction trades who works for a licensed contractor, or the substantial equivalent of a licensed contractor as determined by the Division, for compensation who has federal and state taxes withheld and workers' compensation and unemployment insurance provided by the person's employer.

(4) "Incidental", as used in Subsection 58-55-102([36]39), means work which:

(a) can be safely and competently performed by the specialty contractor; and

(b) arises from and is directly related to work performed in the licensed specialty classification and does not exceed 10 percent of the overall contract and does not include performance of any electrical or plumbing work unless specifically included in the specialty classification description under Subsection R156-55a-301(2).

(5) "Maintenance" means the repair, replacement and refinishing of any component of an existing structure; but, does not include alteration or modification to the existing weight-bearing structural components.

(6) "Mechanical", as used in Subsections 58-55-102([+8]21) and 58-55-102([29]32), means the work which may be performed by a S350 HVAC Contractor under Section R156-55a-301.

(7) "Personal property" means, as it relates to Title 58, Chapter 56, factory built housing and modular construction, a structure which is titled by the Motor Vehicles Division, state of Utah, and taxed as personal property.

(8) "Qualifier", as used in Title 58, Chapter 55 and this rule, means the individual who demonstrates competence for a contractor or construction trades instruction facility license by passing the examinations, completing the experience requirements or holding the individual licenses that are prerequisite requirements to obtain the contractor or construction trades instruction facility license.

(9) "School" means a Utah school district, applied technology college, or accredited college.

(10) "Unprofessional conduct" defined in Title 58, Chapters 1 and 55, is further defined in accordance with Section 58-1-203 in Section R156-55a-501.

R156-55a-103. Authority.

This rule is adopted by the [d]Division under the authority of Subsection 58-1-106(1)(a) to enable the [d]Division to administer Title 58, Chapter 55.

R156-55a-301. License Classifications - Scope of Practice.

(1) In accordance with Subsection 58-55-301(2), the classifications of licensure are listed and described in this section. The construction trades or specialty contractor classifications listed are those determined to significantly impact the public health, safety, and welfare. A person who is engaged in work which is included in the items listed in Subsections R156-55a-301(4) and (5) is exempt from licensure in accordance with Subsection 58-55-305(1)(i).

(2) Licenses shall be issued in the following primary classifications and subclassifications:

E100 - General Engineering Contractor. A General Engineering contractor is a contractor licensed to perform work as defined in Subsection 58-55-102([+9]22).

B100 - General Building Contractor. A General Building contractor is a contractor licensed to perform work as defined in Subsection 58-55-102([+8]21) and pursuant to Subsection 58-55-102([+8]21)(b) is clarified as follows:

(a) The General Building Contractor scope of practice does not include activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the North American Board of Certified Energy Practitioners.

(b) The General Building Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

B200 - Modular Unit Installation Contractor. Set up or installation of modular units as defined in Subsection

58-56-3([+4]15) and constructed in accordance with Section 58-56-13. The scope of the work permitted under this classification includes construction of the permanent or temporary foundations, placement of the modular unit on a permanent or temporary foundation, securing the units together if required and securing the modular units to the foundations. Work excluded from this classification includes installation of factory built housing and connection of required utilities.

R100 - Residential and Small Commercial Contractor. A Residential and Small Commercial contractor is a contractor licensed to perform work as defined in Subsection 58-55-102([29]32) and pursuant to Subsection 58-55-102([29]32) is clarified as follows:

(a) The Residential and Small Commercial Contractor scope of practice does not include activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the North American Board of Certified Energy Practitioners.

(b) The Residential and Small Commercial Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

R101 - Residential and Small Commercial Non Structural Remodeling and Repair. Remodeling and repair to any existing structure built for support, shelter and enclosure of persons, animals, chattels or movable property of any kind with the restriction that no change is made to the bearing portions of the existing structure, including footings, foundation and weight bearing walls; and the entire project is less than \$50,000 in total cost.

R200 - Factory Built Housing Contractor. Disconnection, setup, installation or removal of manufactured housing on a temporary or permanent basis. The scope of the work permitted under this classification includes placement of the manufactured housing on a permanent or temporary foundation, securing the units together if required, securing the manufactured housing to the foundation, and connection of the utilities from the near proximity, such as a meter, to the manufactured housing unit and construction of foundations of less than four feet six inches in height. Work excluded from this classification includes site preparation or finishing, excavation of the ground in the area where a foundation is to be constructed, back filling and grading around the foundation, construction of foundations of more than four feet six inches in height and construction of utility services from the utility source to and including the meter or meters if required or if not required to the near proximity of the manufactured housing unit from which they are connected to the unit.

I101 - General Engineering Trades Instruction Facility. A General Engineering Trades Instruction Facility is a construction trades instruction facility authorized to teach the construction trades and is subject to the scope of practice defined in Subsection 58-55-102([+9]22).

I102 - General Building Trades Instruction Facility. A General Building Trades Instruction Facility is a construction trades instruction facility authorized to teach the construction trades and is

subject to the scope of practice defined in Subsections 58-55-102([18]21) or 58-55-102([29]32).

I103 - Electrical Trades Instruction Facility. An Electrical Trades Instruction Facility is a construction trades instruction facility authorized to teach the electrical trades and subject to the scope of practice defined in Subsection R156-55a-301(S200).

I104 - Plumbing Trades Instruction Facility. A Plumbing Trades Instruction Facility is a construction trades instruction facility authorized to teach the plumbing trades and subject to the scope of practice defined in Subsection R156-55a-301(S210).

I105 - Mechanical Trades Instruction Facility. A Mechanical Trades Instruction Facility is a construction trades instruction facility authorized to teach the mechanical trades and subject to the scope of practice defined in Subsection R156-55a-301(S350).

S200 - General Electrical Contractor. Fabrication, construction, and/or installation of generators, transformers, conduits, raceways, panels, switch gear, electrical wires, fixtures, appliances, or apparatus which utilizes electrical energy. The General Electrical Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

S201 - Residential Electrical Contractor. Fabrication, construction, and/or installation of services, disconnecting means, grounding devices, panels, conductors, load centers, lighting and plug circuits, appliances and fixtures in any residential unit, normally requiring non-metallic sheathed cable, including multiple units up to and including a four-plex, but excluding any work generally recognized in the industry as commercial or industrial.

S202 - Solar Photovoltaic Contractor. Fabrication, construction, installation, and repair of photovoltaic cell panels and related components including battery storage systems, distribution panels, switch gear, electrical wires, inverters, and other electrical apparatus for solar photovoltaic systems. Work excluded from this classification includes work on any alternating current system or system component.

S210 - General Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in buildings, by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting, heating, and industrial purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a building out to the main water, sewer or gas pipeline. The General Plumbing Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

S211 - Boiler Installation Contractor. Fabrication and/or installation of fire-tube and water-tube power boilers and hot water

heating boilers, including all fittings and piping, valves, gauges, pumps, radiators, converters, fuel oil tanks, fuel lines, chimney flues, heat insulation and all other devices, apparatus, and equipment related thereto.

S212 - Irrigation Sprinkling Contractor. Layout, fabrication, and/or installation of water distribution system for artificial watering or irrigation.

S213 - Industrial Piping Contractor. Fabrication and/or installation of pipes and piping for the conveyance or transmission of steam, gases, chemicals, and other substances including excavating, trenching, and back-filling related to such work.

S214 - Water Conditioning Equipment Contractor. Fabrication and/or installation of water conditioning equipment and only such pipe and fittings as are necessary for connecting the water conditioning equipment to the water supply system within the premises.

S215 - Solar Thermal Systems Contractor. Construction, repair and/or installation of solar thermal systems up to the system shut off valve or where the system interfaces with any other plumbing system.

S216 - Residential Sewer Connection and Septic Tank Contractor. Construction of residential sewer lines including connection to the public sewer line, and excavation and grading related thereto. Excavation, installation and grading of residential septic tanks and their drainage.

S217 - Residential Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in residential building, including multiple units up to and including a four-plex by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting and heating purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a residential building out to the main water, sewer or gas pipeline. Excluded is any new construction and service work generally recognized in the industry as commercial or industrial.

S220 - Carpentry Contractor. Fabrication for structural and finish purposes in a structure or building using wood, wood products, metal studs, vinyl materials, or other wood/plastic/metal composites as is by custom and usage accepted in the building industry as carpentry. Incidental work includes the installation of tub liners and wall systems.

S221 - Cabinet, Millwork and Countertop Installation Contractor. On-site construction and/or installation of milled wood products or countertops.

S222 - Overhead and Garage Door Contractor. The installation of overhead and garage doors and door openers.

S230 - Siding Contractor. Fabrication, construction, and/or installation of siding.

S231 - Rainutter Installation Contractor. On-site fabrication and/or installation of rainutters and drains, roof flashings, gravel stops and metal ridges.

S240 - Glass and Glazing Contractor. Fabrication, construction, installation, and/or removal of all types and sizes of glass, mirrors, substitutes for glass, glass-holding members, frames, hardware, and other incidental related work.

S250 - Insulation Contractor. Installation of any insulating media in buildings and structures for the sole purpose of temperature control, sound control or fireproofing, but shall not include mechanical insulation of pipes, ducts or conduits.

S260 - General Concrete Contractor. Fabrication, construction, mixing, batching, and/or installation of concrete and related concrete products along with the placing and setting of screeds for pavement for flatwork, the construction of forms, placing and erection of steel bars for reinforcing and application of plaster and other cement-related products.

S261 - Concrete Form Setting and Shoring Contractor. Fabrication, construction, and/or installation of forms and shoring material; but, does not include the placement of concrete, finishing of concrete or embedded items such as metal reinforcement bars or mesh.

S262 - Gunnite and Pressure Grouting Contractor. Installation of a concrete product either injected or sprayed under pressure.

S263 - Cementitious Coating Systems Resurfacing and Sealing Contractor. Fabrication, construction, mixing, batching and installation of cementitious coating systems or sealants limited to the resurfacing or sealing of existing surfaces, including the preparation or patching of the surface to be covered or sealed.

S270 - General Drywall and Plastering Contractor. Fabrication, construction, and installation of drywall, gypsum, wallboard panels and assemblies. Preparation of drywall or plaster surfaces for suitable painting or finishing. Application to surfaces of coatings made of plaster, including the preparation of the surface and the provision of a base. This does not include applying stucco to lathe, plaster and other surfaces. Exempted is the plastering of foundations.

S272 - Ceiling Grid Systems, Ceiling Tile and Panel Systems Contractor. Fabrication and/or installation of wood, mineral, fiber, and other types of ceiling tile and panels and the grid systems required for placement.

S273 - Light-weight Metal and Non-bearing Wall Partitions Contractor. Fabrication and/or installation of light-weight metal and other non-bearing wall partitions.

S280 - General Roofing Contractor. Application and/or installation of asphalt, pitch, tar, felt, flax, shakes, shingles, roof tile, slate, and any other material or materials, or any combination of any thereof which use and custom has established as usable for, or which are now used as, water-proof, weatherproof, or watertight seal or membranes for roofs and surfaces; and roof conversion. Incidental work includes the installation of roof clamp ring to the roof drain.

S290 - General Masonry Contractor. Construction by cutting, and/or laying of all of the following brick, block, or forms: architectural, industrial, and refractory brick, all brick substitutes, clay and concrete blocks, terra-cotta, thin set or structural quarry tile, glazed structural tile, gypsum tile, glass block, clay tile, copings, natural stone, plastic refractories, and castables and any incidental works, including the installation of shower pans, as required in construction of the masonry work.

S291 - Stone Masonry Contractor. Construction using natural or artificial stone, either rough or cut and dressed, laid at random, with or without mortar. Incidental work includes the installation of shower pans.

S292 - Terrazzo Contractor. Construction by fabrication, grinding, and polishing of terrazzo by the setting of chips of marble, stone, or other material in an irregular pattern with the use of cement, polyester, epoxy or other common binders. Incidental work includes the installation of shower pans.

S293 - Marble, Tile and Ceramic Contractor. Preparation, fabrication, construction, and installation of artificial marble, burned clay tile, ceramic, encaustic, falence, quarry, semi-vitreous, and other tile, excluding hollow or structural partition tile. Incidental work includes the installation of shower pans.

S294 - Cultured Marble Contractor. Preparation, fabrication and installation of slab and sheet manmade synthetic products including cultured marble, onyx, granite, onice, corian, and corian type products. Incidental work includes the installation of shower pans.

S300 - General Painting Contractor. Preparation of surface and/or the application of all paints, varnishes, shellacs, stains, waxes and other coatings or pigments.

S310 - Excavation and Grading Contractor. Moving of the earth's surface or placing earthen materials on the earth's surface, by use of hand or power machinery and tools, including explosives, in any operation of cut, fill, excavation, grading, trenching, backfilling, or combination thereof as they are generally practiced in the construction trade.

S320 - Steel Erection Contractor. Construction by fabrication, placing, and tying or welding of steel reinforcing bars or erecting structural steel shapes, plates of any profile, perimeter or cross-section that are used to reinforce concrete or as structural members, including riveting, welding, and rigging.

S321 - Steel Reinforcing Contractor. Fabricating, placing, tying, or mechanically welding of reinforcing bars of any profile that are used to reinforce concrete buildings or structures.

S322 - Metal Building Erection Contractor. Erection of pre-fabricated metal structures including concrete foundation and footings, grading, and surface preparation.

S323 - Structural Stud Erection Contractor. Fabrication and installation of metal structural studs and bearing walls.

S330 - Landscaping Contractor.

(a) grading and preparing land for architectural, horticultural, or decorative treatment;

(b) arrangement, and planting of gardens, lawns, shrubs, vines, bushes, trees, or other decorative vegetation;

(c) construction of small decorative pools, tanks, fountains, hothouses, greenhouses, fences, walks, garden lighting of 50 volts or less, or sprinkler systems;

(d) construction of retaining walls except retaining walls which are intended to hold vehicles, structures, equipment or other non natural fill materials within the area located within a 45 degree angle from the base of the retaining wall to the level of where the additional weight bearing vehicles, structures, equipment or other non natural fill materials are located; or

(e) patio areas except that:

(i) no decking designed to support humans or structures shall be included; and

(ii) no concrete work designed to support structures to be placed upon the patio shall be included.

(f) This classification does not include running electrical or gas lines to any appliance.

S340 - Sheet Metal Contractor. Layout, fabrication, and installation of air handling and ventilating systems. All architectural sheet metal such as cornices, marquees, metal soffits, gutters, flashings, and skylights and skydomes including both plastic and fiberglass.

S350 - HVAC Contractor. Fabrication and installation of complete warm air heating and air conditioning systems, and complete ventilating systems. The HVAC Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

S351 - Refrigerated Air Conditioning Contractor. Fabrication and installation of air conditioning ventilating systems to control air temperatures below 50 degrees.

S352 - Evaporative Cooling Contractor. Fabrication and installation of devices, machinery, and units to cool the air temperature employing evaporation of liquid.

S353 - Warm Air Heating Contractor. Layout, fabrication, and installation of such sheet metal, gas piping, and furnace equipment as necessary for a complete warm air heating and ventilating system.

S354 - Radon Mitigation Contractor. Layout, fabrication, and installation of a radon mitigation system. This classification does not include work on heat recovery ventilation or makeup air components which must be performed by an HVAC Contractor and does not include electrical wiring which must be performed by an Electrical Contractor.

S360 - Refrigeration Contractor. Construction and/or installation of refrigeration equipment including, but not limited to, built-in refrigerators, refrigerated rooms, insulated refrigerated spaces and equipment related thereto; but, the scope of permitted work does not include the installation of gas fuel or electric power services other than connection of electrical devices to a junction box provided for that device and electrical control circuitry not exceeding 50 volts.

S370 - Fire Suppression Systems Contractor. Layout, fabrication, and installation of fire protection systems using water, steam, gas, or chemicals. When a potable sanitary water supply system is used as the source of supply, connection to the water system must be accomplished by a licensed journeyman plumber. Excluded from this classification are persons engaged in the installation of fire suppression systems in hoods above cooking appliances.

S380 - Swimming Pool and Spa Contractor. On-site fabrication, construction and installation of swimming pools, prefabricated pools, spas, and tubs.

S390 - Sewer and Waste Water Pipeline Contractor. Construction of sewer lines, sewage disposal and sewage drain facilities including excavation and grading with respect thereto, and the construction of sewage disposal plants and appurtenances thereto.

S400 - Asphalt Paving Contractor. Construction of asphalt highways, roadways, driveways, parking lots or other asphalt surfaces, which will include but will not be limited to, asphalt overlay, chip seal, fog seal and rejuvenation, micro surfacing, plant mix sealcoat, slurry seal, and the removal of asphalt

surfaces by milling. Also included is the excavation, grading, compacting and laying of fill or base-related thereto. Also included in painting on asphalt surfaces including striping, directional and other types of symbols or words.

S410 - Pipeline and Conduit Contractor. Fabrication, construction, and installation of pipes, conduit or cables for the conveyance and transmission from one station to another of such products as water, steam, gases, chemicals, slurries, data or communications. Included are the excavation, cabling, horizontal boring, grading, and backfilling necessary for construction of the system.

S420 - General Fencing, Ornamental Iron and Guardrail Contractor. Fabrication, construction, and installation of fences, guardrails, handrails, and barriers.

S421 - Residential Fencing Contractor. Fabrication and installation of residential fencing up to and including a height of six feet.

S430 - Metal Firebox and Fuel Burning Stove Installer. Fabrication, construction, and installation of metal fireboxes, fireplaces, and wood or coal-burning stoves, including the installation of venting and exhaust systems, provided the individual performing the installation is RMGA certified.

S440 - Sign Installation Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state or local governmental jurisdictions. Signs and graphic displays shall include signs of all types, both lighted and unlighted, permanent highway marker signs, illuminated awnings, electronic message centers, sculptures or graphic representations including logos and trademarks intended to identify or advertise the user or his product, building trim or lighting with neon or decorative fixtures, or any other animated, moving or stationary device used for advertising or identification purposes. Signs and graphic displays must be fabricated, installed and erected in accordance with professionally engineered specifications and wiring in accordance with the National Electrical Code.

S441 - Non Electrical Outdoor Advertising Sign Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state and local governmental jurisdictions. Signs and graphics shall include outdoor advertising signs which do not have electrical lighting or other electrical requirements, and in accordance with professionally engineered specifications.

S450 - Mechanical Insulation Contractor. Fabrication, application and installation of insulation materials to pipes, ducts and conduits.

S460 - Wrecking and Demolition Contractor. The raising, cribbing, underpinning, moving, and removal of building and structures.

S470 - Petroleum Systems Contractor. Installation of above and below ground petroleum and petro-chemical storage tanks, piping, dispensing equipment, monitoring equipment and associated petroleum and petro-chemical equipment including excavation, backfilling, concrete and asphalt.

S480 - Piers and Foundations Contractor. The excavation, drilling, compacting, pumping, sealing and other work necessary to construct, alter or repair piers, piles, footings and foundations placed in the earth's subsurface to prevent structural settling and to provide an adequate capacity to sustain or transmit the structural load to the soil or rock below.

S490 - Wood Flooring Contractor. Installation of wood flooring including prefinished and unfinished material, sanding, staining and finishing of new and existing wood flooring. Underlayments, non-structural subfloors and other incidental related work.

S491 - Laminate Floor Installation Contractor. Installation of laminate floors including underlayments, non-structural subfloors and other incidental related work, but does not include the installation of solid wood flooring.

S500 - Sports and Athletic Courts, Running Tracks, and Playground Installation Contractor. Installation of sports and athletic courts including but not limited to tennis courts, racquetball courts, handball courts, basketball courts, running tracks, playgrounds, or any combination. Includes nonstructural floor subsurfaces, nonstructural wall surfaces, perimeter walls and perimeter fencing. Includes the installation and attachment of equipment such as poles, basketball standards or other equipment.

~~S510 - Elevator Contractor. Erecting, constructing, installing, altering, servicing, repairing or maintaining an elevator.~~

S600 - General Stucco Contractor. Applying stucco to lathe, plaster and other surfaces.

S700 - Specialty License Contractor.

(a) A specialty license is a license that confines the scope of the allowable contracting work to a specialized area of construction which the Division grants on a case-by-case basis.

(b) When applying for a specialty license, an applicant, if requested, shall submit to the Division the following:

(i) a detailed statement of the type and scope of contracting work that the applicant proposes to perform; and

(ii) any brochures, catalogs, photographs, diagrams, or other material to further clarify the scope of the work that the applicant proposes to perform.

(c) A contractor issued a specialty license shall confine the contractor's activities to the field and scope of operations as outlined by the Division.

(3)(a) Any person holding a S215 Solar Systems Contractor license before the effective date of this rule may obtain a S202 Solar Photovoltaic Contractor license by submitting an affidavit demonstrating two years of experience that meets the requirements of R156-55a-302b no later than March 31, 2010.

(b) Any person holding a S271 Plastering and Stucco Contractor license before the effective date of this rule shall be issued a S270 General Drywall and Plastering Contractor license.

(c) Any person holding a S274 Drywall Contractor license before the effective date of this rule shall be issued a S270 General Drywall and Plastering Contractor license.

(d) Any person holding a S271 Plastering and Stucco Contractor license or an S270 General Drywall, Stucco and Plastering Contractor license before the effective date of this rule may obtain a S600 General Stucco Contractor license by submitting an affidavit demonstrating two years of experience that meets the requirements of R156-55a-302b no later than March 31, 2010.

(e) Any person holding any of the following licenses before the effective date of this rule shall be issued a S280 General Roofing Contractor license:

- (i) S281 Single Ply and Specialty Coating Contractor;
- (ii) S282 Build-up Roofing Contractor;
- (iii) S283 Shingle and Shake Roofing Contractor;
- (iv) S284 Tile Roofing Contractor; and

(v) S285 Metal Roofing Contractor.

(4) The following activities are determined to not significantly impact the public health, safety and welfare and therefore do not require a contractors license:

(a) sandblasting;

(b) pumping services;

(c) tree stump or tree removal;

(d) installation within a building of communication cables including phone and cable television;

(e) installation of low voltage electrical as described in R156-55b-102(1);

(f) construction of utility sheds, gazebos or other similar items which are personal property and not attached;

(g) building and window washing, including power washing;

(h) central vacuum systems installation;

(i) concrete cutting;

(j) interior decorating;

(k) wall paper hanging;

(l) drapery and blind installation;

(m) welding on personal property which is not attached;

(n) chimney sweepers other than repairing masonry;

(o) carpet and vinyl floor installation; and

(p) artificial turf installation.

(5) The following activities are those determined to not significantly impact the public health, safety and welfare beyond the regulations by other agencies and therefore do not require a contractors license:

(a) lead removal regulated by the Department of Environmental Quality;

(b) asbestos removal regulated by the Department of Environmental Quality; and

~~(c) [elevator installation and maintenance regulated by the Labor Commission; and~~

~~(d)]fire alarm installation regulated by the Fire Marshal.~~

R156-55a-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsection 58-55-302(1)(e)(ii), the minimum experience requirements are established as follows:

(1) Requirements for all license classifications:

(a) ~~[All experience shall be directly supervised by the applicant's employer.]Unless otherwise provided in this rule, all experience shall be lawfully performed under the general supervision of a contractor licensed in the classification applied for or a substantially equivalent classification, and shall be subject to the following:~~

~~(i) If the experience was completed in Utah, it shall be:~~

~~(A) completed while a W-2 employee of a licensed contractor; or~~

~~(B) completed while working as an owner of a licensed contractor, which has for all periods of experience claimed, employed a qualifier who performed the duties and served in the capacities specified in Subsection 58-55-304(4) and in Subsection R156-55a-304.~~

~~(ii) If the experience was completed outside of the state of Utah, it shall be:~~

~~(A) completed in compliance with the laws of the jurisdiction in which the experience is completed; and~~

~~(B) completed with supervision that is substantially equivalent to the supervision that is required in Utah.~~

~~(iii) Experience may be determined to be substantially equivalent if lawfully obtained in a setting which has supervision of qualified persons and an equivalent scope of work, such as performing construction activities in the military where licensure is not required.~~

(b) All experience shall be directly related to the scope of practice set forth in Section R156-55a-301 of the classification the applicant is applying for, as determined by the Division.

(c) One year of work experience means 2000 hours.

(d) No more than 2000 hours of experience during any 12 month period may be claimed.

(e) Except as described in Subsection (2)(c), experience obtained under the supervision of a construction trades instructor as a part of an educational program is not qualifying experience for a contractor's license.

(2) Requirements for E100 General Engineering, B100 General Building, R100 Residential and Small Commercial Building license classifications:

(a) In addition to the requirements of paragraph (1), an applicant for an R100, B100 or E100 license shall have within the past 10 years a minimum of four years experience~~[as an employee of a contractor licensed in the license classification applied for, or the substantial equivalent of a contractor licensed in that license classification as determined by the Division].~~

(b) Two of the required four years of experience shall be in a supervisory or managerial position.

(c) A person holding a four year bachelors degree or a two year associates degree in Construction Management may have one year of experience credited towards the supervisory or managerial experience requirement.

(d) A person holding a Utah professional engineer license may be credited with satisfying one year toward the supervisory or managerial experience required for E100 contractor license.

(3) Requirements for S220 Carpentry, S280 General Roofing, S290 General Masonry, S320 Steel Erection, S350 Heating Ventilating and Air Conditioning, S360 Refrigeration and S370 Fire Suppression Systems license classifications:

In addition to the requirements of paragraph (1), an applicant shall have within the past 10 years a minimum of four years of experience~~[as an employee of a contractor licensed in the license classification applied for, or the substantial equivalent of a contractor licensed in that license classification as determined by the Division].~~

(4) Requirements for I101 General Engineering Trades Instruction Facility, I102 General Building Trades Instruction Facility, I103 Electrical Trades Instruction Facility, I104 Plumbing Trades Instruction Facility, I105 Mechanical Trades Instruction Facility license classifications:

An applicant for construction trades instruction facility license shall have the same experience that is required for the license classifications for the construction trade they will instruct.

(5) Requirements for other license classifications:

Except as set forth in Subsections (6) and (7), in addition to the requirements of paragraph (1), an applicant for contractor license classification not listed above shall have within the past 10 years a minimum of two years of experience~~[as an employee of a contractor licensed in the license classification applied for, or the~~

~~substantial equivalent of a contractor licensed in that license classification as determined by the Division].~~

(6) Requirements for S202 Solar Photovoltaic Contractor. In addition to the requirements of Subsections (1) and (5), an applicant shall hold a current certificate by the North American Board of Certified Energy Practitioners.

(7) Requirements for S354 Radon Mitigation Contractor. In addition to the requirements of Subsections (1) and (5), an applicant shall hold a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP). Experience completed prior to the effective date of this rule does not need to be performed under the supervision of a licensed contractor. Experience completed after the effective date of this rule must be performed under the supervision of a licensed contractor who has authority to practice radon mitigation.

R156-55a-303b. Continuing Education - Standards.

(1) Required Hours. Pursuant to Subsection 58-55-~~[50(21)]302.5~~, each licensee shall complete a total of six hours of continuing education during each two year license term except that for the renewal term ending November 30, 2009, the continuing education must be completed between July 1, 2007 and November 30, 2009. A minimum of three hours shall be core education. The remaining three hours are to be professional education. Additional core education hours beyond the required amount may be substituted for professional education hours.

(a) "Core continuing education" is defined as construction codes, construction laws, OSHA 10 or OSHA 30 safety training, governmental regulations pertaining to the construction trades and employee verification and payment practices.

(b) "Professional continuing education" is defined as substantive subjects dealing with the practice of the construction trades, including land development, land use, planning and zoning, energy conservation, professional development, arbitration practices, estimating, finance and bookkeeping, marketing techniques, servicing clients, personal and property protection for the licensee and the licensee's clients and similar topics.

(c) The following course subject matter is not acceptable as core education or professional education hours: mechanical office and business skills, such as typing, speed reading, memory improvement and report writing; physical well-being or personal development, such as personal motivation, stress management, time management, dress for success, or similar subjects; presentations by a supplier or a supplier representative to promote a particular product or line of products; and meetings held in conjunction with the general business of the licensee or employer.

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

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

(a) Time. Each hour of continuing education course credit shall consist of 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes is to allow for breaks.

(b) Provider. The course provider shall meet the requirements of this Section and shall be one of the following:

- (i) a recognized accredited college or university;
- (ii) a state or federal agency;

(iii) a professional association or organization involved in the construction trades; or

(iv) a commercial continuing education provider providing a program related to the construction trades.

(c) Content. The content of the course shall be relevant to the practice of the construction trades and consistent with the laws and rules of this state.

(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.

(e) Teaching Methods. The course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.

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

(g) Distance learning. A course may be recognized for continuing education that is provided via Internet or through home study courses provided the course verifies registration and participation in the course by means of a test which demonstrates that the participant has learned the material presented.

(h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division and shall provide individuals completing the course a certificate which contains the following information:

- (i) the date of the course;
- (ii) the name of the course provider;
- (iii) the name of the instructor;
- (iv) the course title;
- (v) the hours of continuing education credit and type of credit (core or professional);
- (vi) the attendee's name; and
- (v) the signature of the course provider.

(3) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.

(4) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (8). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.

(5) Licensees who lecture in continuing education courses meeting these requirements shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.

(6) The continuing education requirement for electricians, plumbers and elevator mechanics as established in ~~[Section R156-55b-304]~~ Subsections 58-55-302.7 and 58-55-303(6), which is completed by an ~~[electrical]~~ employee or owner of a contractor, shall satisfy the continuing education requirement for contractors as established in Subsection 58-55-~~[504(21)]~~302.5 and implemented herein. The contractor licensee shall assure that the course provider

has submitted the verification of the electrician's attendance on behalf of the licensee to the continuing education registry as specified in Subsection (8).

(7) Licensees who obtain an initial license after March 31st of the renewal year shall not be required to meet the continuing education requirement for that renewal cycle.

(8) A course provider shall submit continuing education courses for approval to the continuing education registry and shall submit verification of attendance and completion on behalf of licensees attending and completing the program directly to the continuing education registry in the format required by the continuing education registry.

(9) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses which meet the standards set forth under this Section.

(10) Continuing Education Registry.

(a) The Division shall designate an entity to act as the Continuing Education Registry under this rule.

(b) The Continuing Education Registry, in consultation with the Division and the Commission, shall:

(i) through its internet site electronically receive applications from continuing education course providers and shall submit the application for course approval to the Division for review and approval of only those programs which meet the standards set forth under this Section;

(ii) publish on their website listings of continuing education programs which have been approved by the Division, and which meet the standards for continuing education credit under this rule;

(iii) maintain accurate records of qualified continuing education approved;

(iv) maintain accurate records of verification of attendance and completion, by individual licensee, which the licensee may review for compliance with this rule; and

(v) make records of approved continuing education programs and attendance and completion available for audit by representatives of the Division.

(c) Fees. A continuing education registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.

~~R156-55a-304. [Construction—Trades—Instruction—Facility] Contractor License Qualifiers.~~

(1) The capacity and material authority specified in Subsection 58-55-304(4) is clarified as follows:

(a) Except as allowed in Subsection (b), the qualifier must receive remuneration for work performed for the contractor licensee for not less than 10 hours of work per week.

(i) If the qualifier is an owner of the business, the remuneration may be in the form of owner's profit distributions or dividends with a minimum ownership of 20 percent of the contractor licensee.

(ii) If the qualifier is an officer or manager of the contractor licensee, the remuneration must be in the form of W-2 wages.

(b) The 10 hour minimum in Subsection (a) may be reduced if the total of all hours worked by all owners and

employees is less than 50 hours per week, in which case the minimum may not be less than 20 percent of the total hours of work performed by all owners and employees of the contractor.

(2) Construction Trades Instruction Facility Qualifier. In accordance with Subsection 58-55-302(1)(f), the contractor license qualifier requirements in Section 58-55-304 shall also apply to construction trades instruction facilities.

R156-55a-305. Compliance Agency Reporting of Sole Owner Building Permits Issued.

In accordance with Subsection 58-55-305(2), all compliance agencies that issue building permits to sole owners of property must submit information concerning each building permit issued in their jurisdiction within 30 days of the issuance, with the building permit number, date issued, name, address and phone number of the issuing compliance agency, sole owner's full name, home address, phone number, and subdivision and lot number of the building site, to a fax number, email address or written mailing address designated by the [d]Division.

KEY: contractors, occupational licensing, licensing

Date of Enactment or Last Substantive Amendment: ~~November 10, 2009~~2010

Notice of Continuation: November 8, 2006

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-55-101; 58-55-308(1)(a); 58-55-102 (~~35~~39)(a); ~~58-55-504(21)~~

Commerce, Occupational and
Professional Licensing
R156-60b
Marriage and Family Therapist
Licensing Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33735

FILED: 06/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Marriage and Family Therapy Licensing Board reviewed the rule and determined that changes need to be made to the definition of unprofessional conduct. The changes make the definition of unprofessional conduct more consistent with the standards in the Code of Ethics of the American Association of Marriage and Family Therapy (AAMFT). In addition, the current rule requires completion of four and one half quarter hours of course work in subjects such as ethics, research methodology and data analysis, and electives. Quarter hours are rarely earned in quantities of half credits and a three

semester credit hour course is substantially equivalent to a four quarter credit hour course. For this reason, the Division and Board recommend that the number of quarter hours required in these subjects be decreased from four and one half to four. The filing also makes minor corrections such as adding commas and capitalizing the terms "division" and "board".

SUMMARY OF THE RULE OR CHANGE: Throughout the rule, the terms "division" and "board" are capitalized and commas are added to numerical numbers where appropriate. In Section R156-60b-302a, the current rule requires completion of four and one half quarter hours of course work in subjects such as ethics, research methodology and data analysis, and electives. Quarter hours are rarely earned in quantities of half credits and a three semester credit hour course is substantially equivalent to a four quarter credit hour course. The proposed amendment decreases the number of quarter hours required in these subjects from four and one half to four. In Section R156-60b-502, the current rule sets a two-year time frame from the date of termination of services with a client within which a therapist is prohibited from engaging in sexual activity with the client. Sexual activity with a client could still qualify as "unprofessional conduct" after two years beyond the date of termination of services; however, such a finding would require the Division to prove that the client was "especially vulnerable or susceptible to being disadvantaged". The Board and Division believe that proving a client is "especially vulnerable or susceptible to being disadvantaged" is nearly impossible unless the client is willing to admit to it. For this reason, the proposed amendment changes the rule such that it is unprofessional conduct to fail to maintain professional boundaries with a client beyond two years after the termination of therapy unless the therapist is able to "demonstrate that there has been no exploitation or injury to the client or to the client's immediate family". The change makes the rule consistent with standards established in the Code of Ethics of the American Association of Marriage and Family Therapy (AAMFT). The current rule also fails to attach a time frame within which a therapist's failure to maintain professional boundaries with a client constitutes unprofessional conduct. The proposed rule sets a two-year time frame unless the therapist is able to provide that there is no exploitation or injury to the client or to the client's family. The remaining subsections have been renumbered.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-60-301 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. If a public college or university in Utah used a quarter credit system, they would possibly see a minor loss in revenue from the decreased number of quarter hours required for

professional ethics, research methodology and data analysis, and electives in marriage and family therapy. However, it is noted that no public colleges or universities in Utah with marriage and family therapy programs use a quarter system.

♦ LOCAL GOVERNMENTS: The proposed amendments only apply to licensed marriage and family therapists and applicants for licensure in that classification. As a result, the proposed amendments do not apply to local governments.

♦ SMALL BUSINESSES: The proposed amendments only apply to licensed marriage and family therapists and applicants for licensure in that classification. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments only apply to licensed marriage and family therapists and applicants for licensure in that classification. Due to the decrease in the number of quarter hours required in certain subjects from four and one half to four, applicants for licensure as a marriage and family therapist will save money in education costs. Any exact amount of savings is unable to be determined due to a wide degree of circumstances. Private colleges and universities that use a quarter hour system may see a minor loss in revenue from the decreased number of quarter hours required for professional ethics, research methodology and data analysis, and electives in marriage and family therapy. Any aggregate impact of tuition lost cannot be estimated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed marriage and family therapists and applicants for licensure in that classification. Due to the decrease in the number of quarter hours required in certain subjects from four and one half to four, applicants for licensure as a marriage and family therapist will save money in education costs. Any exact amount of savings is unable to be determined due to a wide degree of circumstances. Private colleges and universities that use a quarter hour system may see a minor loss in revenue from the decreased number of quarter hours required for professional ethics, research methodology and data analysis, and electives in marriage and family therapy. Any exact amount of tuition losses cannot be estimated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In accordance with industry standards, this rule filing clarifies the definition of unprofessional conduct as it relates to relationships with clients after termination of services, eliminates the half-credit hour reference in certain required subjects, and makes other technical amendments. Applicants for licensure as a marriage and family therapist should see a cost savings as a result of this credit-hour change.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 07/20/2010 10:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 464, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-60b. Marriage and Family Therapist Licensing Act Rule.
R156-60b-302a. Qualifications for Licensure - Education Requirements.**

(1) Pursuant to Subsection 58-60-305(1)(d), an applicant applying for licensure as a marriage and family therapist shall:

(a) produce certified transcripts evidencing completion of a master's or doctorate degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy at the time the applicant obtained the education; or

(b)(i) produce certified transcripts evidencing completion of a master's degree in marriage and family therapy from a program accredited by a professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education at the time the applicant obtained the education.

(ii) A program under Subsection (1)(b)(i) shall include the following:

(A) six semester hours/nine quarter hours of course work in theoretical foundations of marital and family therapy;

(B) nine semester hours/12 quarter hours of course work in assessment and treatment in marriage and family therapy, including Diagnostic Statistical Manual (DSM);

(C) six semester hours/nine quarter hours of course work in human development and family studies which include ethnic minority issues, and gender issues including sexuality, sexual functioning, and sexual identity;

(D) three semester hours/four [~~and one-half~~]quarter hours in professional ethics;

(E) three semester hours/four [~~and one-half~~]quarter hours in research methodology and data analysis;

(F) three semester hours/four [~~and one-half~~]quarter hours in electives in marriage and family therapy; and

(G) a clinical practicum of not fewer than 600 hours which includes not fewer than 100 hours of face to face supervision and not fewer than 500 direct contact hours of face to face supervised clinical practice of which not less than 250 hours shall be with couples or families who are physically present in the therapy room.

R156-60b-302b. Qualifications for Licensure - Experience Requirements.

(1) Pursuant to Subsections 58-60-305(1)(e) and (f), an applicant shall complete marriage and family therapy and mental health therapy training consisting of a minimum of 4,000 hours of supervised training which shall:

(a) be completed in not less than two years;

(b) be completed while the applicant is an employee of a public or private agency engaged in mental health therapy;

(c) be completed under the supervision of a marriage and family therapist supervisor meeting the requirements under Section 58-60-307;

(d) include at least 100 hours of clinical face to face supervision spread uniformly throughout the training period;

(e) in accordance with Subsection 58-60-305(1)(f), include a minimum of 1,000 hours of mental health therapy of which at least 500 hours are in couple or family therapy with two or more clients present; and

(f) hours completed in a group therapy session may count only if the supervisee functions as the primary therapist.

(2) An applicant for licensure as a marriage and family therapist, who is not seeking licensure by endorsement based upon licensure in another jurisdiction, who has completed all or part of the marriage and family therapy training requirements outside the state, may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training completed outside the state is equivalent to and in all respects meets the requirements for training under Subsections 58-60-305(1)(e) and (f), and Subsection R156-60b-302b(1). The applicant shall have the burden of demonstrating by evidence satisfactory to the [d]Division and [b]Board that the training completed outside the state is equivalent to and in all respects meets the requirements under this subsection.

R156-60b-302e. Duties and Responsibilities of a Supervisor of Marriage and Family Therapist and Mental Health Therapy Training.

The duties and responsibilities of a marriage and family therapist supervisor are further defined, clarified or established to provide the supervisor shall:

(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training;

(2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the

supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor;

(4) provide periodic review of the client records assigned to the supervisee;

(5) comply with the confidentiality requirements of Section 58-60-114;

(6) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of marriage and family therapy and report violations to the [d]Division;

(7) supervise only a supervisee who is an employee of a public or private mental health agency;

(8) submit appropriate documentation to the [d]Division with respect to all work completed by the supervisee evidencing the performance of the supervisee during the period of supervised marriage and family therapist training and mental health therapist training, including the supervisor's evaluation of the supervisee's competence in the practice of marriage and family therapy and mental health therapy;

(9) complete four hours of the required 40 hours of continuing professional education directly related to marriage and family therapy supervisor training in each two year continuing professional education period established;

(10) supervise not more than three supervisees at any given time unless approved by the [b]Board and [d]Division;

(11) provide at least one hour of face to face supervision for each ten hours of client contact by the supervisee.

R156-60b-306. License Reinstatement - Requirements.

An applicant for reinstatement of his license after two years following expiration of that license shall be required to meet the following reinstatement requirements:

(1) upon request, meet with the [b]Board for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a marriage and family therapist and to make a determination of any additional education, experience or examination requirements which will be required before reinstatement;

(2) upon the recommendation of the [b]Board, establish a plan of supervision under an approved supervisor which may include up to 4,000 hours of marriage and family therapy and mental health therapy training as a marriage and family therapist-temporary;

(3) pass the Examination of Marital and Family Therapy of the American Association for Marriage and Family Therapists if it is determined by the [b]Board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a marriage and family therapist; and

(4) complete a minimum of 40 hours of professional education in subjects determined by the board as necessary to ensure the applicant's ability to engage safely and competently in practice as a marriage and family therapist.

R156-60b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60b-302d and R156-60b-302e;

(2) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60b-302b;

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

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

~~(5) failing to establish and maintain appropriate professional boundaries with a client or former client;~~

~~(6) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;~~

~~(7) engaging in sexual activities or sexual contact with a client with or without client consent;~~

~~(8) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;~~

~~(9) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the marriage and family therapist and the client;]~~

(5) failing to maintain professional boundaries with a client within two years after the formal termination of therapy or last professional contact, with or without client consent, including engaging in any of the following:

(a) dual or multiple relationships; or

(b) romantic, intimate or sexual relationship;

(6) if engaging in any activity or relationship referenced in Subsection (5) with a client after two years following the formal termination of therapy or last professional contact, failing to demonstrate that there has been no exploitation or injury to the client or to the client's immediate family;

~~(10) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of [his]the personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the marriage and family therapist and that individual;~~

~~(11) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;~~

~~(12) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;~~

~~(13) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;~~

~~(14) exploiting a client for personal gain;~~

~~(15) use of a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;~~

~~(13) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;~~

~~(14) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;~~

~~(15) failure to cooperate with the Division during an investigation; and~~

~~(16) failure to abide by provisions 1 to 8.8 of the Code of Ethics of the American Association for Marriage and Family Therapy (AAMFT) as adopted by the AAMFT effective July 1, 2001, which is adopted and incorporated by reference.~~

KEY: licensing, therapists, marriage and family therapist

Date of Enactment or Last Substantive Amendment:
~~[November 16, 2009]2010~~

Notice of Continuation: August 31, 2009

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-60-301

Commerce, Occupational and Professional Licensing **R156-61** Psychologist Licensing Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33734

FILED: 06/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Psychologist Licensing Board reviewed the rule and determined that changes need to be made to clarify the education requirement for applicants whose psychology degree is from a program that is not accredited by the Committee on Accreditation of the American Psychological Association and to make other minor corrections.

SUMMARY OF THE RULE OR CHANGE: In Section R156-61-103, updated statutory citation. In Section R156-61-201, updated name of Psychologist Licensing Board as provided in Subsection 58-61-102(1). In Subsection R156-61-302a(2)(e), amendments are made to clarify the education requirement for applicants whose psychology degree is from a program that is not accredited by the Committee on Accreditation of the American Psychological Association (COA). The proposed amendments emphasize the fact that the Association of State and Provincial Psychology Boards/National Register Joint Designation

Committee must recognize a non-COA accredited program as having met designation criteria. Subsection R156-61-302a(2)(f) is added that foreign educated applicants shall have the education program they completed evaluated by a credential evaluation service that is a member of the National Association of Credential Evaluation Services. In Section R156-61-302c, amendments update the name of the Utah Psychologist Law and Ethics Examination as provided in Subsection 58-61-304(2)(d).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-61-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. The proposed amendments are only a clarification and a correction of incorrect citations and terms; as a result, the proposed amendments have no significant cost or savings impact.

◆ LOCAL GOVERNMENTS: The proposed amendments only apply to licensed psychologists and applicants for licensure in that classification. As a result, the proposed amendments do not apply to local governments.

◆ SMALL BUSINESSES: The proposed amendments only apply to licensed psychologists and applicants for licensure in that classification. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments only apply to licensed psychologists and applicants for licensure in that classification. Since the proposed amendments are only a clarification and a correction of incorrect citations and terms, the Division determined the amendments would have no significant cost or savings impact. Foreign-educated psychology applicants will need to pay approximately \$160 - \$355 to have their education program evaluated to determine equivalency with degrees obtained from institutions in the United States or Canada. The Division is not able to determine how many foreign-educated psychology applicants will apply for licensure and will therefore need the evaluation completed.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed psychologists and applicants for licensure in that classification. Since the proposed amendments are only a clarification and a correction of incorrect citations and terms, the Division determined the amendments would have no significant cost impact. Foreign educated psychology applicants will need to pay approximately \$160 - \$355 to have their education program evaluated to determine equivalency with degrees obtained from institutions in the United States or Canada.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing is generally clarifying in nature. No fiscal impact to businesses is anticipated from such clarifications or from the statement of an existing practice - when the Division receives an application from licensure from a foreign educated applicant, the applicant is required to obtain an evaluation by a credential evaluation service.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 07/19/2010 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-61. Psychologist Licensing Act Rule.
R156-61-103. Authority - Purpose.**

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 61.

R156-61-201. Advisory Peer Committee Created - Membership - Duties.

(1) There is hereby enabled in accordance with Subsection 58-1-203(1)(f), the Ethics Committee as an advisory peer committee to the Psychologist Licensing Board on either a permanent or ad hoc basis consisting of members licensed in good standing as psychologists qualified to engage in the practice of mental health therapy, in number and area of expertise necessary to fulfill the duties and responsibilities of the committee as set forth in Subsection (3).

(2) The committee shall be appointed and serve in accordance with Section R156-1-205.

(3) The committee shall assist the Division in its duties, functions, and responsibilities defined in Section 58-1-202 including:

(a) upon the request of the Division, reviewing reported violations of Utah law or the standards and ethics of the profession by a person licensed as a psychologist and advising the Division if allegations against or information known about the person presents a reasonable basis to initiate or continue an investigation with respect to the person;

(b) upon the request of the Division providing expert advice to the Division with respect to conduct of an investigation; and

(c) when appropriate serving as an expert witness in matters before the Division.

R156-61-302a. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsection 58-61-304(1)(d), an institution or program of higher education awarding a psychology degree that qualifies an applicant for licensure as a psychologist shall be accredited by the CoA.

(a) An applicant must graduate from the actual program that is accredited by CoA. No other program within the department or institution qualifies unless separately accredited.

(b) If a transcript does not uniquely identify the qualifying CoA accredited degree program, it is the responsibility of the applicant to provide signed, written documentation from the program director or department chair that the applicant did indeed graduate from the qualifying accredited degree program.

(2) In accordance with Subsection 58-61-304(1)(d), an institution or program of higher education awarding a psychology doctoral degree that is not accredited by CoA must meet the following criteria in order to qualify an applicant for licensure as a psychologist:

(a) if located in the United States or Canada, be accredited by a professional accrediting body approved by the Council for Higher Education of the American Council on Education, at the time the applicant received the required earned degree;

(b) if located outside of the United States or Canada, be equivalent to an accredited program under Subsection (a), and the burden to demonstrate equivalency shall be upon the applicant;

(c) result from successful completion of a program conducted or based on a college or university campus;

(d) result from a program which includes at least one year of residence at the educational institution;

(e) if located in the United States or Canada, be an institution having a doctoral psychology program ~~[meeting "Designation" criteria, as]~~ recognized by the Association of State and Provincial Psychology Boards/National Register Joint Designation Committee as being found to meet "designation criteria", at the time the applicant received the earned degree~~[-].~~ Whether a program is found to meet designation criteria is a decision to be made by the Association of State and Provincial Psychology Boards/National Register Joint Designation Committee. ~~[or if]~~

(f) if located outside of the United States or Canada, the applicant shall have the education program evaluated by a credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES) for the purpose of determining whether the education is substantially equivalent to the education required of applicants with degrees from institutions

located in the United States or Canada~~[meet the same criteria by which a program is recognized by the Association of State and Provincial Psychology Boards at the time the applicant received the earned degree];~~

~~([f]g)~~ have an organized and clearly identified sequence of study to provide an integrated educational experience appropriate to preparation for the professional practice of psychology and licensure, and shall clearly identify those persons responsible for the program with clear authority and responsibility for the core and specialty areas regardless of whether or not the program cuts across administrative lines in the educational institution;

~~([g]h)~~ clearly identify in catalogues or other publications the psychology faculty, demonstrate that the faculty is sufficient in number and experience to fulfill its responsibility to adequately educate and train professional psychologists, and demonstrate that the program is under the direction of a professionally trained psychologist;

~~([h]i)~~ grant earned degrees resulting from a program encompassing a minimum of three academic years of full time graduate study with an identifiable body of students who are matriculated in the program for the purpose of obtaining a doctoral degree;

~~([i]j)~~ include supervised practicum, internship, and field or laboratory training appropriate to the practice of psychology;

~~([j]k)~~ require successful completion of a minimum of two semester/three quarter hour graduate level core courses including:

(i) scientific and professional ethics and standards;

(ii) research design and methodology;

(iii) statistics; and

(iv) psychometrics including test construction and measurement;

~~([k]l)~~ require successful completion of a minimum of two graduate level semester hours/three graduate level quarter hours in each of the following knowledge areas. Course work must have a theoretical focus as opposed to an applied, clinical focus:

(i) biological bases of behavior such as physiological psychology, comparative psychology, neuropsychology, psychopharmacology, perception and sensation;

(ii) cognitive-affective bases of behavior such as learning, thinking, cognition, motivation and emotion;

(iii) social and cultural bases of behavior such as social psychology, organizational psychology, general systems theory, and group dynamics; and

(iv) individual differences such as human development, personality theory and abnormal psychology; and

~~([l]m)~~ require successful completion of specialty course work and professional education courses necessary to prepare the applicant adequately for the practice of psychology.

(3) An applicant whose psychology doctoral degree training is not designed to lead to clinical practice or who wishes to practice in a substantially different area than the training of the doctoral degree shall complete a program of respecialization as defined in Subsection R156-61-102(5), and shall meet requirements of Subsections R156-61-302a(2).

(4) In accordance with Subsection 58-61-304(1)(d), an applicant who has received a doctoral degree in psychology by completing the requirements of Subsections R156-61-302a(1)(a) through (2)(i), without completing the core courses required under Subsection R156-61-302a(2)(j), or the specialty course work

required in Subsection (2)(l) may be allowed to complete the required course work post-doctorally. The supplemental course work shall consist of formal graduate level work meeting the requirements of Subsections (2)(j) and (2)(l) in regularly offered and scheduled classes. University based directed reading courses may be approved at the discretion of the [b]Board.

(5) The date of completion of the doctoral degree shall be the graduation date listed on the official transcript.

R156-61-302c. Qualifications for Licensure - Examination Requirements.

(1) The examination requirements which must be met by an applicant for licensure as a psychologist under Subsection 58-61-304(1)(g) are:

(a) passing the Examination for the Professional Practice of Psychology (EPPP) developed by the American Association of State Psychology Board (ASPPB) with a passing score as recommended by the ASPPB; and

(b) passing the Utah Psychologist Law and Ethics Examination with a score of not less than 75%.

(2) A person may be admitted to the EPPP and Utah Psychologist Law and [Rule]Ethics examinations in Utah only after meeting the requirements under 58-61-305, and after receiving written approval from the Division.

(3) If an applicant is admitted to an EPPP examination based upon substantive information that is incorrect and furnished knowingly by the applicant, the applicant shall automatically be given a failing score and shall not be permitted to retake the examination until the applicant submits fees and a correct application demonstrating the applicant is qualified for the examination and adequately explains why the applicant knowingly furnished incorrect information. If an applicant is inappropriately admitted to an EPPP examination because of a Division or Board error and the applicant receives a passing score, the results of the examination may not be used for licensure until the deficiency which would have barred the applicant for admission to the examination is corrected.

(4) An applicant who fails the EPPP examination three times will only be allowed subsequent admission to the examination after the applicant has appeared before the Board, developed with the Board a plan of study in appropriate subject matter, and thereafter completed the planned course of study to the satisfaction of the Board.

(5) An applicant who is found to be cheating on the EPPP examination or in any way invalidating the integrity of the examination shall automatically be given a failing score and shall not be permitted to retake the examination for a period of at least three years or as determined by the Division in collaboration with the Board.

(6) In accordance with Section 58-1-203 and Subsection 58-61-304(1)(g), an applicant for the EPPP or the [Utah Law and Rule-e]Utah Psychologist Law and Ethics Examination must pass the examinations within one year from the date of the psychologist application for licensure. If the applicant does not pass the examinations within one year, the pending psychologist application will be denied. The applicant may continue to register to take the EPPP examination under the procedures outlined in Subsection R156-61-302c(4).

(7) In accordance with Section 58-1-203 and Subsection 58-61-304(2)(d), an applicant for psychologist licensure by endorsement must pass the Utah [Law and Rule-e]Psychologist Law and Ethics Examination within six months from the date of the psychologist application for licensure. If the applicant does not pass the examination in six months, the pending psychologist application will be denied.

KEY: licensing, psychologists

Date of Enactment or Last Substantive Amendment:
[December 22, 2009]2010

Notice of Continuation: February 10, 2009

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-61-101

**Commerce, Occupational and
Professional Licensing
R156-70a
Physician Assistant Practice Act Rule**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33710

FILED: 06/03/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this filing is to address the details of S.B. 139, which was passed during the 2010 Legislative Session, that permits a supervising physician to delegate to a licensed physician assistant on a temporary basis as defined by rule, the supervision of physician assistant students. Additionally, Subsection R156-70a-501(4) is updated to be consistent with current practice standards and Medicaid and Medicare rules on supervision. (DAR NOTE: S.B. 139 (2010) is found at Chapter 37, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: Section R156-70a-305 is added to define temporary basis in regards to a physician delegating the supervision of supervising students to a physician assistant. Subsection R156-70a-501(4) is amended to address how many physician assistants a physician may supervise. The maximum is no more than four full-time equivalents without the prior approval of the Division in collaboration with the Board. It also provides that the supervising physician shall ensure that patient health, safety and welfare is not adversely compromised by supervising more physician assistants than the physician can competently supervise.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-70a-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

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

◆ LOCAL GOVERNMENTS: The proposed amendments only apply to licensed physicians and physician assistants and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.

◆ SMALL BUSINESSES: The proposed rule amendments create a cost savings to the physician or the owner of the medical business as it will allow them to hire two additional physician assistants to serve patients instead of another physician. Additionally, it creates employment opportunities for physician assistants. Exact estimates of savings cannot be determined due to a wide range of circumstances.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed rule amendments create a cost savings to the physician or the owner of the medical business as it will allow them to hire two additional physician assistants to serve patients instead of another physician. Additionally, it creates employment opportunities for physician assistants. Exact estimates of savings cannot be determined due to a wide range of circumstances.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed rule amendments do not cost affected persons because it simply establishes criteria for supervision of students which allows for delegation which in the past was not allowed. Additionally, it accommodates physicians to supervise additional physician assistants in order to serve more patients at a potential lower cost and provide employment opportunities for physician assistants. Exact estimates cannot be determined due to a wide range of circumstances.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule filing beyond those addressed by the passage of recent statutory amendments.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Noel Taxin by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at ntaxin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 07/20/2010 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 464, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-70a. Physician Assistant Practice Act Rule.

R156-70a-305. Exemptions from Licensure.

"Temporary basis" as used in Subsection 58-70a-305(1)(b)(ii), shall be limited as defined by the Delegation of Service Agreement and shall include the following:

(1) the circumstances and purpose under which any temporary supervision is permitted;

(2) the temporary supervision duties to be performed by the physician assistant;

(3) the amount of temporary supervision that is allowed; and

(4) how the physician will review the activities of students while under temporary supervision.

R156-70a-501. Working Relationship and Delegation of Duties.

In accordance with Section 58-70a-501, the working relationship and delegation of duties between the supervising physician and the physician assistant are specified as follows:

(1) The supervising physician shall provide supervision to the physician assistant to adequately serve the health care needs of the practice population and ensure that the patient's health, safety and welfare will not be adversely compromised. The degree of on-site supervision shall be outlined in the Delegation of Services Agreement maintained at the site of practice. Physician assistants may authenticate with their signature any form that may be authenticated by a physician's signature.

(2) There shall be a method of immediate consultation by electronic means whenever the physician assistant is not under the direct supervision of the supervising physician.

(3) The supervising physician shall review and co-sign sufficient numbers of patient charts and medical records to ensure that the patient's health, safety, and welfare will not be adversely compromised. The Delegation of Services Agreement, maintained at the site of practice, shall outline specific parameters for review that are appropriate for the working relationship.

(4) A supervising physician ~~shall~~ may not supervise more than ~~two~~ four full time equivalent (FTE) physician assistants without the prior approval of the division in collaboration with ~~and~~ the board, and only for extenuating circumstances with a written

request with justification. The supervision physician shall ensure that[if] patient health, safety, and welfare [will not be]is not adversely compromised by supervising more physician assistants than the physician can competently supervise.

KEY: licensing, physician assistants

Date of Enactment or Last Substantive Amendment: ~~July 23, 2009~~2010

Notice of Continuation: February 27, 2007

Authorizing, and Implemented or Interpreted Law: 58-70a-101; 58-1-106(1)(a); 58-1-202(1)(a)

Education, Administration
R277-402-1
Definitions

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 33738
 FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide for changes in H.B. 166, 2010 Legislative Session, which eliminates the requirement to administer norm-referenced achievement testing, eliminates the requirement to administer criterion-referenced tests in grade 2, and suspends administration of the Utah Basic Skills Competency Test (UBSCT) in high schools for at least two years. (DAR NOTE: H.B. 166 (2010) is found at Chapter 305, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: The changes include removing language requiring administration of norm-referenced testing, removing language requiring administration of criterion-referenced testing in grade 2, and provides language suspending the UBSCT until at least the 2011-2012 school year.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-1-708(5)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. Although the changes to the rule permanently eliminate norm-referenced testing, administration of criterion-referenced testing in grade 2, and suspend the UBSCT for for two years, funding previously appropriated for this purpose has now been directed toward the High School Assessment Pilot Program.

◆ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. Public school districts and schools will simply not administer the specific tests that have been eliminated or suspended. School districts and schools may apply for participation in the High School Assessment Pilot Program.

◆ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. The rule applies only to public school districts and schools.

◆ 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. Students will not be required to take the tests that have been eliminated or suspended.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Public schools will not administer specific tests that have been eliminated or suspended.

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 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

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

R277. Education, Administration.

R277-402. Online Testing.

R277-402-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "Formative assessment" means an activity, such as questioning, observation, interview and assessment, engaged in by teachers and students during instruction that provides feedback to adjust ongoing teaching and learning to improve students' achievement of intended instructional outcomes.

C. "Intent to implement a uniform online summative test system" as used in 53A-1-708(4) means the commitment by the USOE to provide a consistent statewide process for school districts/charter schools to administer 100 percent of CRT U-PASS-required assessments. This includes the willingness of school districts/charter schools to provide documentation of preparatory activities and of actual test-taking by students.

D. "Online formative assessment system" means a system coordinated by the USOE for the online delivery of formative assessments that can be created by teachers, school districts/charter schools, or the USOE. One part of the system is the Utah Test Item Pool Service (UTIPS).

E. "Summative tests" means tests administered near the end of a course to assess overall achievement of course goals.

F. "Uniform online summative test system" means a statewide process coordinated by the USOE for the online delivery of summative tests required under U-PASS.

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

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

~~_____][(2)1] criterion-referenced achievement testing of students in all grade levels in:~~

(a) language arts (grades ~~[2]3-11~~);

(b) mathematics (grades ~~[2]3-7~~) and pre-algebra, elementary Algebra 1, Algebra 2 and geometry;

(c) science (grades 4-8) and earth systems, biology, chemistry, and physics; and

~~[(3)2] an online direct writing assessment in grades 5 and 8;~~

~~[(4)3] a tenth grade basic skills competency test as detailed in Section 53A-1-611 (suspended through at least the 2011-2012 school year); and~~

~~[(5)4] the use of student behavior indicators in assessing student performance.~~

~~(5) The U-PASS Performance Report is suspended through at least the 2011-2012 school year.~~

H. "USOE" means Utah State Office of Education.

I. "USOE item pool" means all test items developed for or by USOE which are intended to support the instruction of the Utah curriculum for Utah K-12 teachers and students.

J. "Utah Test Item Pool Service (UTIPS)" means a system which includes the USOE item pool, all copyrights, logos, the UTIPS website and domain name, all copyrighted materials, and all other items and equipment used to provide and enhance the USOE item pool.

K. "UTIPS Steering Committee" means a committee formed to govern, support, develop and administer UTIPS. The committee is comprised of the elected co-chairs of the UTIPS User's Group and the UTIPS Operators' Group, the USOE Assessment Director, the USOE Computer Based Assessments Specialist, the USOE Curriculum Director, and one at-large member.

KEY: online testing

Date of Enactment or Last Substantive Amendment: [August 7, 2009]2010

Notice of Continuation: July 16, 2009

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-708(5); 53A-1-401(3)

Education, Administration
R277-433-3
School District and Charter School
Policies on Disposal of Textbooks

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33739

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to reflect changes in H.B. 166, 2010 Legislative Session, which suspends a required policy and implementation until at least the 2013-2014 school year. (DAR NOTE: H.B. 166 (2010) is found at Chapter 305, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: Language is added to the rule that provides for suspension of a required district policy and implementation of the policy.

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The changes to the law and rule apply to school districts and charter schools.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The changes to the rule are procedural.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. The rule applies to school districts and charter schools.

♦ **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. Changes to the rule only affect school districts and charter schools.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Changes to the rule are procedural with no costs associated for compliance.

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 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

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

R277. Education, Administration.
R277-433. Disposal of Textbooks in the Public Schools.
R277-433-3. School District and Charter School Policies on Disposal of Textbooks.
 A. School districts and charter schools shall develop policies regarding the reuse or disposal of textbooks.
 B. School district and charter school policies shall provide procedures for notification to other school districts and charter schools of available textbooks and timelines for disposal of textbooks.
 C. School districts and charter school policies shall provide procedures for negotiating the exchange of the textbooks.
D. A required policy and implementation shall be suspended consistent with Section 53A-12-207(1) until the 2013-2014 school year.

KEY: textbooks
Date of Enactment or Last Substantive Amendment: [~~April 21, 2009~~2010]
Notice of Continuation: September 6, 2007
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-12-207

Education, Administration
R277-459

Classroom Supplies Appropriation

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 33740
 FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide for changes in S.B. 2, 2010 Legislative Session, that changes the distribution formula for the classroom supply appropriation. The amendments to the rule also provide language allowing classroom supply money to be used for limited purposes and equipment that protect specific health risks of teachers. (DAR NOTE: S.B. 2 (2010) is found at Chapter 399, Laws of Utah 2010, and was effective 07/01/2010.)

SUMMARY OF THE RULE OR CHANGE: The changes provide language that changes the distribution formula consistent with S.B. 2, 2010 Legislative Session, and expands the purposes for which classroom supply money can be used.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 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 funding affects teachers in the classroom.
 ♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. A one-time appropriation provides funding for classroom supplies for all eligible teachers and provides greater flexibility for its use.
 ♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This rule affects public school teachers.
 ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to small businesses, businesses, or local government entities. Eligible classroom teachers will receive money for classroom supplies.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Funding is provided for classroom supplies for eligible classroom teachers with added flexibility for its use.

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 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

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

R277. Education, Administration.

R277-459. Classroom Supplies Appropriation.

R277-459-1. Definitions.

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

B. "Classroom teacher" definition criteria:

(1) Eligible teachers shall be in a permanent teacher position filled by one teacher or two or more job-sharing teachers employed by a school district, the Utah Schools for the Deaf and the Blind, or charter schools.

(2) Eligible teachers are licensed personnel, and paid on a school district's salary schedule or a charter school's salary schedule.

(3) Teachers shall be employed for an entire contract period.

(4) The teacher's primary responsibility shall be to provide instructional or a combination of instructional and counseling services to students in public schools.

C. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes such as:

- (1) personal directory information;
- (2) educational background;
- (3) endorsements;
- (4) employment history;
- (5) professional development information; and
- (6) a record of disciplinary action taken against the educator.

All information contained in an individual's CACTUS file is available to the individual, but is classified private or protected under Section 63G-2-302 or 305 and is accessible only to specific designated individuals.

D. "Field trip" means a district, or school authorized excursion for educational purposes.

~~E. "First year classroom teacher/intern" means any teacher who has no experience posted in the teacher's CACTUS file in the school/school district in which the teacher is currently assigned as of the November 15 CACTUS update.~~

F. "Intern" means a teacher education student, who, in an advanced stage of preparation, usually as a culminating experience,

~~may be employed in a school setting for a period of up to one year and receive salary proportionate to the service rendered. An intern is supervised primarily by the school system but with a continuing relationship with college personnel and following a planned program designed to produce a demonstrably competent professional. An intern is licensed under a letter of authorization consistent with R277-503, Licensing Routes.~~

~~G. "Second year through fifth year classroom teacher" means any teacher who has one to four years of experience in the teacher's CACTUS file as of the November 15 CACTUS file.~~

~~H. "Teaching supplies and materials" means both expendable and nonexpendable items that are used for educational purposes by teachers in classroom activities and may include such items as:~~

(1) paper, pencils, workbooks, notebooks, supplementary books and resources;

(2) laboratory supplies, e.g. photography materials, chemicals, paints, bulbs (both light and flower), thread, needles, bobbins, wood, glue, sandpaper, nails and automobile parts;

(3) laminating supplies, chart paper, art supplies, and mounting or framing materials;

(4) Th[is]e definition of teaching supplies and materials should be broadly construed in so far as the materials are used by the teacher for instructional purposes or to protect the health of teachers in [classrooms,] instructional or lab settings, or in conjunction with field trips.

~~I. "USOE" means the Utah State Office of Education.~~

R277-459-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which gives general control and supervision of the public school system to the Board, by Section 53A-1-402(1)(b) which directs the Board to establish rules and minimum standards for school programs, and by state legislation which provides a designated appropriation for teacher classroom supplies and materials.

B. The purpose of this rule is to distribute money through school districts, the Utah Schools for the Deaf and the Blind, or charter schools to classroom teachers for school materials, ~~and~~ supplies, and purposes or equipment that protect the health of teachers in instructional or lab settings or in conjunction with field trips.

R277-459-3. Distribution of Funds.

A. The USOE shall generate from the CACTUS database a teacher count of the full-time classroom teachers consistent with S.B. 2, Section [30]8, 20[08]10 Legislative Session, for each school district, the Utah Schools for the Deaf and the Blind, or charter schools as of November 15 of each year.

B. ~~[For the \$7,500,000 portion of the classroom supplies appropriation for 2008, t]~~ The Board shall distribute funds to school districts, charter schools and the Utah Schools for the Deaf and the Blind based on data submitted to the CACTUS database consistent with S.B. 2, Section [30]8, 20[08]10 Legislative Session.

C. School districts, charter schools and the Utah Schools for the Deaf and the Blind shall distribute funds for classroom supplies consistent with the amounts for salary schedule steps and teaching assignments designated in S.B. 2, Section [30]8, 20[08]10 Legislative Session.

~~[D. Following the distribution of the \$7,500,000 portion of the classroom supplies appropriation, the Board shall distribute the \$2,500,000 portion of the classroom supplies appropriation for 2008, consistent with the following:~~

~~(1) First year teachers shall receive a \$500 classroom stipend.~~

~~(2) The remaining funds shall be distributed only to teachers in their second through fifth years of teaching consistent with the following:~~

~~(a) Second year teacher shall receive up to 80 percent of the first year teacher amount.~~

~~(b) third year teacher shall receive up to 60 percent of the first year teacher amount.~~

~~(c) fourth year teacher shall receive up to 40 percent of the first year teacher amount.~~

~~(d) fifth year teacher shall receive up to 20 percent of the first year teacher amount.~~

~~][E]D. Individual teachers shall designate the uses for their allocations consistent with the criteria of this rule. School districts/charter schools and other eligible schools ~~shall~~ may develop policies, procedures and timelines to facilitate the intent of the appropriation.~~

~~[F]E. Each school district/charter school shall ensure that each eligible individual has the opportunity to receive the proportionate share of the appropriation.~~

~~[G]E. If a teacher has not spent or committed to spend the individual allocation by April 1, the school or district may make the excess funds available to other teachers or may reserve the money for use by eligible teachers the following year.~~

~~[H]G. These funds shall supplement, not supplant, existing funds for identified purposes.~~

~~[I]H. These funds shall be accounted for by the school district/charter school or eligible school using state and school district procurement and accounting policies.~~

~~[J]I. The funds and supplies purchased with the funds are the property of the school district, the Utah Schools for the Deaf and the Blind, or charter schools.~~

~~(1) Employees do not personally own materials purchased with designated public funds.~~

~~(2) A school district or charter school may by policy allow individual teachers to use supply funds to protect teacher health with consumable materials that may not be able to be reused by the school.~~

R277-459-4. Other Provisions.

A. Districts, the Utah Schools for the Deaf and the Blind, or charter schools shall allow, but not require, teachers to jointly use their allocations.

B. School districts, the Utah Schools for the Deaf and the Blind, and charter schools may carry over these funds, if necessary.

KEY: teachers, supplies

Date of Enactment or Last Substantive Amendment: ~~[November 10, 2008]~~2010

Notice of Continuation: July 6, 2005

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

**Education, Administration
R277-463
Class Size Reporting**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 33741

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 56, 2010 Legislative Session, provides for changes in the Utah State Office of Education's calculations of class size averages and pupil-teacher ratios. Because the changes are significant and now require pupil-teacher ratios, the previous rule is being repealed and reenacted. (DAR NOTE: S.B. 56 (2010) is found at Chapter 206, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: The repealed rule provides procedures for reporting class size for elementary and secondary grades that are no longer adequate under new law. The reenacted rule provides procedures for calculating class size averages and pupil-teacher ratios consistent with the amended law.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-1-301 and Section 53A-3-602.5 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. The Utah State Office of Education will calculate class size averages and pupil-teacher ratios consistent with state law. Any minimal workload increases will be absorbed by the Utah State Office of Education.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. School districts and charter schools currently report student enrollment data to the Utah State Office of Education that allows for calculations under S.B. 56. They will continue to report student enrollment data. Data will be used in a different formula and resulting information will be consistent with state law.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. The rule applies to public school districts and charter schools only.

◆ **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 requirements of the rule affect school districts and charter schools.

COMPLIANCE COSTS FOR AFFECTED PERSONS: School districts and charter schools currently report student enrollment data to the Utah State Office of Education that allows for calculations under S.B. 56. They will continue to report student enrollment data. Data will be used in a different formula and resulting information will be consistent with state law.

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 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

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

R277. Education, Administration.

[R277-463. Class Size Reporting.

~~R277-463-1. Definitions.~~

~~A. "Individual class" means a group of students organized for instruction and assigned to one or more teachers or other staff members for a designated time period. A class may meet multiple periods during the school day or multiple terms during the school year or both and still shall be considered a single class for purposes of class size reporting.~~

~~B. "USOE" means the Utah State Office of Education.~~

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

~~R277-463-2. Authority and Purpose.~~

~~A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, Section 53A-17a-124.5(7)(b) which directs the Board to establish uniform class size reporting rules for school districts and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.~~

~~B. The purpose of this rule is to establish uniform class size reporting rules, including definitions, codes and a state-wide reporting timeline.~~

~~R277-463-3. Reporting for Elementary Grades K Through 6.~~

~~A. The enrollment of each individual class in the elementary grades shall be reported using a designated code number for the appropriate grade level.~~

~~B. Code numbers for grade levels shall be designated by the USOE Finance Section.~~

~~R277-463-4. Reporting for Secondary Grades 7 Through 12.~~

~~A. The enrollment of each individual class in the secondary grades shall be reported using a designated code number for the appropriate class.~~

~~B. Code numbers for approved classes shall be designated by the USOE Finance Section.~~

~~C. Student enrollment in released time, advisory, teacher aide classes or in any classes not defined by the State Superintendent of Public Instruction shall not be reported.~~

~~R277-463-5. Enrollment Reporting Format and Timeline.~~

~~A. Student enrollment shall be reported in an electronic format approved by the USOE Finance Section.~~

~~B. District classroom enrollment reports shall be based on the enrollment as of October 1 and shall be received by the USOE by November 1.]~~

R277-463. Class Size Average and Pupil-Teacher Ratio Reporting.

R277-463-1. Definitions.

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

B. "Course" means the subject matter taught to students.

(1) Elementary courses are designated by grade level.

(2) Secondary courses are determined by course content.

C. "ESL" means English as a Second Language.

D. "Individual class" means a group of students organized for instruction and assigned to one or more teachers or other staff

members for a designated time period. A class may include students

from multiple grades or may include students taking multiple

courses and still shall be considered a single class for purposes of

class size reporting. An individual class shall be determined from

course data submitted to the USOE using a combination of course

elements such as CACTUS identification number, teacher of record,

class period, term of student enrollment, and course cycle.

E. "LEA" means a school district or charter school.

F. "Pupil" means a student enrolled in a public school as

of October 1 of the reported school year.

G. "Teacher" for purposes of this rule means a full-time

equivalent licensed educator, such as a regular classroom teacher, a

school-based specialist, and a special education teacher.

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

R277-463-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X,

Section 3 which places general control and supervision of the public

school system under the Board, Section 53A-1-301 which directs

the Board to report average class sizes and pupil-teacher ratios,

Section 53A-3-602.5 which directs the Board to establish rules for

uniform class size reporting, and Section 53A-1-401(3) which

allows the Board to adopt rules in accordance with its

responsibilities.

B. The purpose of this rule is to establish uniform class size and pupil-teacher ratio reporting procedures, including definitions and codes.

R277-463-3. Class Size Average for Elementary Classes.

A. LEAs shall report student level course data providing sufficient course information to determine the number of students in individual classes. Classes with students in multiple grades shall be calculated as one class. Extended day classes in which one portion of the class arrives early and the other portion stays late will be calculated as one class.

B. Average class size shall be calculated by grade. Special education, ESL, online, and other non-traditional classes shall be excluded from class size average calculations.

C. State- and district-level class sizes shall be derived from the median of school-level class sizes.

R277-463-4. Class Size Average for Secondary Classes.

A. LEAs shall report student level course data providing sufficient course information to determine the number of students in individual classes. Classes including students enrolled in multiple courses shall be calculated as one class.

B. Average class size shall be calculated for core language arts, mathematics, and science courses. Special education, ESL, online, and other non-traditional classes will be excluded from class size averages.

C. State- and district-level class sizes shall be derived from taking the median of school-level class sizes.

R277-463-5. Pupil-Teacher Ratio Calculation.

A. Pupil-teacher ratios shall be calculated by school. The pupil-teacher ratio for each school shall be calculated by dividing the number of enrolled pupils by the number of full-time equivalent teachers assigned to the school.

B. District-level ratios shall be derived by taking the median of school-level ratios.

C. State-level ratios for charter schools and traditional schools shall be derived from taking the median of school-level ratios.

R277-463-6. Reporting Format and Timeline.

School, district and state-level ratios and class size averages shall be reported to the public as required under Section 53A-1-301.

KEY: public schools, enrollment reporting, class size average reporting; pupil-teacher ratio reporting

Date of Enactment or Last Substantive Amendment: [1994]2010

Notice of Continuation: September 3, 2009

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; [53A-17a-124(7)(b)];53A-1-301; 53A-3-602.5; 53A-1-401(3)

Education, Administration
R277-469
 Instructional Materials Commission
 Operating Procedures

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33742

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to reflect 2010 legislation in H.B. 166 that suspends the requirement for primary instruction materials to be mapped and aligned to the Core Curriculum by an independent party. The rule also provides changes to make the rule consistent with testing requirements also suspended in H.B. 166. (DAR NOTE: H.B. 166 (2010) is found at Chapter 305, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: The amended rule provides changes to definitions and changes that reflect the suspension of primary instructional materials mapping and an alignment process and testing requirements.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-14-107 and Section 53A-14-101 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. There may be a minimal decrease in the workload of Utah State Office of Education (USOE) instructional materials staff, as monitoring the alignment process is no longer required.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. If there was an increased cost to school districts/schools to purchase instructional materials that resulted from the mapping and alignment process, the costs were minimal. Any savings resulting from the suspension of the mapping and alignment process would be minimal as well.

♦ **SMALL BUSINESSES:** USOE understands that the costs to a publisher to map and align primary instructional materials are approximately \$500 per publication. Small publishers will no longer have that expense and will be able to provide a greater number of publications to school districts/schools, a slightly decreased costs is expected.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: If an individual is a publisher, the individual will be affected in the same way as a small business and no longer have the cost of approximately \$500 per publication to map and align primary instructional materials.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Mapping and aligning primary instructional materials has been suspended for two years.

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 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

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

R277. Education, Administration.

R277-469. Instructional Materials Commission Operating Procedures.

R277-469-1. Definitions.

A. "Advanced placement materials" means materials used for the College Board Advanced Placement Program and classes. The program policies are determined by representatives of member institutions. Operational services are provided by the Educational Testing Service. The program provides practical descriptions of college-level courses to interested schools and student test results based on these courses to colleges of the student's choice. Participating colleges grant credit or appropriate placement, or both, to students whose test results meet standards prescribed by the college.

B. "Basic skills course" means a subject which requires mastery of specific functions to include reading, language arts, mathematics through geometry, science, in grades 4 through 12, and effectiveness of written expression.

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

D. "Commission" means the Instructional Materials Commission.

E. "Curriculum alignment" means the assurance that the material taught in a course or grade level matches the standards, objectives and assessments set by the state or school district for specific courses or grade levels.

F. "Curriculum map" means a visual representation, a tool, for assisting developers to conceptualize shared visions and values which will drive the curriculum as a whole. Sometimes called a concept map, this tool clarifies a plan for knowledge construction; it shows the links and relationships between concepts.

G. "Instructional materials" means systematically arranged content in text or digital format which may be used within the state curriculum framework for courses of study by students in public schools, including textbooks, workbooks, computer software, online or internet courses, CDs or DVDs, and multiple forms of communication media. [~~text materials, in harmony with the Core framework and required courses of study or U-PASS requirements or both, which~~] Such materials may be used by students or teachers or both as principal sources of study [~~and which~~] to cover any portion of the course. These materials:

(1) shall be designed for student use; and

(2) may be accompanied by or contain teaching guides and study helps;

(3) shall include all textbooks, workbooks and student materials and supplements necessary for a student to fully participate in coursework; and

(4) shall be high quality, research-based and proven to be effective in supporting student learning.

H. "Independent party" means an entity that is not the Board, not the superintendent of public instruction or USOE staff, or an employee or board member of a school district, or the instructional materials creator or publisher, or anyone with a financial interest in the instructional materials, however minimal.

I. "Integrated instructional program" means any combination of textbooks, workbooks, software, videos, transparencies, or similar resources used for classroom instruction of students.

[~~Θ~~]L. "[~~Primary~~] instructional materials provider" means a publisher or author and self-publisher who sells or provides instructional materials for use in Utah public schools.

[~~Ⓜ~~]K. "International Baccalaureate" means college level work, limited in subject areas, which balances humanities and sciences in an interdisciplinary, global academic program that is both philosophical and practical. This multi-cultural experience emphasizes analytical and conceptual skills and aesthetic understanding for advanced students.

[~~Ⓜ~~]L. "National Instructional Materials Access Center (NIMAC)" is a central national repository established at the American Printing House for the Blind (APH) to store and to maintain NIMAS file sets. It features an automated system for allowing publishers to deposit NIMAS-conformant files within the repository. Files are checked to confirm that they are valid NIMAS-conformant files and then cataloged in a web-based database. Those who have been authorized for access have user identifications and passwords. These authorized users may search the NIMAC database and directly download the file(s) they need to convert into accessible instructional materials for those students who are in elementary and secondary schools and have qualifying disabilities.

[E]M. "National Instructional Materials Accessibility Standard (NIMAS)" is a technical standard used by publishers to produce consistent and valid XML-based source files that may be used to develop multiple specialized formats, such as Braille or audio books, for students with print disabilities.

[M]N. "Not recommended materials" means instructional materials which have been reviewed by the Commission but not recommended.

[N]O. "Primary instructional material" means a comprehensive basal or Core textbook or integrated instructional program for which a publisher seeks a recommendation for Core subjects designated in R277-700-4, 5, and 6.

P. "Public website" means a website designated by the USOE provided by the publisher of instructional materials, free-of-charge, to teachers and the general public, to exhibit alignment and mapping to the Core for Utah primary instructional materials.

Q. "Recommended instructional materials (RIMs)" means the recommended instructional materials searchable database provided as a free service by the USOE for the posting of evaluations and alignments to the Core of instructional materials submitted by publishers and on the public website of the publisher, if applicable, for review by the Commission and approval of the Board.

R. "State Core Curriculum (Core)" means minimum academic standards provided through courses as established by the Board which shall be completed by all students K-12 as a requisite for graduation from Utah's secondary schools. The Core is provided in R277-700.

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

~~[T. "Utah Performance Assessment System for Students (U-PASS)" means:~~

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

~~(2) criterion-referenced achievement testing of students in all grade levels in basic skills courses, to include reading, language arts, mathematics through geometry, science, in grades 4 through 12, and effectiveness of written expression, as defined in Section 53A-1-602;~~

~~(3) a direct writing assessment in grades 6 and 9; and~~

~~(4) a tenth grade basic skills competency test as detailed in Section 53A-1-611.]T. "Utah Performance Assessment System for Students (U-PASS)" means:~~

(1) criterion-referenced achievement testing of students in all grade levels in:

(a) language arts (grades 3-11);

(b) mathematics (grades 3-7) and pre-algebra, elementary Algebra 1, Algebra 2 and geometry;

(c) science (grades 4-8) and earth systems, biology, chemistry, and physics; and

(2) an online direct writing assessment in grades 5 and 8;

(3) a tenth grade basic skills competency test as detailed in Section 53A-1-611 (suspended through at least the 2011-2012 school year); and

(4) the use of student behavior indicators in assessing student performance.

(5) The U-PASS Performance Report is suspended through at least the 2011-2012 school year.

R277-469-2. Authority and Purpose.

A. This rule is authorized under Utah Constitutional Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-14-101 which directs the Board to appoint an Instructional Materials Commission and directs the Commission to evaluate instructional materials for recommendation by the Board, by Section 53A-14-107 which directs the Board to make rules that establish the qualifications of the independent parties who may evaluate and map the alignment of the primary instructional materials and requirements for the detailed summary of the evaluation and its placement on a public website, and by Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions, operating procedures and criteria for recommending instructional materials for use in Utah public schools. The rule also provides for mapping and alignment of primary instructional materials to the Core consistent with Utah law.

R277-469-3. Use of State Funds for Instructional Materials.

A. School districts may use funds:

~~[(1) for primary instructional materials that have been mapped and aligned to the Core by an independent party; and~~
~~—————]([2]1) for any primary supplemental or supportive instructional materials that support Core or U-PASS requirements.~~

~~[(3]2) for instructional materials selected and approved by a school or school district consistent with the standards of this rule and:~~

(a) consistent with established local board procedures and timelines; and

(b) consistent with Section 53A-13-101(1)(c)(iii); or

(c) consistent with Section 53A-14-102(4).

B. Schools or school districts that use any funding source to purchase materials that have not been recommended or selected consistent with law, may have funds withheld to the extent of the actual costs of those materials pursuant to Section 53A-1-401(3).

C. Free instructional materials:

(1) that are used as primary instructional materials or that are part of primary integrated instructional programs shall be subject to the same independent party evaluation and Core mapping as basal or Core material; or

(2) if free materials are provided as part of a supplemental program, they may be used as student instructional materials only consistent with the law and this rule; and

(3) shall be reviewed and recommended by the Commission or by a school in a public meeting consistent with Section 53A-14-102(4), prior to their use.

D. Charter schools are exempt from Section 53A-14-107. Despite this exemption and consistent 34 CFR 300.172(c), hereby incorporated by reference, all public schools subject to a state education agency that contracts with NIMAC require publishers with whom the public schools under the control of the state education agency contract to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instruction materials using the NIMAS or purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

E. Notice to publishers

(1) All traditional and charter public schools shall be responsible for notifying all publishers with whom they contract for instructional materials beginning October 1, 2008 that all materials shall be provided consistent with R277-469-3D.

(2) Traditional and charter schools shall include a copy of R277-469, drawing publishers' attention to this provision of the rule, with the notice to publishers from whom the schools purchase materials.

(3) Schools shall provide publishers with timely notice of this requirement.

R277-469-4. Instructional Materials Commission Members Terms of Service.

A. Members shall be appointed from categories designated in Section 53A-14-101.

B. ~~Members shall serve four year staggered terms with the option, jointly expressed by the Commission member and the Commission, for reappointment for one additional term~~ Members of the Commission shall serve four year terms, staggered to ensure continuity in the efficient operation of the Commission. Members may apply for reappointment for one additional term.

C. The Commission may establish subcommittees as needed.

R277-469-5. Commission Review of Materials.

A. The primary focus of instructional materials review shall be materials used in subjects assessed under U-PASS to include reading, language arts, mathematics through geometry, science, in grades 4 through 12, and effectiveness of written expression, and other Core subject areas as assigned by the Board.

B. Subject areas and timelines for review shall be determined by the Commission based on school district needs and requests, and using forms and procedures provided by the USOE.

C. Commission review of material takes place at least annually.

R277-469-6. Review and Adoption Categories.

Materials may be considered for review by the Commission and designated under the following categories. They may be purchased with state funds and used consistent with this rule:

A. Recommended Primary: Instructional materials that:

(1) are in alignment with content, philosophy and instructional strategies of the Core;

(2) have been mapped and aligned to the Core, consistent with Section 53A-14-107 after the 2012-2013 school year;

(~~3~~)2 are appropriate for use by students as principal sources of study;

(~~4~~)3 provide comprehensive coverage of course content; and

(~~5~~)4 support Core or U-PASS requirements or both.

B. Recommended Limited: Instructional materials that are in limited alignment with the Core or U-PASS requirements or are narrow or restricted in their scope and sequence. If school districts or schools select and purchase materials designated under this category, it is recommended that they have a plan for using appropriate supplementary materials assuring coverage of Core requirements.

C. Recommended Teacher Resource: Instructional materials that are appropriate as resource materials for use by teachers.

D. Recommended Student Resource: Instructional materials aligned to the Core or that support U-PASS that are developmentally appropriate, but not intended to be the primary instructional resource. These materials may provide valuable content information for students.

E. Reviewed, but not Recommended: Instructional materials that may not be aligned with the Core, may be inaccurate in content, include misleading connotations, contain undesirable presentation, or are in conflict with existing law and rules. School districts are strongly cautioned against using these materials.

F. Not Sampled: Instructional materials that were included in the publisher bid but were not sampled to the USOE or the Commission.

R277-469-7. Criteria for Recommendation of Instructional Materials Following Mid-Party Evaluation of Core Curriculum.

A. Instructional materials shall:

(1) be consistent with Core or U-PASS requirements or both;

(2) if used as primary materials, be mapped and aligned to the Core consistent with Section 53A-14-107 and state adopted assessments as applicable for the 2012-2013 school year;

(~~3~~)2 be high quality, research-based and proven to be effective in supporting student learning;

(~~4~~)3 provide an objective and balanced viewpoint on issues;

(~~5~~)4 include enrichment and extension possibilities;

(~~6~~)5 be appropriate to varying levels of learning;

(~~7~~)6 be accurate and factual;

(~~8~~)7 be arranged chronologically or systematically, or both;

(~~9~~)8 reflect the pluralistic character and culture of the American people and provide accurate representation of diverse ethnic groups;

(~~10~~)9 be free from sexual, ethnic, age, gender or disability bias and stereotyping; and

(~~11~~)10 be of acceptable technical quality.

B. Publishers, when submitting new primary material to be evaluated by the USOE, shall submit an electronic version in NIMAS file format of that material to the National Instructional Materials Access Center (NIMAC) for use in conversion into Braille, large print, and other formats for students with print disabilities.

C. USOE review:

(1) The USOE may require a school district to provide a report of instructional materials purchased by the school district or a school in the previous five years.

(2) The USOE may initiate a formal or informal audit of instructional materials purchased to determine purchase or use of instructional materials consistent with the law or this rule.

R277-469-8. Agreements and Procedures for School Districts.

A. A local board shall establish a policy for school district and school selection and purchase of instructional materials.

B. The detailed Core curriculum alignment shall be required prior to the purchase of primary instructional materials by public schools and school districts purchased ~~[after July 1, 2008]~~ for the 2012-2013 school year.

R277-469-9. Qualifications for Core Curriculum Alignment Independent Parties.

Independent parties ~~[that may align and map primary instructional materials]~~ required to meet mapping and alignment requirements for the 2012-2013 school year shall use reviewer(s)/employee(s) who meet the following minimum requirements:

(1) have a degree or an endorsement specific to the subject area of the primary instructional materials. For example, a reviewer who is aligning an American literature text shall have an English endorsement or degree; a reviewer who is mapping a calculus text shall have a mathematics endorsement or a related mathematics degree. The USOE shall make available to independent parties a list of acceptable endorsements or degrees that shall be current and valid for appropriate review of materials; and

(2) may not be current employees of a publishing company seeking the alignment and map of primary instructional materials;

(3) shall post documentation of credentials and endorsements on a public website designated by the USOE as required under Section 53A-14-107(3)(b).

R277-469-10. Detailed Summary Requirements.

Independent parties ~~[that may align and map primary instructional materials]~~ required to meet mapping and alignment requirements for the 2012-2013 school year shall provide to the publisher a detailed summary of the evaluation. The summary shall:

A. be provided on a public website required under Section 53A-14-107(3)(b) designated by the USOE;

B. submit the summary in the alignment template provided by the USOE;

C. submit the summary in a searchable, software database format designated by the USOE;

D. include detailed alignment information that includes at a minimum:

- (1) the title of the material;
- (2) the ISBN number;
- (3) the publisher's name;
- (4) the name/grade of the Core document used to align the material;

(5) the overall percentage of coverage of the Core;

(6) the overall percentage of coverage in ancillary resources of the material to the Core;

(7) the percentage of coverage of the Core in the material for each standard, objective and indicator in the Core with corresponding page numbers;

(8) percentage of coverage of the Core not covered in the material but covered in the ancillary resources for each standard;

(9) objective and indicator in the Core with corresponding page numbers; and

E. provide the detailed alignment information listed in R277-469-10D(4) for the student text for all editions of the text that are used in Utah public schools;

F. provide the detailed alignment information listed in R277-464-10D(4) for a teacher edition of text, if a teacher edition is used in Utah public schools;

G. provide a map of the materials detailing when the materials should be used in a 180 day school schedule including the standard, objective and indicator of the item to be taught with corresponding page numbers; the recommended use of the material, such as to introduce a concept, to gain information about a concept, to extend understanding of a concept, to apply a concept, or to assess a concept; and hyperlinks to other materials, websites, or lesson plans that correspond to the concept.

H. designate at the conclusion of the alignment document, the reviewer's evaluation of the material's alignment to the Core curriculum on a scale of 1-10, with 10 indicating the closest alignment to the Utah Core curriculum; and

I. provide an assurance, including a personal (electronic is adequate) signature that the work was completed personally and as required by the licensed and endorsed reviewer.

R277-469-11. Agreements and Procedures for Publishing Companies.

A. Beginning with the 2012-2013 school year, ~~[P]~~publishing companies desiring to sell primary instructional materials to Utah school districts and schools shall:

(1) contract with an independent party who meets the requirements in R277-469-9 to align and map the primary instructional material and related ancillary materials to the appropriate Utah Core with the following provisions:

(a) the publisher provides a detailed summary of the Core alignment and mapping as described in R277-469-10 at no charge; and

(b) the publisher pays the costs associated with the requirements of Section 53A-14-107.

(2) The requirements under R277-469-9-A(1) shall only be performed by entities consistent with Section 53A-14-107(2).

B. Publishers seeking to sell recommended materials to Utah schools or school districts shall have adopted materials on deposit at an instructional materials depository in the business of selling instructional materials to schools or school districts in Utah.

C. Depository agreements may be made between publishers of materials and one or more depository.

D. The provisions of R277-469-11 shall not preclude publishers from selling instructional materials to schools or school districts in Utah directly or through means other than the designated depository.

E. Recommended materials with revisions:

(1) If a revised edition of recommended materials retains the original title and authorship, the publisher may request its substitution for the edition currently recommended providing that:

(a) the original contract price and contract date do not change and the original contract price applies for the substituted materials;

(b) the revised edition is compatible with the earlier edition, permitting use of either or both in the same classroom;

(c) a sample copy of the revised edition is provided to the USOE Instructional Materials Specialist for examination purposes;

(d) the publisher submits a revised electronic edition in NIMAS file format to the National Instructional Materials Access

Center (NIMAC) if the USOE approves the substitution request; and

(e) a new curriculum alignment and map summary is provided after the 2012-2013 school year.

~~[(2) If Section R277-469-8E is not satisfied, a new edition shall be submitted for recommendation as new materials.~~

[(3)] The Commission shall make the final determination about the substitution of a new edition for a previously recommended edition with assistance from the state subject area specialist.

F. A publisher's contract price for materials recommended by the Commission shall apply for five years from the contract date.

R277-469-12. Request for Reconsideration of Recommendation.

A. A request for reconsideration is an additional opportunity provided to a school district, school or publisher for review of instructional materials when the school district, school or the publisher disagrees with the initial Commission recommendation.

B. The request for reconsideration procedure is as follows:

(1) A school district, school or publisher shall receive the evaluations and recommendations from the USOE of the initial review.

(2) A school district, school or publisher shall have 30 days to respond to the evaluation and request to have materials reviewed again during the next review cycle.

(3) During the period of the reconsideration request, materials shall be marked as tentative and shall not be given official status. These materials shall not be posted to the Internet site until recommended through the official Commission process.

(4) A school district, school or publisher may be asked to send a second set of sample materials to the USOE.

(5) Any written information provided by a school district, school or publisher shall be available to the advisory committees during the second review.

(6) After the second review by the subject area advisory committee, the advisory committee's recommendation shall be voted on by the Commission at the next scheduled meeting.

(7) If the Commission votes to change the recommendation, the Board shall consider the Commission's revised recommendation at the next scheduled Board meeting and make a final decision.

(8) A school district, school or publisher shall receive written notification that a recommendation is final and shall receive a copy of the new evaluation. Evaluations may now appear on the Internet if materials are recommended.

KEY: instructional materials

Date of Enactment or Last Substantive Amendment: ~~February 24, 2009~~ 2010

Notice of Continuation: March 3, 2008

Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-14-101; 53A-14-107; 53A-1-401(3)

Education, Administration
R277-472
 Charter School Student Enrollment and
 Transfers and School District Capacity
 Information

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 33743

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule provides for changes in S.B. 188, 2010 Legislative Session, which requires the Utah State Board of Education to write rules and describe procedures for students who transfer between traditional schools and charter schools during the school year. Although there is currently student transfer criteria in Section R277-470-6, Charter Schools, the language in this new rule is more complete. Therefore, a stand-alone rule was proposed and approved by the Utah State Board of Education. This new rule will supersede language in Section R277-470-6 until it is officially removed from Rule R277-470. (DAR NOTE: S.B. 188 (2010) is found at Chapter 162, Laws of Utah 2010, and was effective 05/10/2010.)

SUMMARY OF THE RULE OR CHANGE: This new rule provides sections that include: definitions, class size calculations, school district school capacity information, application procedures for students entering and exiting charter schools, and enrollment of transferring charter school students in district schools based upon criteria in the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-1a-506.5(2)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The rule applies to school districts and charter schools.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. School districts and charter schools will need to follow the procedures in this rule when students request transfers to and from school districts and charter schools during the school year. Neither S.B. 188 or this rule make changes in funding to local education agencies (LEAs).

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This rule applies to school districts and charter schools.

◆ 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. Students will transfer to and from school districts and charter schools consistent with requirements and procedures in this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Students will be able to transfer to and from school districts and charter schools consistent with the procedures in this rule.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

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

R277. Education, Administration.

R277-472. Charter School Student Enrollment and Transfers and School District Capacity Information.

R277-472-1. Definitions.

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

B. "Below capacity at the elementary and secondary level" making the grade level available for transfer students from charter schools outside of the window provided for in Section 53A-1a-506.6(3) is established if the grade level or program is less than 100 percent of the district, school, or grade level average.

(1) A special program is "below capacity" or available for transfer students from charter schools if the number of assigned students is less than the designated number of students determined by valid, research-based, or federally established standards.

(2) An entire elementary or secondary school is "below capacity" if the district determines that the average class size, using calculations of classes and courses in R277-471-1, is less than 100 percent of the district elementary or secondary average class size.

C. "Elementary (K-6) class size" means the number of students with a primary assignment to a specific teacher.

(1) An extended day class in which a portion of the class arrives early and the other portion stays late shall be counted as one class.

(2) Elementary class size shall include all special education students who participate in all or part of the school day, excluding those students assigned to self-contained special education classes.

D. "Secondary (7-12) class size" means the secondary school's calculation for each language arts, mathematics, and science course that is typically taught multiple times in the school day, such as 8th grade English, Algebra I, Earth Systems.

R277-472-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53A-1a-506.5(2) which directs the Board to make rules for students transferring between charter schools and district schools and enrolling and withdrawing from charter schools, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide procedures for students transferring between district public schools and charter schools; to define capacity in district public schools to allow for transfers into district schools from charter schools; to provide notice to parents and students of schools that have space available.

R277-472-3. Class Size Calculations.

A. Elementary class size: Each school district (or school as determined by the school district) shall calculate an average class size for each grade level. This calculation shall be derived from the total number of students in a given grade divided by the number of full time licensed teachers assigned to that grade.

(1) Students assigned to multiple grade level classes (and their respectively assigned teachers) shall not be counted in determining average class size for a grade level.

(2) Elementary classes that group students in programs other than by grade level, such as gifted and talented or English Language Learner programs, shall be calculated as a class if students participate for the entire instructional day.

(a) If students participate in special programs for part of the school day, they must be counted as part of their age-appropriate grade level (together with respective teachers) for purposes of this calculation.

(b) If multiple classes of special programs exist (including self-contained special education classes), an average class size for special programs must be determined-consistent with state, federal and program standards.

B. Elementary school size: Each school district (or school) shall calculate a school-wide average class size by dividing the total full time teachers assigned to direct teaching situations by the total number of students receiving instruction.

(1) Self-contained special education students and teachers shall not be included in this calculation.

(2) All other special education students and teachers shall be included.

C. Secondary average class size: Each school district (or secondary school as determined by the district) shall calculate an

average class size for each language arts, mathematics and science course that is taught multiple times during a typical school day by dividing the total number of full time teachers assigned to direct teaching situations by the total number of students enrolled.

(1) Self-contained special education students and teachers shall not be included in this calculation.

(2) All special education students, other than full-time self-contained students, shall be included in the calculation.

D. District average: Each school district shall calculate the district-wide average class size for each grade level, each elementary program that enrolls students across grade levels and for each language arts, mathematics, and science course.

(1) The calculation shall be determined by dividing the total number of full time teachers (FTEs) assigned to direct teaching situations by the total number of fully enrolled students.

(2) All calculations shall be made using October 1 enrollment and employment data.

E. In a school district with only one elementary or secondary school, or only one class of any subject or grade level, the average class size may be calculated for an entire school or the entire school district by averaging all the classes in the school or the school district. The school district may then determine that any class size less than the school district or school average class size is below capacity.

R277-472-4. School District School Capacity Information.

A. School districts shall provide and post the following information to facilitate transfer of students on school district or school websites:

(1) Elementary schools within the school district that are below capacity and available for transfer students;

(2) Grade levels and special programs within elementary schools that are below capacity and available for transfer students;

(3) Secondary schools that are below capacity and available for transfer students based on calculated capacity of language arts, science and mathematics; and

(4) Special programs within secondary schools that are below capacity and available for transfer students.

B. Below capacity standards for individual schools, grade levels, courses or programs do not apply if a school has documentation that the school community council in a public meeting has designated more than one-half of a school's school LAND trust annual allotment to reduce class size in a specific school, grade level, program or course.

R277-472-5. Application Procedures for Students Entering and Exiting Charter Schools.

A. Each charter school shall post on its website information and procedures required under Section 53A-1a-506.5(2).

B. Each charter school shall develop and post admissions procedures for the charter school including:

(1) Lottery dates and procedures;

(2) Admission forms;

(3) School calendar;

(4) Non-discrimination assurances;

(5) A clear explanation, including timelines required in the law and provided in individual charter school policies, of student transfer procedures from a charter school to another charter school or to a district school;

(6) A readily accessible transfer form; and

(7) Assurance and parent signature that student has been admitted to only one charter school.

R277-472-6. Enrollment of Transferring Charter School Students in District Schools.

A. A school district shall enroll a student who is a resident of a school district, who desires to transfer from a charter school to the resident school after June 30 and who submits enrollment information consistent with all school district students in a district school that is below capacity.

B. A school district shall not require enrollment procedures or forms from students moving from a charter school to a district school that differ in any way from enrollment procedures/forms required for district students if the charter school students are leaving a charter school after the final grade level offered by the charter school.

C. Students who are transferring from a charter school to a district school after June 30 for the upcoming school year are limited to schools, grade levels, programs and courses that have space available or are below capacity at the district schools.

D. Parents/Students who are enrolled at charter schools and are seeking enrollment at district schools should check with the school district office (or school principal if designated by the school district) for official current capacity information about schools, grade levels, programs or courses before leaving a charter school and forfeiting a charter school enrollment right.

E. A change in location for a student with disabilities may not result in a change of placement as determined by the student's IEP and consistent with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400, Part B.

F. Consistent with Section 53A-11-904(3), students may be denied enrollment in a public school if they have been expelled from a public school.

G. Students may be denied enrollment in a public school if they leave a public school with disciplinary procedures pending at the previous Utah public school until previous allegations have been resolved.

H. Charter schools and district schools shall notify each other of student enrollment consistent with Section 53A-1a-506.5(4).

KEY: charter schools, students, transfers

Date of Enactment or Last Substantive Amendment: 2010

Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-1a-506.5(2); 53A-1-401(3)

Education, Administration
R277-473
Testing Procedures

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33744

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide changes in H.B. 166, 2010 Legislative Session, which eliminates the requirement to administer norm-referenced achievement testing, and suspends the requirement to administer the Utah Basic Skills Competency Test (UBSCT) in high schools for at least two years. (DAR NOTE: H.B. 166 (2010) is found at Chapter 305, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: The changes include removing language requiring administration of norm-referenced achievement testing and providing language suspending the UBSCT until at least the 2011-2012 school year.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-1-603(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. Although the changes to the rule permanently eliminate norm-referenced testing and suspend the UBSCT for at least two years, funding previously appropriated for this purpose has now been directed toward a High School Assessment Pilot Program.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. Public school districts and schools will simply not administer the specific tests that have been eliminated or suspended. School districts and schools may apply for participation in the High School Assessment Pilot Program.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. The rule applies only to public school districts and schools.

◆ **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. Students will not be required to take the tests that have been eliminated or suspended.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Public schools will not administer specific tests that have been eliminated or suspended.

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 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

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

R277. Education, Administration.

R277-473. Testing Procedures.

R277-473-1. Definitions.

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

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

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

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

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

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

G. "Direct Writing Assessment (DWA)" means a USOE-designated online test to measure writing performance for students in grades five and eight.

H. "Emergent English Language Learner student" means the student understands and responds to basic social conventions,

simple questions, simple directions, and appropriate level text. In general, the student speaks, reads, and writes using single phrases or sentences with support. The student may begin to use minimal academic vocabulary with support and participates in classroom routines. The student is identified at the E level on the UALPA.

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

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

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

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

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

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

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

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

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

R. "Utah Basic Skills Competency Test (UBSCT)" means a USOE-designated test to be administered to Utah students beginning in the tenth grade (suspended through at least the 2011-2012 school year) to include components in reading, writing, and mathematics. Utah students shall satisfy the requirements of the UBSCT, in addition to state and school district/charter school graduation requirements, prior to receiving a high school diploma that indicates a passing score on all UBSCT subtests unless exempted consistent with R277-705-11.

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

R277-473-2. 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-1-603(3) which directs the Board to adopt rules for the conduct and administration of the testing programs and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide specific standards and procedures by which school districts/charter schools shall handle and administer standardized tests.

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

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

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

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

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

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

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

—][E]B. School districts/charter schools shall submit all answer sheets for the CRT ~~and NRT~~ tests to the CS Section of the USOE for scanning and scoring as follows:

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

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

—][3]2) School districts/charter schools shall return UBSCT answer sheets to the USOE no later than three days after the final make-up day.

[(4]3) School districts/charter schools shall return UALPA answer sheets to the USOE no later than May 15 for traditional schedule schools and June 15 for year-round schedule schools ~~[beginning with the 2007-08 school year].~~

[D]C. When determining the date of testing, schools on trimester schedules shall schedule the testing at the point in the course where students have had approximately the same amount of

instructional time as students on a regular schedule and provide the schedule to the USOE. Basic skills courses ending in the first trimester of the year shall be assessed with the previous year's form of the CRTs.

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

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

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

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

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

R277-473-4. Security of Testing Materials.

A. All test questions and answers for all standardized tests required under Sections 53A-1-601 through 53A-1-611, shall be designated protected, consistent with Section 63G-2-305(5), until released by the USOE. A student's individual answer sheet shall be available to parents under the federal Family Educational Rights and Privacy Act (FERPA), 20 USC, Sec. 1232g; 34 CFR Part 99).

B. The USOE shall maintain a record of all of the protected test materials sent to the school districts/charter schools.

C. Each school district/charter school shall maintain a record of the number of booklets of all protected test materials sent to each school in the district and charter school, and shall submit the record to USOE upon request.

D. Each school district/charter school shall ensure that all test materials are secured in an area where only authorized personnel have access, or are returned to USOE following testing as required by the USOE. Individual educators shall not retain test materials, in either paper or electronic form beyond the time period allowed for test administration.

E. Individual schools within a school district and charter schools shall secure or return paper test materials within three working days of the completion of testing. Electronic testing materials shall be secured between administrations of the test, and shall be removed from teacher and student access immediately following the final administration of the test.

F. The USOE shall ensure that all test materials sent to a school district/charter school are returned as required by USOE, and may periodically audit school districts/charter schools to confirm that test materials are properly accounted for and secured.

G. School district/charter school employees and school personnel may not copy or in any way reproduce protected test materials without the express permission of the specific test publisher, including the USOE.

R277-473-5. Format for Electronic Submission of Data.

A. CS shall communicate regularly with school districts/charter schools regarding required formats for electronic submission of any required data.

B. School districts/charter schools shall ensure that any computer software for maintaining school district/charter school data is, or can be made, compatible with CS requirements and shall report data as required by the USOE.

R277-473-6. Format for Submission of Answer Sheets and Other Materials.

A. The USOE shall provide a checklist to each school district/charter school with directions detailing the format in which answer documents are to be collected, reviewed, and returned to the USOE.

B. Each school district/charter school shall verify that all the requirements of the testing checklist have been met.

C. CRT data may be submitted in batches in cooperation with the assigned CS data technician.

R277-473-7. Timing for Return of Results to School Districts/Charter Schools.

A. Scanning and scoring shall occur in the order data is received from the school districts/charter schools.

B. Consistent with Utah law, raw test results from all CRTs shall be returned to the school before the end of the school year.

C. Each school district/charter school shall check all test results for each school within the district and charter school and for the school district as a whole, verify their accuracy with CS, and certify that they are prepared for publication within two weeks of receipt of the data. Except in compelling circumstances, as determined by the USOE, no changes shall be made to school or school district data after this two week period. Compelling circumstances may include:

(1) a natural disaster or other catastrophic occurrence (e.g., school fire) that precludes timely review of data; and

(2) resolution of a professional practices issue that may impede reporting of the data.

D. School districts/charter schools shall not release data until authorized to do so by the USOE.

R277-473-8. USOE and School Responsibilities for Crisis Indicators in State Assessments.

A. Students participating in state assessments may reveal intentions to harm themselves or others, that the student is at risk of harm from others, or may reveal other indicators that the student is in a crisis situation.

B. The USOE shall notify the school principal, counselor or other school or school district personnel who the USOE determines have legitimate educational interests, whenever the USOE determines, in its sole discretion, that a student answer indicates the student may be in a crisis situation.

C. As soon as practicable, the school district superintendent/charter school director, or designee shall be given the name of the individual contacted at the school regarding a student's potential crisis situation.

D. The USOE shall provide the school and district with a copy of the relevant written text.

E. Using their best professional judgment, school personnel contacted by USOE shall notify the student's parent, guardian or law enforcement of the student's expressed intentions as soon as practical under the circumstances.

F. The text provided by USOE shall not be part of the student's record and the school shall destroy any copies of the text once the school or district personnel involved in resolution of the matter determine the text is no longer necessary. The school principal shall provide notice to the USOE of the date the text is destroyed.

G. School personnel who contact a parent, guardian or law enforcement agency in response to the USOE's notification of potential harm shall provide the USOE with the name of the person contacted and the date of the contact within three business days from the date of contact.

R277-473-9. Standardized Testing Rules and Professional Development Requirement.

A. It is the responsibility of all educators to take all reasonable steps to ensure that standardized tests reflect the ability, knowledge, aptitude, or basic skills of each individual student taking standardized tests.

B. School districts/charter schools shall develop policies and procedures consistent with the law and Board rules for standardized test administration, make them available and provide training to all teachers and administrators who shall administer state tests.

C. At least once each school year, school districts/charter schools shall provide professional development for all teachers, administrators, and standardized test administrators concerning guidelines and procedures for standardized test administration, including teacher responsibility for test security and proper professional practices.

D. School district/charter school assessment staff shall use the Testing Ethics Policy Power Point presentation and the Testing Ethics booklet developed by the USOE, available on the USOE Assessment homepage in providing training for all test administrators/proctors.

E. Each and every test administrator/proctor shall individually sign a Testing Ethics signature page also available on the USOE Assessment homepage.

F. All teachers and test administrators shall conduct test preparation, test administration, and the return of all protected test materials in strict accordance with the procedures and guidelines specified in test administration manuals, school district/charter school rules and policies, Board rules, and state application of federal requirements for funding.

G. Teachers, administrators, and school personnel shall not:

(1) provide students directly or indirectly with specific questions, answers, or the subject matter of any specific item in any standardized test prior to test administration;

(2) copy, print, or make any facsimile of protected testing material prior to test administration without express permission of the specific test publisher, including USOE, and school district/charter school administration;

(3) change, alter, or amend any student answer sheet or any other standardized test materials at any time in such a way as to alter the student's intended response;

(4) use any prior form of any standardized test (including pilot test materials) that has not been released by the USOE in test preparation without express permission of the specific test publisher, including USOE, and school district/charter school administration;

(5) violate any specific test administration procedure or guideline specified in the test administration manual, or violate any state or school district/charter school standardized testing policy or procedure;

(6) knowingly and intentionally do anything that would inappropriately affect the security, validity, or reliability of standardized test scores of any individual student, class, or school;

H. Violation of any of these rules may subject licensed educators to possible disciplinary action under [~~Rules of Professional Practices and Conduct for Utah Educators, R686-103-6(4)~~]R277-515, Utah Educator Standards.

KEY: educational testing

Date of Enactment or Last Substantive Amendment: ~~August 7, 2009~~2010

Notice of Continuation: April 29, 2010

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

**Education, Administration
R277-480
Charter Schools School Building
Subaccount**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 33745

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to provide procedures for determining membership of the Charter School Building Subaccount Committee, and determining loan amounts and loan repayment conditions. Although there are currently Charter School Building Subaccount criteria in Section R277-470-17, Charter Schools, the language in this new rule provides more detail and is more comprehensive. Therefore, a stand-alone rule was proposed and approved by the Utah State Board of Education. This new rule will supersede language in Section R277-470-17 until it is officially removed from Rule R277-470.

SUMMARY OF THE RULE OR CHANGE: The new rule provides definitions and a Charter School Building Subaccount section that includes procedures for establishing

or reauthorizing a Subaccount committee, and application criteria and procedures.

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 new rule provides procedures and criteria for Subaccount Committee membership and loan applications.
- ◆ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The rule allows eligible charter schools to apply for a loan from the Charter School School Building Subaccount.
- ◆ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. This rule applies to charter schools.
- ◆ 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 rule applies to charter schools.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Charter schools must be eligible to apply for a loan from the Charter School School Building Subaccount.

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 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

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

R277. Education, Administration.

R277-480. Charter Schools School Building Subaccount.

R277-480-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "Charter schools" means schools acknowledged as charter schools by local boards of education under Section 53A-1a-515 or by the Board under Section 53A-1a-505.
- C. "Subaccount" means the Charter School Building Subaccount consisting of funds provided under 53A-21-401(5)(b)
- D. "Subaccount Committee" means the committee established by the Superintendent under Section 53A-21-401(6).
- E. "Superintendent" means the State Superintendent of Public Instruction as designated under 53A-1-301.
- F. "USOE" means the Utah State Office of Education.

R277-480-2. Authority and Purpose.

- A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53A-21-401(6) which requires the Board to establish or reauthorize a Subaccount Committee by July 15 annually, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of this rule is to establish procedures for determining membership of the Charter School Building Subaccount Committee, and determining loan amounts and loan repayment conditions.

R277-480-3. Charter School Building Subaccount.

- A. The Board shall establish or reauthorize a Subaccount Committee consistent with 53A-21-401(6) by July 15 annually.
 - (1) The Superintendent, on behalf of the Board, may annually accept nominations of individuals provided by the State Charter School Board who meet the qualifications of 53A-21-401(6)(b).
 - (a) The State Charter School Board shall submit a list of at least three nominees per vacancy who meet the requirements of Section 53A-21-401(6)(b) for appointment by the Board.
 - (b) Subaccount Committee members shall be appointed by the Board for terms that do not exceed three years.
 - (2) For appointment prior to June 1, 2010, the Superintendent, under the direction of the Board, shall designate which Subaccount Committee members shall be reappointed and which members shall serve continuing one, two or three year terms in order to stagger the terms of Subaccount Committee members.
 - (3) Subaccount Committee members appointed by the Board after May 1, 2010 shall serve two year terms.
 - (4) The USOE Charter School Director or designee shall be a non-voting Subaccount Committee member.
- B. The Subaccount Committee shall develop and the USOE shall make available a loan application that includes criteria designated under Sections 53A-21-401(6)(c) and (8).
- C. The Subaccount Committee shall include other criteria or information from loan applicants that the committee or the Board determines to be necessary and helpful in making final recommendations to the Superintendent, the State Charter School Board and the Board.

D. The Subaccount Committee shall establish terms and conditions for loan repayment, consistent with Section 53A-21-401(6)(c) and Section 53A-21-401(8). Terms may include:

(1) A tiered schedule of loan fund distribution:

(a) 50 percent (up to \$150,000) disbursed no more than 12 months prior to August 15 in the school's first year of operations;

(b) 25 percent (up to \$75,000) disbursed no more than six months prior to August 15 in the school's first year of operation;

(c) the balance of loan funds disbursed no more than three months prior to August 15 in the school's first year of operations.

(2) The loan amount to a charter school board awarded under Section 53A-21-401(7) shall not exceed:

(a) \$1,000 per pupil based on prior year October 1 enrollment count for operational schools; or

(b) \$1,000 per pupil based on approved enrollment capacity of the first year of operation for pre-operational schools; or

(c) \$300,000 of the total of all current loan awards by the Board to a charter school board.

E. Applications for loans shall be accepted on an ongoing basis, subject to eligibility criteria and availability of funding.

(1) To apply for a loan, a charter school shall submit the information requested on the Board's most current loan application form together with the requested supporting documentation.

(2) The application shall include a resolution from the governing board of the charter school that the governing board, at a minimum:

(a) agrees to enter into the loan as provided in the application materials;

(b) agrees to the interest established by the Subaccount Committee and repayment schedule of the loan designated by the Subaccount Committee and the Board;

(c) agrees that loan funds shall only be used consistent with the purposes of Section 53A-21-401(5)(c) and the purpose of the approved charter;

(d) agrees to any and all audits or financial reviews ordered by the Subaccount Committee or the Board;

(e) agrees to any and all inspections or reviews ordered by the Subaccount Committee or the Board;

(f) understands that repayment, including interest, shall be deducted automatically from the charter school's monthly fund transfers, as appropriate.

F. The Subaccount Committee shall not make recommendations to the Superintendent, the State Charter School Board or the Board until the committee receives complete and satisfactory information from the applicant and the Subaccount Committee has reached a majority recommendation.

G. The submission of intentionally false, incomplete or inaccurate information from a loan applicant shall result in immediate cancellation of any previous loan(s), the requirement for immediate repayment of any funds received, denial of subsequent applications for a 12 month period from the date of the initial application, and possible Board revocation of a charter.

H. The Superintendent, in consultation with USOE and State Charter Board staff, shall review recommendations from the Subaccount Committee and make final recommendations to the Board.

I. The Superintendent shall submit final recommendations from the Subaccount Committee to the Board no

more than 60 days after submission of all information and materials from the loan applicant to the Subaccount Committee.

J. The Board may request additional information from loan applicants or a reconsideration of a recommendation by the Subaccount Committee.

K. The Board's approval or denial of loan applications constitutes the final administrative action in the charter school building revolving loan process.

KEY: charter schools, building subaccount

Date of Enactment or Last Substantive Amendment: 2010

Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-21-401(6); 53A-1-401(3)

Education, Administration R277-505-4 Administrative License Area of Concentration Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33745

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to remove the language that allows for acceptance of programs accredited by major regional accrediting associations as regional accreditation has resulted in substandard and unregulated programs to qualify as administrative licensure programs in Utah.

SUMMARY OF THE RULE OR CHANGE: The amendment removes language in Section R277-505-4 that includes major regional accrediting associations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-6-101(1) and Subsection 53A-6-101(2)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The changes are procedural. Any conceivable cost differential could be minimal and absorbed by the Utah State Office of Education.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The changes are procedural.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. The changes are procedural.

♦ **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 are procedural.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The changes are procedural.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no 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 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

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

R277. Education, Administration.

R277-505. Administrative License Areas of Concentration and Programs.

R277-505-4. Administrative License Area of Concentration Requirements.

A. An applicant for the Administrative license area of concentration shall have successfully completed or received all of the following:

- (1) a Level 2 teaching license or equivalent from another state with area of concentration;
- (2) a master's degree or more advanced degree;
- (3) an education administrative program; and
- (4) a Board-approved administrative test;
- (5) Exceptions may be made to R277-505-4A(1)(2) or (3) by the USOE for exceptional professional experience, exceptional education accomplishments, or other noteworthy experiences or circumstances.
- (6) not fewer than three years of acceptable full-time professional experience in an education-related area in a public or accredited private or parochial school. Appropriate experiences that may be substituted for up to one-half of this requirement include:
 - (a) alternative school or similar type professional experience;
 - (b) community college, trade-technical college, or other post-secondary professional experience;

- (c) district-level administrative experience;
 - (d) headstart or preschool professional experience;
 - (e) college of education or state education agency professional experience; or
 - (f) professional experience in academic departments of colleges or universities if there has been sufficient involvement with public school programs and curriculum.
- (7) a recommendation from a Utah institution whose program of preparation has been accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC)[~~—or one of the major regional accrediting associations as defined under R277-503-1L~~].

B. In addition to R277-505-4A, above, an applicant for the Administrative license area of concentration shall successfully complete an administrative internship. The internship shall:

- (1) consist of a minimum of 450 hours of supervised clinical experiences, excluding additional hours required by a university for seminars or discussion sessions within the required hours.
 - (2) include a minimum of 200 of the required hours in a school setting which offers the opportunity of working with a properly licensed principal, students, faculty, classified employees, parents and patrons.
 - (3) include the remainder of the required internship hours in school district offices, the USOE or other USOE-approved and appropriate agencies or school settings.
 - (4) include the majority of the school-level supervised experience during the regular school day in concentrated blocks of a minimum of three hours each when students are present.
 - (5) presume interns' involvement in extracurricular activities.
 - (6) include experiences at both elementary and secondary school levels.
 - (7) have clinical experience in a different school than where the intern may be employed as a teacher.
 - (8) provide opportunities for the intern to demonstrate application of knowledge and skills gained through the higher education experience in school settings, including the opportunity to:
 - (a) understand the school community;
 - (b) understand the school culture and its importance to the student;
 - (c) experience managing a safe, efficient learning environment;
 - (d) collaborate with families of diverse students;
 - (e) support ethics and fairness in the school setting; and
 - (f) participate in the larger political, social, economic, legal and cultural school context.
- C. In the first year of employment as an administrator, an applicant for the Administrative license area of concentration shall complete a one school year mentoring experience established and supervised by the employing school district or charter school that includes criteria identified in R277-522-3A and B, as applied to administrators.
- D. Relicensure and professional development requirements for active and non-practicing administrators shall include:
- (1) for active administrators, at least 75 of the required 200 points shall focus on leadership issues to ensure that:

- (a) administrators have current and effective knowledge and skills;
 - (b) administrators understand and can demonstrate employee corrective action directives;
 - (c) administrators are working to improve student achievement, teacher effectiveness and teacher retention skills; and
 - (d) administrators are using student data to assess student learning.
- (2) for non-practicing administrators, at least 100 points of the required 200 points shall be related to school administration.

KEY: professional competency, teacher certification, accreditation
Date of Enactment or Last Substantive Amendment: [March 27, 2007]2010
Notice of Continuation: September 6, 2007
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-101(1); 53A-6-101(2); 53A-1-401(3)

Education, Administration
R277-600-10
Special Transportation Levy

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 33747
 FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide for changes in H.B. 166, 2010 Legislative Session, that permits use of the local special transportation levy with fewer restrictions by school districts to transport students and to use the levy for the replacement of school buses. (DAR NOTE: H.B. 166 (2010) is found at Chapter 305, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: The amendments provide for broader use of the special transportation levy in Section R277-600-10.

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

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The changes to the rule affect local school districts and use of funds.
 ♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. School districts will now be able to use the special transportation levy for additional uses

previously restricted, but will have no additional or new funding.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This rule applies to public school transportation.

♦ **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 apply to school districts.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. School districts will have more flexibility in using special transportation levy funds.

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 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

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

R277. Education, Administration.
R277-600. Student Transportation Standards and Procedures.
R277-600-10. Special Transportation Levy.

A. Costs for school district transportation of students which are not reimbursable may be paid for from general funds of the school district or from the proceeds of a tax rate authorized for school districts. The tax rate authorized for transportation may not exceed .0003 tax rate. The revenue may be used for transporting students and for the replacement of school buses.[-

- ~~(1) to transport ineligible students to and from school;~~
- ~~(2) for transportation to interscholastic activities;~~
- ~~(3) for transportation to night activities;~~
- ~~(4) for field trips; and~~
- ~~(5) for the replacement of school buses.]~~

B. Transportation of students in areas where walking constitutes a hazardous condition, as determined by the local board, may be provided from general funds from the school district or from the tax specified in R277-600-10A. Hazardous areas shall be determined by an analysis of the following factors:

- (1) volume, type, and speed of vehicular traffic;
- (2) age and condition of students traversing the area;
- (3) condition of the roadway, sidewalks and applicable means of access in the area; and
- (4) environmental conditions.

C(1) The cost of school bus operation for ~~[activity trips]~~ interscholastic activities[-] and educational field trips approved by a school board, and for the transportation of students to alleviate hazardous walking conditions may be met with state funds appropriated under Section 53A-17a-127(6) only to the extent of funds available to individual school districts ~~[- for the specific purposes of Section 53A-17a-127(6)(b)].~~

(2) Appropriated funds under Section 53A-17a-127(6) shall be distributed according to each school district's proportional share of its qualifying state contribution.

(3) The qualifying state contribution for school districts shall be the difference between 85 percent of the average state cost per qualifying mile multiplied by the number of qualifying miles and the current funds raised per school district by a transportation levy of .0002.

KEY: school buses, school transportation

Date of Enactment or Last Substantive Amendment: [June 23, 2009] 2010

Notice of Continuation: January 8, 2008

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(d); 53A-17a-126 and 127

**Education, Administration
R277-604-1
Definitions**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33748

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R277-604-1 is amended to provide for changes in H.B. 166, 2010 Legislative Session, which suspend administration of the Utah Basic Skills Competency Test (UBSCT) for at least two years. (DAR NOTE: H.B. 166 (2010) is found at Chapter 305, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: The amendment provides language suspending the UBSCT for at least two years.

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. Participation in Utah public school achievement testing is coordinated through school districts.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. Utah public school achievement testing will still take place consistent with Rule R277-604, with the exception of the UBSCT for at least two years.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. Utah public school achievement testing will still take place consistent with Rule R277-604, with the exception of the UBSCT for at least two years.

◆ **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. Students enrolled in private schools, home schools, electronic high schools, and Utah Bureau of Indian Affairs students may still participate in Utah public school achievement testing, consistent with Rule R277-604, with the exception of the UBSCT for at least two years.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Utah public school achievement testing will still take place consistent with Rule R277-604, with the exception of the UBSCT for at least two years.

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 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

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

R277. Education, Administration.

R277-604. Private School, Home School, Electronic High School (EHS), and Bureau of Indian Affairs (BIA) Student Participation in Public School Achievement Tests.

R277-604-1. Definitions.

A. Utah Basic Skills Competency Test (UBSCT) means the test required under Section 53A-1-611 for Utah students seeking a high school diploma (suspended through at least the 2011-2012 school year).

B. "Private school" means a school that is not a public school but:

(1) has a location or space in Utah where teachers have regularly scheduled face-to-face classes with students;

(2) has a current business license through the Utah Department of Commerce;

(3) is accredited through Northwest or another regional accrediting agency;

(4) has and makes available a written policy for maintaining and securing student records;

(5) charges tuition generally consistent with other private schools in Utah; and

(6) employs teachers with licenses, credentials or demonstrable skills and expertise for instructing students in Core Curriculum courses or areas.

C. "Home school student" means a student who has been excused from compulsory education and for whom documentation has been completed under 53A-11-102.

D. "Public school achievement test" means a standardized test which measures or attempts to measure the level of performance which a student has attained in one or more courses of study. Achievement tests shall mean criterion-referenced tests consistent with 53A-1-602(3)(b)(c) and (d).

KEY: home school, private school, electronic high school, achievement tests

Date of Enactment or Last Substantive Amendment: [November 9, 2006]2010

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

Education, Administration

R277-609

Standards for School District, School and Charter School Discipline Plans

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33749

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-609 is amended to make changes from S.B. 59, 2010 Legislative Session, that require the Utah State Board of Education to adopt rules that direct a local school board or governing board of a charter school to enact gang prevention and intervention policies for all schools within the board's jurisdiction. (DAR NOTE: S.B. 59 (2010) is found at Chapter 207, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: The amendment provides new language in the authority and purpose section and new language requiring school districts, schools, and charter schools to have board-approved gang prevention and intervention policies.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-15-603 and 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 changes provide a new requirement for school districts and charter schools.

◆ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. School districts, schools, and charter schools are required to have board-approved gang prevention and intervention policies and plans which should not result in additional costs.

◆ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. This rule applies only to the Utah public education system.

◆ 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 apply to school districts, schools, and charter schools.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. School districts, schools, and charter schools are required to have board-approved gang prevention and intervention policies and plans which should not result in additional 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 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

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

R277. Education, Administration.

**R277-609. Standards for School District, School and Charter
School Discipline Plans.**

R277-609-1. Definitions.

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

B. "Bullying" means behavior that:

- (1) is intended to cause harm or distress;
- (2) exists in a relationship in which there is an imbalance
of power;
- (3) may be repeated over time; and
- (4) may also include definitions provided in Section
53A-11a-102.

C. "Discipline" means:

(1) Imposed discipline: Code of conduct prescribed for
the highest welfare of the individual and of the society in which the
individual lives; and

(2) Self-Discipline: A personal system of organized
behavior designed to promote self-interest while contributing to the
welfare of others.

D. "Disruptive student behavior" includes:

- (1) the grounds for suspension or expulsion described in
Section 53A-11-904; and
- (2) the conduct described in Section 53A-11-908(2)(b).

E. "Plan" means a school district-wide and school-wide
written model for prevention and intervention for student behavior
management and discipline procedures for students who habitually
disrupt school environments and processes.

F. "Qualifying minor" means a school-age minor who:

- (1) is at least nine years old; or
- (2) turns nine years old at any time during the school
year.

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

R277-609-2. 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, Section
53A-1-402(1)(b) which requires the Board to establish rules
concerning discipline and control, Section 53A-15-603 which
requires the Board to adopt rules that require a local school board or
governing board of a charter school to enact gang prevention and
intervention policies for all schools within the board's jurisdiction,
and Section 53A-11-901 which directs local school boards and
charter school governing boards to adopt conduct and discipline
policies and directs the Board to develop model policies to assist
local school boards and charter school governing boards.

B. The purpose of this rule is to define bullying and
outline requirements for school discipline plans and policies which
school districts and charter schools shall meet to qualify for
funding.

**R277-609-3. School District, School and Charter School
Responsibility to Develop Plans.**

A. Each school district, or school and each charter school
shall develop and implement a board approved comprehensive
school district, school or charter school plan or policy for student
and classroom management, and school discipline. The plan shall
include:

- (1) the definitions of Section 53A-11-910;
- (2) written standards for student behavior expectations,
including school and classroom management;
- (3) effective instructional practices for teaching student
expectations, including self-discipline, citizenship, civic skills, and
social skills;
- (4) systematic methods for reinforcement of expected
behaviors and uniform methods for correction of student behavior;
- (5) uniform methods for at least annual school level data-
based evaluations of efficiency and effectiveness;
- (6) an ongoing staff development program related to
development of student behavior expectations, effective
instructional practices for teaching and reinforcing behavior
expectations, effective intervention strategies, and effective
strategies for evaluation of the efficiency and effectiveness of
interventions;
- (7) policies and procedures relating to the use and abuse
of alcohol and controlled substances by students;
- (8) policies to define, prohibit, and intervene in bullying,
including the requirement of awareness and intervention strategies,
including training for social skills, for students, parents, and school
staff. The policies shall:
 - (a) provide for training specific to overt aggression that
may include physical fighting such as punching, shoving, kicking,
and verbal threatening behavior, such as name calling, or both
physical and verbal aggression or threatening behavior;
 - (b) provide for training specific to relational aggression
or indirect, covert, or social aggression, including rumor spreading,
intimidation, enlisting a friend to assault a child, and social
isolation;
 - (c) provide training and education specific to bullying
based upon students':
 - (i) actual or perceived identities;
 - (ii) conformance or failure to conform with stereotypes.
 - (d) provide for training specific to cyber bullying,
including use of email, web pages, text messaging, instant

messaging, three-way calling or messaging or any other electronic means for aggression inside or outside of school;

(e) provide for student assessment of the prevalence of bullying in school districts, schools and charter schools, specifically locations where students are unsafe and additional adult supervision may be required, such as playgrounds, hallways, and lunch areas;

(f) complement existing safe and drug free school policies and school harassment and hazing policies; and

(g) include strategies for providing students and staff, including aides, custodians, kitchen and lunchroom workers, secretaries, paraprofessionals, and coaches, with awareness and intervention skills such as social skills training.

B. The plan shall also provide direction to school districts for dealing with disruptive students. This part of the plan shall:

(1) direct schools to determine the range of behaviors and establish the continuum of administrative procedures that may be used by school personnel to address the behavior of habitually disruptive students;

(2) provide for identification, by position(s), of individual(s) designated to issue notices of disruptive student behavior; and

(3) provide for documentation of disruptive student behavior prior to referral of disruptive students to juvenile court.

C. School district or school plans or sections of plans, including directives about bullying and disruptive students, shall also:

(1) include strategies to provide for necessary adult supervision;

(2) be clearly written and consistently enforced; and

(3) include administration, instruction and support staff, students, parents, community council and other community members in policy development, training and prevention implementation so as to create a community sense of participation, ownership, support and responsibility.

D. Plans required under R277-609-3 shall include gang prevention and intervention policies.

(1) The required plans shall account for an individual school or school district's unique needs or circumstances.

(2) The required plans may include the provisions of Section 53A-15-603(2).

(3) The required plans may provide for publication of notice to parents and school employees of policies by reasonable means.

R277-609-4. Implementation.

A. School districts, schools and charter schools shall implement strategies and policies consistent with their plans.

B. School districts, schools and charter schools shall develop, use and monitor a continuum of intervention strategies to assist students whose behavior in school falls repeatedly short of reasonable expectations, including teaching student behavior expectations, reinforcing student behavior expectations, re-teaching behavior expectations, followed by effective, evidence-based interventions matched to student needs prior to administrative referral.

C. As part of any suspension or expulsion process that results in court involvement, once a school district, school or charter school receives information from the courts that disruptive student behavior will result in court action, the school district, school or

charter school shall provide a formal written assessment of habitually disruptive students. Assessment information shall be used to connect parents and students with supportive school and community resources.

D. Nothing in state law or this rule restricts local districts/charter schools from implementing policies to allow for suspension of students of any age consistent with due process and with all requirements of Individuals with Disabilities Education Act 2004.

R277-609-5. Parent/Guardian Notification and Court Referral.

A. Through school administrative and juvenile court referral consequences, school district, and school and charter school policies shall provide procedures for qualifying minors and their parents to participate in decisions regarding consequences for disruptive student behavior.

B. Policies shall provide for notice to parents and information about resources available to assist parents in resolving school-age minors' disruptive behavior.

C. Policies shall provide for notices of disruptive behavior to be issued by schools to qualifying minor(s) and parent(s) consistent with:

(1) numbers of disruptions and timelines in accordance with Section 53A-11-910;

(2) school resources available; and

(3) cooperation from the appropriate juvenile court in accessing student school records, including attendance, grades, behavioral reports and other available student school data.

D. Policies shall provide due process procedures for minors and parents to contest allegations and citations of disruptive student behavior.

R277-609-6. USOE Model Policies.

The USOE shall develop, review regularly, and provide to local school boards and charter school governing boards model policies to address disruptive student behavior and appropriate consequences.

KEY: disciplinary actions, disruptive students

Date of Enactment or Last Substantive Amendment:
[November 10, 2008] 2010

Notice of Continuation: July 23, 2009

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1-402(1); 53A-15-603; 53A-11-901

Education, Administration **R277-612-3** Foreign Exchange Student Cap

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33750

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide for changes in H.B. 433, 2010 Legislative Session, that require a school district or charter school to accept a student participating in a foreign exchange program if another student from the same school participates in the same exchange program in a foreign country. This exchange is required despite the overall cap on the number of foreign exchange students. (DAR NOTE: H.B. 433 (2010) is found at Chapter 349, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: The amendment removes language regarding the cap on foreign exchange students from the rule and provides new language directing school districts and charter schools to enroll foreign exchange students consistent with the law.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-2-206(2)

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget because of this amendment. Though foreign exchange students are nonresident students supported by state taxpayers, this specific rule and new legislation only requires the state to pay for a nonresident student if a Utah student leaves the school district.
 ♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. School districts and charter schools are required to enroll a foreign exchange student beyond the legislative cap if a resident student from the same school, sponsored by the same agency, leaves the Utah public school system to enroll in school in a foreign country. Funding would not be affected because the exchange is on a one-to-one basis.
 ♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. Utah State Board of Education approved foreign exchange student programs will be able to arrange for exchanges on a one-on-one basis.
 ♦ **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. Students will be able to exchange on a one-on-one basis.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Students will be able to exchange on a one-on-one basis.

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 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

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

R277. Education, Administration.

R277-612. Foreign Exchange Students.

R277-612-3. Foreign Exchange Student Cap.

A. School districts and charter schools shall be compensated from a specific legislative appropriation designated annually to pay the costs of educating foreign exchange students who meet all criteria of the law.

B. School districts and charter schools are encouraged to enroll foreign exchange students and report those enrollment numbers annually to the USOE in the October 1 Superintendents' Report.

~~[C. When the number of reported foreign exchange students reaches 250 in a school year, the USOE may notify school districts of quotas in enrolling foreign exchange students or may seek funding for a USOE employee to promote the program among school districts and charter schools and ensure that all requirements of the law are satisfied by foreign exchange student agencies, foreign exchange students, school districts and charter schools.~~

~~—D]C.~~ School districts and charter schools shall include in their report to the USOE only foreign exchange students that satisfy all requirements of 53A-2-206(6) and school district/charter school policies. School districts/charter schools may enroll foreign exchange students who do not qualify for state monies and pay the costs of those students with other school district/charter school funds or charge the students tuition.

D. Notwithstanding the provisions of Section 53A-2-206(2) and R277-612-3, the provisions of Section 53A-2-206(8) shall apply.

KEY: foreign exchange students, enrollment

Date of Enactment or Last Substantive Amendments: ~~[May 9, 2007]~~**2010**

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-2-206(2), 53A-1-401(3)

Education, Administration
R277-616-1
Definitions

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 33751
 FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide for changes in federal reporting standards consistent with the "Final Guidance on Maintaining, Collecting, and Reporting Racial and Ethnic Data to the U.S. Department of Education."

SUMMARY OF THE RULE OR CHANGE: The amendments provide a change to the definition of "Ethnic minority student."

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-17a-121(2)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The amendment merely provides a change in a definition to make the definition consistent with federal reporting requirements.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The amendment merely provides a change in a definition to make the definition consistent with federal reporting requirements.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. The rule applies to school districts/schools that report data to the U.S. Department of Education is merely a change in a definition to make the definition consistent with federal reporting requirements.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, business, or local government entities. The amendment merely provides a change in a definition to make the definition consistent with federal reporting requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The amendment merely provides a change in a definition to make the definition consistent with federal reporting requirements.

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 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

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

R277. Education, Administration.

R277-616. Education for Homeless and Emancipated Students and State Funding for Homeless and Disadvantaged Minority Students.

R277-616-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "Domicile" means the place which a person considers to be the permanent home, even though temporarily residing elsewhere.
- C. "Economically disadvantaged" means a student who is eligible for reduced price or free school lunch.
- D. "Emancipated minor" means:
 - (1) a child under the age of 18 who has become emancipated through marriage or by order of a court consistent with Section 78A-6-801 et seq.; or
 - (2) a child recommended for school enrollment as an emancipated or independent or homeless child/youth by an authorized representative of the Utah State Department of Social Services.
- E. "Enrolled" for purposes of this rule means a student has the opportunity to attend classes and participate fully in school and extracurricular activities based on academic and citizenship requirements of all students.
- F. "Ethnic minority student" means ~~non-Caucasian~~ a student ~~s-as~~ identified as belonging to one or more of the categories below:
 - (1) American Indian or Alaskan native;
 - (2) Hispanic/Latino;
 - (3) Asian;
 - (4) Pacific Islander;
 - (5) Black/African American ~~[, not of Hispanic origin;~~
 - ~~(6) Other;~~
 - ([7]6) The total of ethnic minority students per school shall be determined annually on October 1.
- G. "Homeless child/youth" means a child who:

(1) lacks a fixed, regular, and adequate nighttime residence;

(2) has primary nighttime residence in a homeless shelter, welfare hotel, motel, congregate shelter, domestic violence shelter, car, abandoned building, bus or train station, trailer park, or camping ground;

(3) sleeps in a public or private place not ordinarily used as a regular sleeping accommodation for human beings;

(4) is, due to loss of housing or economic hardship, or a similar reason, living with relatives or friends usually on a temporary or emergency basis due to lack of housing; or

(5) is a runaway, a child or youth denied housing by his family, or school-age unwed mother living in a home for unwed mothers, who has no other housing available.

H. "Parent" means a parent or guardian having legal custody of a minor child.

I. "School district of residence for a homeless child/youth" means the school district in which the student or the student's legal guardian or both currently resides or the charter school that the student is attending for the period that the student or student's family satisfies the homeless criteria.

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

KEY: compulsory education, students' rights

Date of Enactment or Last Substantive Amendment:
~~December 26, 2007~~ 2010

Notice of Continuation: November 23, 2005

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-2-201(5); 53A-2-202; 53A-17a-121(3)

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

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33752

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide for changes in H.B. 166, 2010 Legislative Session, which eliminates the requirement to administer norm-referenced achievement testing, eliminates the requirement to administer criterion-referenced achievement tests in grade 2, and suspends administration of the Utah Basic Skills Competency Test (UBSCT) for two years. The amendments also provide for 2010 legislative changes in S.B. 16 which provides new language for school district and charter school participation in a pilot assessment system. (DAR NOTE: H.B. 166 (2010) is

found at Chapter 305, Laws of Utah 2010, and was effective 05/11/2010. S.B. 16 (2010) is found at Chapter 11, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: The changes include removing language requiring administration of norm-referenced testing, removing language requiring criterion-referenced testing in grade 2, providing language suspending the UBSCT for at least two years, and providing a new Section R277-705-12 on participation in the High School Assessment Pilot Program.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 53A-1-604 through 53A-1-611 and Subsection 53A-1-401(3) and Subsections 53A-1-402(1)(b) and (c)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. Although the changes to the rule permanently eliminate norm-referenced testing, administration of criterion-referenced testing in grade 2, and suspend the UBSCT for at least two years, funding previously appropriated for this purpose has now been directed toward the High School Assessment Pilot Program.

◆ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. Public school districts and charter schools will simply not administer the specific tests that have eliminated or suspended. School districts and charter schools may apply for participation in the High School Assessment Pilot Program.

◆ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. The rule applies only to public school district and schools.

◆ 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. Students will not be required to take tests that have been eliminated or suspended.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Public schools will not administer specific tests that have been eliminated or suspended.

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

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THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

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

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

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

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

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

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

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

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

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

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

H. "LEA" means a local education agency, including local school boards/public school districts and schools, and charter schools.

~~[H]~~I. "Military child or children" means a K-12 public education student whose parent(s) or legal guardian(s) satisfies the definition of Section 53A-11-1401.

~~[I]~~J. "Secondary school" means grades 7-12 in whatever kind of school the grade levels exist.

~~[J]~~K. "Section 504 Plan" means a written statement of reasonable accommodations for a student with a qualifying disability that is developed, reviewed, and revised in accordance with Section 504 of the Rehabilitation Act of 1973.

~~[K]~~L. "Special purpose schools" means schools designated by regional accrediting agencies, such as Northwest. These schools typically serve a specific population such as students

with disabilities, youth in custody, or schools with specific curricular emphasis. Their courses and curricula are designed to serve their specific populations and may be modified from traditional programs.

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

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

~~[N]~~~~Utah Performance Assessment System for Students (U-PASS)" means:~~

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

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

~~_____ (3) direct writing assessments in grades 5 and 8; and~~

~~_____ (4) beginning with the 2003-2004 school year, a tenth grade basic skills competency test as detailed in Section 53A-1-611.]O. "Utah Performance Assessment System for Students (U-PASS)" means:~~

~~_____ (1) criterion-referenced achievement testing of students in all grade levels in:~~

~~_____ (a) language arts (grades 3-11);~~

~~_____ (b) mathematics (grades 3-7) and pre-algebra, elementary Algebra 1, Algebra 2 and geometry;~~

~~_____ (c) science (grades 4-8) and earth systems, biology, chemistry, and physics; and~~

~~_____ (2) an online direct writing assessment in grades 5 and 8;~~

~~_____ (3) a tenth grade basic skills competency test as detailed in Section 53A-1-611 (suspended through at least the 2011-2012 school year); and~~

~~_____ (4) the use of student behavior indicators in assessing student performance.~~

~~_____ (5) The U-PASS Performance Report is suspended through at least the 2011-2012 school year.~~

~~[O]~~P. "Unit of credit" means credit awarded for courses taken consistent with this rule or upon ~~[school district/school]~~LEA authorization or for mastery demonstrated by approved methods.

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

~~[Q]~~R. "Utah Basic Skills Competency Test (UBSCT)" means a test to be administered to Utah students beginning in the tenth grade (suspended through at least the 2011-2012 school year) to include at a minimum components on English, language arts, reading and mathematics. Utah students shall satisfy the

requirements of the UBSCT in addition to state and ~~[district]~~LEA graduation requirements prior to receiving a high school diploma indicating a passing score on all UBSCT subtests, for applicable school years.

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

- (1) parents;
- (2) high school principal(s);
- (3) high school teacher(s);
- (4) ~~school~~ district superintendent(s);
- (5) Coalition of Minorities Advisory Committee;
- (6) Utah State Office of Education staff;
- (7) local school board(s);
- (8) higher education.

R277-705-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution, which places general control and supervision of the public schools under the Board; Section 53A-1-402(1)(b) and (c) which direct the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements; Sections 53A-1-603 through 53A-1-611 which direct the Board to adopt rules for the conduct and administration of U-PASS; and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide consistent definitions, provide alternative methods for students to earn and schools to award credit, and to provide rules and procedures for the assessment of all students as required by law, ~~and to provide for differentiated diplomas or certificates of completion consistent with state law~~.

R277-705-3. Required ~~[School-District]~~LEA Policy Explaining Student Credit.

A. All Utah ~~[school districts or schools and charter schools]~~LEAs shall have a policy, approved in an open meeting by the governing board, explaining the process and standards for acceptance and reciprocity of credits earned by students in accordance with Utah state law. Policies shall provide for specific and adequate notice to students and parents of all policy requirements and limitations.

B. ~~[School districts and schools]~~LEAs shall adhere to the following standards for credits or coursework from schools, supplemental education providers accredited by the Northwest Association of Accredited Schools, and accredited distance learning schools:

(1) Public schools shall accept credits and grades awarded to students from schools or providers accredited by the Northwest Association of Accredited Schools or approved by the Board without alteration.

(2) ~~[School district or school]~~LEA policies may establish reasonable timelines and may require adequate and timely documentation of authenticity for credits and grades submitted.

C. ~~[School district or school]~~LEA policies shall provide various methods for students to earn credit from non-accredited sources, course work or education providers. Methods, as designated by the ~~[school district or school]~~LEA may include:

(1) Satisfaction of coursework by demonstrated competency, as evaluated at the ~~[school district or school]~~LEA level;

(2) Assessment as proctored and determined at the school or school level;

(3) Review of student work or projects by ~~[school or school district]~~LEA administrators; and

(4) Satisfaction of electronic or correspondence coursework, as approved at the ~~[school or school district]~~LEA level.

D. ~~[Schools/school districts]~~LEAs may require documentation of compliance with Section 53A-11-102 prior to reviewing student home school or competency work, assessment or materials.

E. ~~[School/school district]~~LEA policies for participation in extracurricular activities, awards, recognitions, and enhanced diplomas may be determined locally consistent with the law and this rule.

F. An ~~[school district or school]~~LEA has the final decision-making authority for the awarding of credit and grades from non-accredited sources consistent with state law, due process, and this rule.

R277-705-4. Diplomas and Certificates of Completion.

A. ~~[School districts or schools]~~LEAs shall award diplomas and certificates of completion.

B. ~~[School districts or schools shall offer differentiated diplomas to secondary school students and adults to]~~Differentiated diplomas that reference the UBSCT before the 2010-2011 school year and after the 2012-2013 school year shall include:

(1) a high school diploma indicating on the diploma that a student successfully completed all state and ~~[district]~~LEA course requirements for graduation and passed all subtests of the UBSCT.

(2) a high school diploma indicating on the diploma that a student did not receive a passing score on all UBSCT subtests; the student shall have:

(a) met all state and ~~[district]~~LEA course requirements for graduation; and

(b) beginning with the graduating class of 2007, participated in UBSCT remediation consistent with ~~[school district or school]~~LEA policies and opportunities; and

(c) provided documentation of at least three attempts to take and pass all subtests of the UBSCT unless:

(i) the student took all subtests of the UBSCT offered while the student was enrolled in Utah schools; or

(ii) a student's IEP team has determined that the student's participation in statewide assessment is through the UAA.

C. ~~[School districts or schools]~~LEAs shall establish criteria for students to earn a certificate of completion that may be awarded to students who have completed their senior year, are exiting the school system, and have not met all state or ~~[district]~~LEA requirements for a diploma.

R277-705-5. Students with Disabilities.

A. A student with disabilities served by special education programs shall satisfy high school completion or graduation criteria, consistent with state and federal law and the student's IEP.

B. A student may be awarded a certificate of completion or a differentiated diploma, consistent with state and federal law and the student's IEP or Section 504 Plan.

R277-705-6. Adult Education Students.

A. Students who are officially enrolled in a school district as adult education students shall not be required to have attempted or passed the UBSCCT in order to qualify for an adult education diploma.

B. Adult education students are eligible only for an adult education secondary diploma.

C. ~~[After the 2006-2007 school year,]~~ An adult education diplomas cannot be upgraded or changed to traditional, high school-specific diplomas.

D. School districts shall establish policies:

(1) allowing or disallowing adult education student participation in graduation activities or ceremonies.

~~[(2) allowing or disallowing adult education students from attempting the UBSCCT.~~

~~[(3) providing for wording, on adult education diplomas, including allowing or disallowing adult education diplomas to state that student did or did not pass UBSCCT.~~

~~_____]~~ [(4)] establishing timelines and criteria for satisfying adult education graduation/diploma requirements.

R277-705-7. Utah Basic Skills Competency Testing Requirements and Procedures (Suspended Through at Least the 2011-2012 School Year Consistent with Section 53A-1-611(6)(b)).

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

B. Timeline:

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

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

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

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

C. UBSCCT components, scoring and consequences:

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

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

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

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

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

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

D. Reciprocity and new seniors:

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

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

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

E. Testing eligibility:

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

(2) Students are qualified if they:

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

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

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

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

F. Testing procedures:

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

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

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

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

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

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

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

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

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

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

(7) ~~[School districts/schools]~~LEAs shall allow appropriate exams to substitute for UBSCCT attempts or successful completion of UBSCCT for military children consistent with Section 53A-11-1404(2).

(8) The graduating classes of 2011, 2012, 2013, and 2014 shall be exempt from the UBSCCT requirement of Sections 53A-1-603(1)(b) and 53A-11-1404.

R277-705-8. Security and Accountability.

A. Building principals shall be responsible to secure and return completed tests consistent with Utah State Office of Education timelines.

B. ~~[School district]~~LEAs testing directors shall account for all materials used, unused and returned.

C. Results shall be returned to students and parents/guardians no later than eight weeks following the administration of each test.

D. Appeals for failure to pass the UBSCCT due to extraordinary circumstances:

(1) If a student or parent has good reason to believe, including documentation, that a testing irregularity or inaccuracy in scoring prevented a student from passing the UBSCCT, the student or parent may appeal to the local board within 60 days of receipt of the test results.

(2) The local board shall consider the appeal and render a decision in a timely manner.

(3) The parent or student may appeal the local board's decision through the UBSCCT Advisory Committee, under rules adopted by the Board.

(4) Appeals under this section are limited to the criteria of R277-705-8D(1).

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

A. Local boards of education and local charter boards may issue differentiated diplomas.

B. The requirement for differentiated diplomas under the UBSCCT shall be suspended through at least the 2011-2012 school year.

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

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

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

(3) Certificate of Completion.

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

~~[B]D.~~ The designation of a differentiated diploma shall may be made on the face of the diploma or certificate of completion provided to students.

R277-705-10. Student Rights and Responsibilities Related to Graduation, Transcripts and Receipt of Diplomas.

A. ~~[School districts]~~LEAs shall supervise the granting of credit and awarding of diplomas, but may delegate the responsibility to schools within the ~~[district]~~LEA.

B. An ~~[school district or school]~~LEA may determine criteria for a student's participation in graduation activities, honors, and exercises, independent of a student's receipt of a diploma or certificate of completion.

C. Diplomas or certificates, credit or unofficial transcripts may not be withheld from students for nonpayment of school fees.

D. ~~[School districts or schools]~~LEAs shall establish consistent timelines for all students for completion of graduation requirements. Timelines shall be consistent with state law and this rule.

E. ~~[School districts/charter schools]~~LEAs shall work with enrolled military children to evaluate the students' coursework or to assist students in completing coursework to allow military children to graduate with the students' age-appropriate graduating class consistent with Section 53A-11-1404.

F. Consistent with Section 53A-11-1404(3), if a Utah school is unable to facilitate a military child's receipt of diploma by evaluating coursework in Utah schools and previous schools attended, the Utah school shall contact the military child's previous local education agency and aid, to the extent possible, the receipt of a diploma.

G. Graduation or U-PASS requirements are not retroactive.

R277-705-11. Student Achievement Testing Exceptions.

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

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

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

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

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

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

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

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

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

R277-705-12. High School Assessment Pilot Program.

A. The Board shall implement the High School Assessment Pilot Program (Program) consistent with Section 53A-1-603(7) to allow LEAs to:

(1) administer the ACT exam to secondary students for the 2010-11 and 2011-12 schools years; or

(2) administer a computer adaptive testing of basic skills, or both the ACT and computer adaptive testing.

B. The pilot Program shall extend until July 1, 2015.

C. The Board shall develop an application for LEAs choosing to participate in the Program.

D. The Board shall re-direct the money saved by not administering the UBSCT to fund implementation of the Program.

E. LEAs participating in the Program shall assure:

(1) the LEA will continue required CRT testing;

(2) full participation and cooperation with evaluators and Board staff in implementing the Program;

(3) the local board or governing board has fully endorsed the LEA's participation in a public meeting; and

(4) the LEA agrees to provide participation data and results to the Board or the Utah State Legislature, or both, as a requirement of the Program.

KEY: curricula

Date of Enactment or Last Substantive Amendment: [August 7, 2009|2010

Notice of Continuation: February 2, 2007

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

Fair Corporation (Utah State),
Administration
R325-3-17
Smoke-Free Policy

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33707

FILED: 06/03/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to outline the smoke-free policy.

SUMMARY OF THE RULE OR CHANGE: This change supports the Utah Indoor Clean Air Act and establishes an outdoor smoke-free policy for the fair.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 9-4-1103

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** None--The Fair Corporation has determined that there would be no cost or savings to the state budget. This rule applies to patrons attending the Utah State Fair. The Fair Corporation is asking people not to smoke on the grounds except in designated smoking areas only. Asking people to smoke in designated smoking areas only should have no impact on the state budget.

♦ **LOCAL GOVERNMENTS:** None--The Fair Corporation has determined that there would be no cost or savings to any local government. This rule applies to patrons attending the Utah State Fair. The Fair Corporation is asking people not to smoke on the grounds except in designated smoking areas only. Asking people to smoke in designated smoking areas only should have no impact on any local governments.

♦ **SMALL BUSINESSES:** None--The Fair Corporation has determined that there would be no cost or savings to small businesses. This rule applies to patrons attending the Utah State Fair. The Fair Corporation is asking people not to smoke on the grounds except in designated smoking areas only. Asking people to smoke in designated smoking areas only should have no impact on any small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--The Fair Corporation has determined that there would be no cost or savings to any individual. This rule applies to patrons attending the Utah State Fair. The Fair Corporation is asking people not to smoke on the grounds except in designated smoking areas only. Asking people to smoke in designated smoking areas only should not have any financial impact on them. No fines will be imposed if they are smoking outside a designated area.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule applies to patrons attending the Utah State Fair. The Fair Corporation is asking people not to smoke on the grounds except in designated smoking areas only. Asking people to smoke in designated smoking areas only should not have any financial impact on them. No fines will be imposed if they are smoking outside a designated area.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact expected.

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

FAIR CORPORATION (UTAH STATE)

ADMINISTRATION

155 N 1000 W

SALT LAKE CITY, UT 84116-3399

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Kelly West by phone at 801-538-8441, by FAX at 801-538-8455, or by Internet E-mail at kelly@utahstatefair.com

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Judy Duncombe, Acting Executive Director

R325. Fair Corporation (Utah State), Administration.

R325-3. Utah State Fair Patron Rules.

R325-3-17. Smoke-Free Policy.

To enhance the family friendly environment and to promote the health and safety of all of our guests, smoking will be limited to designated outdoor areas.

In accordance with the Utah Indoor Clean Air Act, all indoor facilities will be smoke free.

No refund of admission, ticketed events or rent will be issued as a result of this policy.

KEY: fairs, rules and procedures

Date of Enactment or Last Substantive Amendment: [August 19, 1999]2010

Notice of Continuation: June 22, 2006

Authorizing, and Implemented or Interpreted Law: 9-4-1103

Fair Corporation (Utah State),
Administration

R325-4-22

Smoke-Free Policy

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33709

FILED: 06/03/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to outline the smoke-free policy.

SUMMARY OF THE RULE OR CHANGE: This change supports the Utah Indoor Clean Air Act and establishes policy for non-fair events.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 9-4-1103

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: None-- The Fair Corporation determined that there would be no cost or savings to the state

budget. This rule applies to patrons of the Utah State Fairpark who come to the Fairpark for an interim event. The Fair Corporation is asking people not to smoke in the buildings in accordance with the Utah Indoor Clean Air Act and if they are not in compliance with this policy and the Fair Corporation closes down an event, no refund of admission or rent will be refunded.

♦ LOCAL GOVERNMENTS: None--The Fair Corporation determined that there would be no cost or savings to any local government. This rule applies to patrons of the Utah State Fairpark who come to the Fairpark for an interim event. The Fair Corporation is asking people not to smoke in the buildings in accordance with the Utah Indoor Clean Air Act and if they are not in compliance with this policy and the Fair Corporation closes down an event, no refund of admission or rent will be refunded.

♦ SMALL BUSINESSES: None--The Fair Corporation determined that there would be no cost or savings to small businesses. This rule applies to patrons of the Utah State Fairpark who come to the Fairpark for an interim event. The Fair Corporation is asking people not to smoke in the buildings in accordance with the Utah Indoor Clean Air Act and if they are not in compliance with this policy and the Fair Corporation closes down an event, no refund of admission or rent will be refunded.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule applies to patrons of the Utah State Fairpark who come to the Fairpark for an interim event. The Fair Corporation is asking people not to smoke in the buildings in accordance with the Utah Indoor Clean Air Act and if they are not in compliance with this policy and the Fair Corporation closes down an event, no amount of admission paid will be refunded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None-- This rule applies to patrons of the Utah State Fairpark who come to the Fairpark for an interim event. The Fair Corporation is asking people not to smoke in the buildings in accordance with the Utah Indoor Clean Air Act. An alternate location for smoking nearby will be provided at no cost to the affected person.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact expected.

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

FAIR CORPORATION (UTAH STATE)
ADMINISTRATION

155 N 1000 W

SALT LAKE CITY, UT 84116-3399

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Kelly West by phone at 801-538-8441, by FAX at 801-538-8455, or by Internet E-mail at kelly@utahstatefair.com

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Judy Duncombe, Acting Executive Director

**R325. Fair Corporation (Utah State), Administration.
R325-4. Interim Patrons Rules (Other Than Utah State Fair).
R325-4-22. Smoke-Free Policy.**

In accordance with the Utah Indoor Clean Air Act, all indoor facilities will be smoke free.

No refund of admission, ticketed events or rent will be issued as a result of this policy.

KEY: fairs, rules and procedures

Date of Enactment or Last Substantive Amendment: [~~April 5, 1999~~2010]

Notice of Continuation: June 22, 2006

Authorizing, and Implemented or Interpreted Law: 9-4-1103

**Fair Corporation (Utah State),
Administration
R325-5-17
Smoke-Free Policy**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33708

FILED: 06/03/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to outline the smoke-free policy.

SUMMARY OF THE RULE OR CHANGE: This change supports the Utah Indoor Clean Air Act and establishes policy for non-fair events.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 9-4-1103

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** None--The Fair Corporation has determined that there would be no cost or savings to the state budget. This rule applies to renters who rent space at the Fairpark. The Fair Corporation is asking people not to smoke in the buildings in accordance with the Utah Indoor Clean Air

Act and if they are not in compliance with this policy and the Fair Corporation closes down an event, no refund of admission or rent will be refunded.

♦ **LOCAL GOVERNMENTS:** None--The Fair Corporation has determined that there would be no cost or savings to local government. This rule applies to renters who rent space at the Fairpark. The Fair Corporation is asking people not to smoke in the buildings in accordance with the Utah Indoor Clean Air Act and if they are not in compliance with this policy and the Fair Corporation closes down an event, no refund of admission or rent will be refunded.

♦ **SMALL BUSINESSES:** None--The Fair Corporation determined that there would be no cost or savings to small businesses. This rule applies to renters who rent space at the Fairpark. The Fair Corporation is asking people not to smoke in the buildings in accordance with the Utah Indoor Clean Air Act and if they are not in compliance with this policy and the Fair Corporation closes down an event, no refund of admission or rent will be refunded.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule applies to renters who rent space at the Fairpark. The Fair Corporation is asking people not to smoke in the buildings in accordance with the Utah Indoor Clean Air Act and if they are not in compliance with this policy and the Fair Corporation closes down an event, the rent paid for the space may be forfeited.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule applies to renters who rent space at the Fairpark. The Fair Corporation is asking people not to smoke in the buildings in accordance with the Utah Indoor Clean Air Act and if they are not in compliance with this policy and the Fair Corporation closes down an event, no refund of admission or rent will be refunded. There is nothing special a renter has to do except provide an area outside the building and designate it as a smoking area.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact expected

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
FAIR CORPORATION (UTAH STATE)
ADMINISTRATION
155 N 1000 W
SALT LAKE CITY, UT 84116-3399
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Kelly West by phone at 801-538-8441, by FAX at 801-538-8455, or by Internet E-mail at kelly@utahstatefair.com

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Judy Duncombe, Acting Executive Director

**R325. Fair Corporation (Utah State), Administration.
R325-5. Interim Renters Rules (Other Than Utah State Fair).
R325-5-17. Smoke-Free Policy.**

In accordance with the Utah Indoor Clean Air Act, all indoor facilities will be smoke free.

No refund of admission, ticketed events or rent will be issued as a result of this policy.

KEY: fairs, rules and procedures

Date of Enactment or Last Substantive Amendment: [~~August 19, 1999~~2010]

Notice of Continuation: June 22, 2006

Authorizing, and Implemented or Interpreted Law: 9-4-1103

**Governor, Economic Development,
Pete Suazo Utah Athletic Commission
R359-1
Pete Suazo Utah Athletic Commission
Act Rule**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33711

FILED: 06/04/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to establish a minimum fee schedule and define payment for event officials for their professional services at unarmed combat events.

SUMMARY OF THE RULE OR CHANGE: This change establishes a minimum fee schedule and defines payment for event officials for their professional services at unarmed combat events. This change will help compensate event officials for the costs of providing their services and should facilitate the availability and professionalism of event officials.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63C, Chapter 11

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This proposed rule changes will increase the work load for the Commission Director, but will

not result in any savings or cost impact to the state budget since the tasks will be accomplished within the existing budget.

◆ **LOCAL GOVERNMENTS:** Since the proposed change will not impact local governments, this change will not result in any savings or cost to the local governments

◆ **SMALL BUSINESSES:** While this change will not significantly impact most event promoters who already pay their event officials, it would impact promoters who do not currently pay their event officials. For small events, this additional cost should not exceed \$190.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Event officials will receive a minimum established fee for their services to help compensate them for the cost of providing their services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: While this change will not significantly impact most event promoters who already pay their event officials, it would impact promoters who do not currently pay their event officials. For small events, this additional cost should not exceed \$190. For an event attended by more than 10,000 people the additional cost to the promoter could be \$1,200.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment would establish a minimum fee to be paid for unarmed combat event officials for their services. It would help compensate these officials for the cost of providing their services and facilitate the availability to qualified individuals to officiate at events.

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

GOVERNOR
ECONOMIC DEVELOPMENT, PETE SUAZO UTAH
ATHLETIC COMMISSION
324 S STATE ST
STE 500
SALT LAKE CITY, UT 84111
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Bill Colbert by phone at 801-538-8876, by FAX at 801-538-8888, or by Internet E-mail at bcolbert@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Bill Colbert, Secretary, PSUAC

R359. Governor, Economic Development, Pete Suazo Utah Athletic Commission.

R359-1. Pete Suazo Utah Athletic Commission Act Rule.

R359-1-501. Promoter's Responsibilities in Arranging a Contest.

(1) Before a licensed promoter may hold a contest or single contest as part of a single promotion, the promoter shall file with the Commission an application for a permit to hold the contest not less than 15 days before the date of the proposed contest, or not less than seven days for televised contests.

(2) The application shall include the date, time, and place of the contest as well as information concerning the on-site emergency facilities, personnel, and transportation.

(3) The permit application must be accompanied by a contest registration fee determined by the Department under Section 63-38-32.

(4) Before a permit to hold a contest is granted, the promoter shall post a surety bond with the Commission in the amount of \$10,000.

(5) Prior to the scheduled time of the contest, the promoter shall have available for inspection the completed physical facilities which will be used directly or indirectly for the contest. The designated Commission member shall inspect the facilities in the presence of the promoter or the promoter's authorized representative, and all deficiencies cited upon inspection shall be corrected before the contest.

(6) A promoter shall be responsible for verifying the identity, ring record, and suspensions of each contestant. A promoter shall be held responsible for the accuracy of the names and records of each of the participating contestants in all publicity or promotional material.

(7) A promoter shall be held responsible for a contest in which one of the contestants is disproportionately outclassed.

(8) Before a contest begins, the promoter shall give the designated Commission member the ~~[money]~~ funds necessary for payment of contestants, referees, judges, ~~timekeeper~~ and the attending physician(s). The designated Commission member shall pay each contestant, referee, ~~and judge, and physician~~ in the presence of one witness. Payment for the attending physician(s) shall be made by the commission by the State of Utah.

(9) A promoter shall be not under the influence of alcohol or controlled substances during the contest and until all purses to the contestants and all applicable fees are paid to the commission, officials and ringside physician.

(10) At the time of an unarmed combat contest weigh-in, the promoter of a contest shall provide primary insurance coverage for each uninsured contestant and secondary insurance for each insured contestant in the amount of \$10,000 for each licensed contestant to provide medical, surgical and hospital care for licensed contestants who are injured while engaged in a contest or exhibition:

(a) The term of the insurance coverage shall not require the contestant to pay more than 10% of the insurance deductible, not to exceed \$500, for the medical, surgical or hospital care for injuries he sustains while engaged in a contest of exhibition. If the contestant is required to pay a portion of the insurance deductible, it shall be specified in the contestant's contract.

(b) If a licensed contestant pays for the medical, surgical or hospital care, the insurance proceeds shall be paid to the contestant or his beneficiaries as reimbursement for the payment.

(c) The promoter shall ~~[also have]~~ provide life insurance coverage of \$10,000 for each contestant in case of death.

(d) The promoter shall include the name of the medical insurance provider, applicable time limits in filing a claim and instructions in how to file a claim in the contestant's contract.

(11) In addition to the payment of any other fees and money due under this part, the promoter shall pay the following event fees:

(a)(i) \$100 for a contest or event occurring in a venue of fewer than 200 attendees;

(ii) \$200 for a contest or event occurring in a venue of at least 200 attendees but fewer than 500 attendees;

(iii) \$300 for a contest or event occurring in a venue of at least 500 attendees but fewer than 1,000 attendees;

(iv) \$400 for a contest or event occurring in a venue of at least 1,000 attendees but fewer than 3,000 attendees;

(v) \$600 for a contest or event occurring in a venue of at least 3,000 attendees but fewer than 5,000 attendees;

(vi) \$1000 for a contest or event occurring in a venue of at least 5,000 attendees but fewer than 10,000 attendees; or

(viii) \$2000 for a contest or event occurring in a venue of at least 10,000 attendees; and

(b) 3% of the first \$500,000, and one percent of the next \$1,000,000, of the total gross receipts from the sale, lease, or other exploitation of broadcasting, television, and motion picture rights for any contest or exhibition thereof, without any deductions for commissions, brokerage fees, distribution fees, advertising, contestants' purses or any other expenses or charges, except in no case shall the fee be more than \$25,000.

(c) the applicable fees assessed by the Association of Boxing Commission designated official record keeper.

(d) the commission may exempt from the payment of all or part of the assessed fees under this section for a special contest or exhibition based on factors which include:

(i) a showcase event promoting a greater interest in contests in the state;

(ii) attraction of the optimum number of spectators;

(iii) costs of promoting and producing the contest or exhibition;

(iv) ticket pricing;

(v) committed promotions and advertising of the contest or exhibition;

(vi) rankings and quality of the contestants; and

(vii) committed television and other media coverage of the contest or exhibition.

(viii) contribution to a 501(c)(3) charitable organization.

R359-1-508. Hepatitis B Surface Antigen (HBsAg) and Hepatitis C Virus (HCV) Antibody Testing.

In accordance with Section 63C-11-317(d), contestants shall produce evidence of a negative test for HBsAg and HCV antibody as a condition to participation in a contest as follows:

(1) All contestants shall provide evidence in the form of a competent laboratory examination certificate verifying that the contestant is negative at the time of the weigh-in.

(2) The examination certificate shall certify that the HBsAg and HCV antibody testing was completed within one year prior to the contest.~~[- However, the period of test validity may be reduced by the vote of the majority of the commission to protect the health and welfare of the contestants and public.-] The period may be reduced by the commission to protect public safety in the event of an outbreak.~~

(3) Any contestant whose HBV or HCV result is positive shall be prohibited from participating in a contest.

(4) In lieu of a negative HBsAg test result, a contestant may present laboratory testing evidence of immunity against Hepatitis B virus based on a positive hepatitis B surface antibody (anti-HBs) test result or of having received the complete hepatitis B vaccine series as recommended by the Advisory Committee on Immunization Practices.

R359-1-511. Event Officials.

(1) Selection and approval of event officials for a contest, bout, program, match, or exhibition.

(a) The event officials are the referee(s), judges, timekeeper and physician(s).

(b) The commission shall approve all event officials.

(c) The number of event officials assigned is dependent on the number of rounds, bouts and/or championship bouts.

(d) The number of event officials required to be in attendance, or the substitution of officials for any reason or at any time during the event shall be solely within the power and discretion of the Commission.

(e) The promoter may select the event announcer.

(2) Event officials shall be stationed at places designated by the Commissioner in Charge or Director.

(3) Referees, judges, timekeepers and physicians shall be deemed to be independent contractors of the Commission.

(4) All ring officials assigned and directed by the Commission to be in attendance at any event, bout, program, match, or exhibition shall be paid by the licensed promoter for the event in accordance with the fee schedule approved by the Commission.

(6) The promoter shall pay to the Commission the total fees set by the Commission for all officials whom the Commission directs to officiate in a contest or exhibition promoted by the promoter.

(7) Event Officials' Minimum Fee Schedule:

TABLE

EVENT ATTENDANCE	REFEREE	JUDGE	TIMEKEEPER	PHYSICIAN
0 - 500	\$50.00	\$35.00	\$35.00	\$300.00
501 - 4000	\$100.00	\$50.00	\$50.00	\$350.00
4001 - 10000	\$200.00	\$100.00	\$100.00	\$400.00
10001 AND ABOVE	\$400.00	\$200.00	\$200.00	\$500.00

(8) If any licensee of the Commission protests the assignment of a referee or judge, the matter will be reviewed by two Commissioners or a Commissioner and the Commission Director and/or Chief Inspector in order to make such disposition of the protest as the facts may justify. Protests not made in a timely manner may be denied.

R359-1-[544]512. Announcer.

(1) At the beginning of a contest, the announcer shall announce that the contest is under the auspices of the Commission.

(2) The announcer shall announce the names of the referee, judges, and timekeeper when the competitions are about to begin, and shall also announce the changes made in officials as the contest progresses.

(3) The announcer shall announce the names of all contestants, their weight, professional record, their city and state of residence, and country of origin if not a citizen.

R359-1-[542]513. Timekeeper[s].

(1) A timekeeper shall indicate the beginning and end of each round by the gong.

(2) A timekeeper shall possess a whistle and a stopwatch.

(3) Ten seconds before the beginning of each round, the timekeeper shall warn the contestants of the time by blowing a whistle.

(4) If a contest terminates before the scheduled limit of rounds, the timekeeper shall inform the announcer of the exact duration of the contest.

(5) The timekeeper shall keep track of and record the exact amount of time that any contestant remains on the canvas.

R359-1-[543]514. Stopping a Contest.

In accordance with Subsections 63C-11-316(2) and 63C-11-302(14)(b), authority for stopping a contest is defined, clarified or established as follows.

(1) The referee may stop a contest to ensure the integrity of a contest or to protect the health, safety, or welfare of a contestant or the public for any one or more of the following reasons:

(a) injuries, cuts, or other physical or mental conditions that would endanger the health, safety, or welfare of a contestant if the contestant were to continue with the competition.

(b) one-sided nature of the contest;

(c) refusal or inability of a contestant to reasonably compete; and

(d) refusal or inability of a contestant to comply with the rules of the contest.

(2) If a referee stops a contest, the referee shall disqualify the contestant, where appropriate, and recommend to the designated Commission member that the purse of that professional contestant be withheld pending an impoundment decision in accordance with Section 63C-11-321.

(3) The designated Commission member may stop a contest at any stage in the contest when there is a significant question with respect to the contest, the contestant, or any other licensee associated with the contest, and determine whether the purse should be withheld pursuant to Section 63C-11-321.

KEY: licensing, boxing, unarmed combat, white-collar contests

Date of Enactment or Last Substantive Amendment: 2010

Notice of Continuation: May 10, 2007

Authorizing, and Implemented or Interpreted Law: 63C-11-101 et seq.

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-1-5
Incorporations by Reference**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33775

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsection 26-18-3(2)(a) requires the Medicaid program to implement policy through administrative rules. The Department, in order to draw down federal funds, must have an approved State Plan with the Centers for Medicare and Medicaid Services. This change, therefore, incorporates the most current Medicaid State Plan by reference. It also implements by rule ongoing Medicaid policy for services described in the Utah Medicaid Provider Manual, Medical Supplies Manual and List, and policy described in the hospital services provider manual. It further incorporates these manuals by reference.

SUMMARY OF THE RULE OR CHANGE: Subsection R414-1-5(2) is changed to update the incorporation of the State Plan by reference effective July 1, 2010. It also incorporates State Plan Amendments that become effective no later than July 1, 2010. The change further incorporates by reference the Medical Supplies Manual and List and the hospital services provider manual, effective July 1, 2010.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Hospital Services Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2010
- ◆ Updates Medical Supplies Manual and List, published by Division of Medicaid and Health Financing, 07/01/2010
- ◆ Updates Utah Medicaid State Plan, published by Division of Medicaid and Health Financing, 07/01/2010

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the Medical Supplies Manual and List and in the hospital services provider manual does not create costs or savings to the Department or other state agencies.

◆ **LOCAL GOVERNMENTS:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the Medical Supplies Manual and List and in the hospital services provider manual does not create costs or savings to local governments.

◆ **SMALL BUSINESSES:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the Medical Supplies Manual and List and in the hospital services provider manual does not create costs or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the Medical Supplies Manual and List and in the hospital services provider manual does not create costs or savings to other persons or entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the Medical Supplies Manual and List and in the hospital services provider manual does not create costs or savings to a single Medicaid client or provider.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should not have a direct fiscal impact on business. Incorporation of the State Plan by this rule assures that the Medicaid program is implemented through administrative rule.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-1. Utah Medicaid Program.

R414-1-5. Incorporations by Reference.

(1) The Department incorporates by reference the Utah State Plan Under Title XIX of the Social Security Act Medical Assistance Program effective [~~April~~]July 1, 2010. It also incorporates by reference State Plan Amendments that become effective no later than [~~April~~]July 1, 2010.

(2) The Department incorporates by reference the Medical Supplies Manual and List described in the Utah Medicaid Provider Manual, Section 2, Medical Supplies, with its referenced attachment, Medical Supplies List, [~~April~~]July 1, 2010, as applied in Rule R414-70.

(3) The Department incorporates by reference the Hospital Services Provider Manual, with its attachments, effective [~~April~~]July 1, 2010.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [~~May 1~~], 2010

Notice of Continuation: April 16, 2007

Authorizing, and Implemented or Interpreted Law: 23-24-2; 26-1-5; 26-18-3

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-54-3
Services**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33776

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to incorporate by reference the Speech-Language Services Provider Manual, effective July 1, 2010.

SUMMARY OF THE RULE OR CHANGE: This change incorporates by reference the Speech-Language Services Provider Manual, effective July 1, 2010.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There is no budget impact because the incorporation of ongoing Medicaid policy described in the Speech-Language Services Provider Manual does not create costs or savings to the Department or other state agencies.

◆ LOCAL GOVERNMENTS: This change does not impact local governments because they do not fund or provide speech-language services to Medicaid clients.

◆ SMALL BUSINESSES: There is no budget impact because the incorporation of ongoing Medicaid policy described in the Speech-Language Services Provider Manual does not create costs or savings to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no budget impact because the incorporation of ongoing Medicaid policy described in the Speech-Language Services Provider Manual does not create costs or savings other persons or entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because the incorporation of ongoing Medicaid policy described in the Speech-Language Services Provider Manual does not create additional costs to a Medicaid client or a loss of revenue to a Medicaid provider.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should not have a direct fiscal impact on business. Incorporation of this section of the Provider Manual by this rule assures that the Medicaid program is implemented through administrative rule.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-54. Speech-Language Pathology Services.

R414-54-3. Services.

- (1) Speech-language pathology services are optional.
- (2) Speech-language pathology services are limited to services described in the Speech-Language Services Provider Manual, effective ~~April~~ July 1, 2010, which is incorporated by reference.
- (3) The Speech-Language Services Provider Manual specifies the reasonable and appropriate amount, duration, and scope of the service sufficient to reasonably achieve its purpose.
- (4) Speech-language pathology services may be provided by licensed speech-language pathologists, or speech-language pathology aides under the supervision of speech-language pathologists.

KEY: Medicaid, speech-language pathology services

Date of Enactment or Last Substantive Amendment: ~~April 1~~, 2010

Notice of Continuation: March 9, 2009

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-59-4
Client Eligibility Requirements**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33777

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to incorporate by reference the Audiology Services Provider Manual, effective July 1, 2010.

SUMMARY OF THE RULE OR CHANGE: This change incorporates by reference the Audiology Services Provider Manual, effective July 1, 2010.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no budget impact because the incorporation of ongoing Medicaid policy described in the Audiology Services Provider Manual does not create costs or savings to the Department or other state agencies.

◆ **LOCAL GOVERNMENTS:** This change does not impact local governments because they do not fund or provide audiology services to Medicaid clients.

◆ **SMALL BUSINESSES:** There is no budget impact because the incorporation of ongoing Medicaid policy described in the Audiology Services Provider Manual does not create costs or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no budget impact because the incorporation of ongoing Medicaid policy described in the Audiology Services Provider Manual does not create costs or savings to other persons or entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because the incorporation of ongoing Medicaid policy described in the Audiology Services Provider Manual does not create additional costs to a Medicaid client or a loss of revenue to a Medicaid provider.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should not have a direct fiscal impact on business. Incorporation of this section of the Provider Manual by this rule assures that the Medicaid program is implemented through administrative rule.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: David Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-59. Audiology-Hearing Services.

R414-59-4. Client Eligibility Requirements.

(1) Audiology-hearing services are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

(2) An individual receiving audiology-hearing services may receive audiology services as described in the Audiology Services Provider Manual, effective [~~April~~July 1, 2010, which is incorporated by reference.

(3) An individual receiving audiology-hearing services must meet the criteria established in the Audiology Services Provider Manual and obtain prior approval if required.

KEY: Medicaid, audiology

Date of Enactment or Last Substantive Amendment: [~~April 1~~, 2010

Notice of Continuation: November 22, 2005

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

**Human Resource Management,
Administration
R477-1
Definitions**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33767

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments narrow the definition of "Highly Sensitive Position" and clarify who is subject to "Preemployment Drug Test".

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-1-1(50)(b), "household composition" is removed because of its vagueness. Subsection R477-1-1(80) is articulated in greater detail, limiting preemployment drug tests to the stated conditions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.

♦ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.

♦ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ J.J. Acker by phone at 801-537-9096, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Jeff Herring , Executive Director

R477. Human Resource Management, Administration.

R477-1. Definitions.

R477-1-1. Definitions.

The following definitions apply throughout these rules unless otherwise indicated within the text of each rule.

(1) **Abandonment of Position:** An act of resignation resulting when an employee is absent from work for three consecutive working days without approval.

(2) **Actual FTE:** The total number of full time equivalents based on actual hours paid in the state payroll system.

(3) **Actual Hours Worked:** Time spent performing duties and responsibilities associated with the employee's job assignments.

(4) **Actual Wage:** The employee's assigned salary rate in the central personnel record maintained by the Department of Human Resource Management.

(5) **Administrative Leave:** Leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.

(6) **Administrative Adjustment:** A DHRM approved change of a position from one job to another job or a salary range change for administrative purposes that is not based on a change of duties and responsibilities.

(7) **Administrative Salary Decrease:** A decrease in the current actual wage based on non-disciplinary administrative reasons determined by an agency head or commissioner.

(8) **Administrative Salary Increase:** An increase in the current actual wage based on special circumstances determined by an agency head or commissioner.

(9) **Agency:** An entity of state government that is:

(a) directed by an executive director, elected official or commissioner defined in Title 67, Chapter 22 or in other sections of the code;

(b) authorized to employ personnel; and

(c) subject to Title 67, Chapter 19, Utah State Personnel Management Act.

(10) **Agency Head:** The executive director or commissioner of each agency or a designated appointee.

(11) **Agency Human Resource Field Office:** An office of the Department of Human Resource Management located at another agency's facility.

(12) **Agency Management:** The agency head and all other officers or employees who have responsibility and authority to establish, implement, and manage agency policies and programs.

(13) **Alternative State Application Program (ASAP):** A program designed to appoint a qualified person with a disability through an on the job examination period.

(14) **Appeal:** A formal request to a higher level for reconsideration of a grievance decision.

(15) **Appointing Authority:** The officer, board, commission, person or group of persons authorized to make appointments in their agencies.

(16) **Budgeted FTE:** The total number of full time equivalents budgeted by the Legislature and approved by the Governor.

(17) **Bumping:** A procedure that may be applied prior to a reduction in force action (RIF). It allows employees with higher retention points to bump other employees with lower retention points as identified in the work force adjustment plan, as long as employees meet the eligibility criteria outlined in interchangeability of skills.

(18) **Career Mobility:** A time limited assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs.

(19) **Career Service Employee:** An employee who has successfully completed a probationary period in a career service position.

(20) **Career Service Exempt Employee:** An employee appointed to work for a period of time, serving at the pleasure of the appointing authority, who may be separated from state employment at any time without just cause.

(21) **Career Service Exempt Position:** A position in state service exempted by law from provisions of career service under Section 67-19-15.

(22) **Career Service Status:** Status granted to employees who successfully complete a probationary period for career service positions.

(23) **Category of Work:** A job series within an agency designated by the agency head as having positions to be eliminated agency wide through a reduction in force. Category of work may be further reduced as follows:

(a) a unit smaller than the agency upon providing justification and rationale for approval, for example:

(i) unit number;

(ii) cost centers;

(iii) geographic locations;

(iv) agency programs.

(b) positions identified by a set of essential functions, for example:

(i) position analysis data;

(ii) certificates;

(iii) licenses;

(iv) special qualifications;

(v) degrees that are required or directly related to the position.

(24) **Change of Workload:** A change in position responsibilities and duties or a need to eliminate or create particular positions in an agency caused by legislative action, financial circumstances, or administrative reorganization.

(25) **Classification Grievance:** The approved procedure by which an agency or a career service employee may grieve a formal classification decision regarding the classification of a position.

(26) **Classified Service:** Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12.

(27) **Classification Study:** A Classification review conducted by DHRM under Section R477-3-4. A study may include single or multiple job or position reviews.

(28) **Compensatory Time:** Time off that is provided to an employee in lieu of monetary overtime compensation.

(29) **Contractor:** An individual who is contracted for service, is not supervised by a state supervisor, but is responsible for providing a specified service for a designated fee within a specified time. The contractor shall be responsible for paying all taxes and FICA payments, and may not accrue benefits.

(30) **Critical Incident Drug or Alcohol Test:** A drug or alcohol test conducted on an employee as a result of the behavior, action, or inaction of an employee that is of such seriousness it requires an immediate intervention on the part of management.

(31) **Demotion:** A disciplinary action resulting in a reduction of an employee's current actual wage.

(32) Detailed Position Record Management Report: A document that lists an agency's authorized positions, incumbent's name and hourly rate, job identification number, salary range, and schedule.

(33) DHRM: The Department of Human Resource Management.

(34) DHRM Approved Recruitment and Selection System: The state's recruitment and selection system, which is a centralized and automated computer system administered by the Department of Human Resource Management.

(35) Disability: Disability shall have the same definition found in the Americans With Disabilities Act (ADA) of 1990, 42 USC 12101 (2008); Equal Employment Opportunity Commission regulation, 29 CFR 1630 (2008); including exclusions and modifications.

(36) Disciplinary Action: Action taken by management under Rule R477-11.

(37) Dismissal: A separation from state employment for cause under Section R477-11-2.

(38) Drug-Free Workplace Act: A 1988 congressional act, 34 CFR 84 (2008), requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.

(39) Employee Personnel Files: For purposes of Title 67, Chapters 18 and 19, the files or records maintained by DHRM and agencies as required by Section R477-2-5. This does not include employee information maintained by supervisors.

(40) Employment Eligibility Verification: A requirement of the Immigration Reform and Control Act of 1986, 8 USC 1324 (1988) that employers verify the identity and eligibility of individuals for employment in the United States.

(41) "Escalator" Principle: Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), returning veterans are entitled to return back onto their seniority escalator at the point they would have occupied had they not left state employment.

(42) Excess Hours: A category of compensable hours separate and apart from compensatory or overtime hours that accrue at straight time only when an employee's actual hours worked, plus additional hours paid, exceed an employee's normal work period.

(43) Fitness For Duty Evaluation: Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.

(44) FLSA Exempt: Employees who are exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(45) FLSA Nonexempt: Employees who are not exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(46) Follow Up Drug or Alcohol Test: Unannounced drug or alcohol tests conducted for up to five years on an employee who has previously tested positive or who has successfully completed a voluntary or required substance abuse treatment program.

(47) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

(48) Grievance: A career service employee's claim or charge of the existence of injustice or oppression, including

dismissal from employment resulting from an act, occurrence, omission, condition, discriminatory practice or unfair employment practice not including position classification or schedule assignment.

(49) Grievance Procedures: The statutory process of grievances and appeals as set forth in Sections 67-19a-101 through 67-19a-408 and the rules promulgated by the Career Service Review Office.

(50) Highly Sensitive Position: A position approved by DHRM that includes the performance of:

(a) safety sensitive functions:

(i) requiring an employee to operate a commercial motor vehicle under 49 CFR 383 (January 18, 2006);

(ii) directly related to law enforcement;

(iii) involving direct access or having control over direct access to controlled substances;

(iv) directly impacting the safety or welfare of the general public;

(v) requiring an employee to carry or have access to firearms; or

(b) data sensitive functions permitting or requiring an employee to access an individual's highly sensitive, personally identifiable, private information, including:

(i) financial assets, liabilities, and account information;

(ii) social security numbers;

(iii) wage information;

(iv) medical history;

(v) public assistance benefits; or

(vi) ~~household composition; or~~

~~(vii)]driver license~~

(51) Gross Compensation: Employee's total earnings, taxable and nontaxable, as shown on the employee's pay statement.

(52) Hiring List: A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position created in the DHRM approved recruitment and selection system.

(53) HRE: Human Resource Enterprise; the state human resource management information system.

(54) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

(55) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

(56) Interchangeability of Skills: Employees are considered to have interchangeable skills only for those positions they have previously held successfully in Utah state government executive branch employment or for those positions which they have successfully supervised and for which they satisfy job requirements.

(57) Intern: An individual in a college degree or certification program assigned to work in an activity where on-the-job training or community service experience is accepted.

(58) Job: A group of positions similar in duties performed, in degree of supervision exercised or required, in requirements of training, experience, or skill and other characteristics. The same salary range is applied to each position in the group.

(59) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

(60) Job Requirements: Skill requirements defined at the job level.

(61) Job Series: Two or more jobs in the same functional area having the same job title, but distinguished and defined by increasingly difficult levels of skills, responsibilities, knowledge and requirements.

(62) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

(63) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

(64) Market Based Bonus: One time lump sum monies given to a new hire or a current employee to encourage employment with the state.

(65) Market Comparability Adjustment: Legislatively approved change to a salary range for a job based on a compensation survey conducted by DHRM.

(66) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

(67) Misconduct: Wrongful, improper, unacceptable, or unlawful conduct or behavior that is inconsistent with prevailing agency practices or the best interest of the agency.

(68) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

(69) Nonfeasance: Failure to perform either an official duty or legal requirement.

(70) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

(71) Performance Improvement Plan: A documented administrative action to address substandard performance of an employee under Section R477-10-2.

(72) Performance Management: The ongoing process of communication between the supervisor and the employee which defines work standards and expectations, and assesses performance leading to a formal annual performance evaluation.

(73) Performance Plan: A written summary of the standards and expectations required for the successful performance of each job duty or task. These standards normally include completion dates and qualitative and quantitative levels of performance expectations.

(74) Performance Standard: Specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.

(75) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Section 63G-4-2 for all human resource policies and practices not covered by the state employees grievance procedure promulgated by the Career Service Review Office, or the classification appeals procedure.

(76) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(77) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

(78) Position Identification Number: A unique number assigned to a position for FTE management.

(79) Post Accident Drug or Alcohol Test: A Drug or alcohol test conducted on an employee who is involved in a vehicle accident while on duty or driving a state vehicle:

(a) where a fatality occurs;

(b) where there is sufficient information to conclude that the employee was a contributing cause to an accident that results in bodily injury or property damage; or

(c) where there is reasonable suspicion that the employee had been driving while under the influence of alcohol or a controlled substance.

(80) Preemployment Drug Test: A drug test conducted on:

(a) final candidates for a highly sensitive position;

(b) employees who are final candidates for transfer or promotion from a non-highly sensitive position to a highly sensitive position; or

(c) employees who transfer or are promoted from one highly sensitive position to another highly sensitive position [~~on a current employee prior to assuming highly sensitive duties~~].

(81) Probationary Employee: An employee hired into a career service position who has not completed the required probationary period for that position.

(82) Probationary Period: A period of time considered part of the selection process, identified at the job level, the purpose of which is to allow management to evaluate an employee's ability to perform assigned duties and responsibilities and to determine if career service status should be granted.

(83) Proficiency: An employee's overall quality of work, productivity, skills demonstrated through work performance and other factors that relate to employee performance or conduct.

(84) Promotion: An action moving an employee from a position in one job to a position in another job having a higher salary range maximum.

(85) Protected Activity: Opposition to discrimination or participation in proceedings covered by the antidiscrimination statutes or the Utah State Grievance and Appeal Procedure. Harassment based on protected activity can constitute unlawful retaliation.

(86) Random Drug or Alcohol Test: Unannounced drug or alcohol testing of a sample of highly sensitive employees done in accordance with federal regulations or state rules, policies, and procedures, and conducted in a manner such that each highly sensitive employee has an equal chance of being selected for testing.

(87) Reappointment: Return to work of an individual from the reappointment register after separation from employment.

(88) Reappointment Register: A register of individuals who have prior to March 2, 2009:

(a) held career service status and been separated in a reduction in force;

(b) held career service status and accepted career service exempt positions without a break in service and were not retained, unless discharged for cause; or

(c) by Career Service Review Board decision been placed on the reappointment register.

(89) Reasonable Suspicion Drug or Alcohol Test: A drug or alcohol test conducted on an employee based on specific,

contemporaneous, articulated observations concerning the appearance, behavior, speech or body odors of the employee.

(90) Reassignment: An action mandated by management moving an employee from one job or position to a different job or position with an equal or lesser salary range maximum for administrative reasons. A reassignment may not include a decrease in actual wage except as provided in federal or state law.

(91) Reclassification: A DHRM reallocation of a single position or multiple positions from one job to another job to reflect management initiated changes in duties and responsibilities.

(92) Reduction in Force: (RIF) Abolishment of positions resulting in the termination of career service staff. RIFs can occur due to inadequate funds, a change of workload, or a lack of work.

(93) Reemployment: Return to work of an employee who resigned or took military leave of absence from state employment to serve in the uniformed services covered under USERRA.

(94) Requisition: An electronic document used for HRE Online recruitment, selection and tracking purposes that includes specific information for a particular position, job seekers' applications, and a hiring list.

(95) Salary Range: An established minimum salary rate and maximum salary rate assigned to a job.

(96) Schedule: The determination of whether a position meets criteria stipulated in the Utah Code Annotated to be career service (schedule B) or career service exempt (schedule A).

(97) Settling Period: A sufficient amount of time, determined by agency management, for an employee to fully assume new or higher level duties required of a position.

(98) Tangible Employment Action: Any significant change in employment status e.g. hiring, firing, promotion, failure to promote, demotion, undesirable assignment, a decision causing a significant change in benefits, compensation decisions, and work assignment. Tangible employment action does not include insignificant changes in employment status such as a change in job title without a change in salary, benefits or duties.

(99) Transfer: An action not mandated by management moving an employee from one job or position to another job or position with an equal or lesser salary range maximum for which the employee qualifies. A transfer may include a decrease in actual wage.

(100) Uniformed Services: The United States Army, Navy, Marine Corps, Air Force, Coast Guard; Reserve units of the Army, Navy, Marine Corps, Air Force, or Coast Guard; Army National Guard or Air National Guard; Commissioned Corps of Public Health Service, National Oceanic and Atmospheric Administration (NOAA), National Disaster Medical Systems (NDMS) and any other category of persons designated by the President in time of war or emergency. Service in Uniformed Services includes: voluntary or involuntary duty, including active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; or absence from work for an examination to determine fitness for any of the above types of duty.

(101) Unlawful Discrimination: An action against an employee or applicant based on race, religion, national origin, color, sex, age, disability, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation, or any other factor, as prohibited by law.

(102) USERRA: Uniformed Services Employment and Reemployment Rights Act of 1994 (P.L. 103-353), requires state governments to re-employ eligible veterans who resigned or took a military leave of absence from state employment to serve in the uniformed services and who return to work within a specified time period after military discharge.

(103) Veteran: An individual who has served on active duty in the armed forces for more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized. Individuals must have been separated or retired under honorable conditions.

(104) Volunteer: Any person who donates services to the state or its subdivisions without pay or other compensation except actual and reasonable expenses incurred, as approved by the supervising agency.

KEY: personnel management, rules and procedures, definitions
Date of Enactment or Last Substantive Amendment: 2010
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6

Human Resource Management, Administration **R477-4-4** Recruitment and Selection for Career Service Positions

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 33772
FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment adds detailed language to clarify requirements of job postings, such as notices and minimum posting times.

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-4-4(2), recruitment announcement requirements are outlined, including minimum of seven days for career service positions to be posted.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.

♦ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local governments.

♦ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only administratively affects agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ J.J. Acker by phone at 801-537-9096, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.

R477-4. Filling Positions.

R477-4-4. Recruitment and Selection for Career Service Positions.

(1) Prior to initiating recruitment, agencies may administer any of the following personnel actions:

(a) reemployment of a veteran eligible under USERRA;

(b) reassignment within an agency initiated by an employee's reasonable accommodation request under the ADA;

(c) fill a position as a result of return to work from long term disability or workers compensation at the same or lesser salary range;

(d) reassignment or transfer made in order to avoid a reduction in force, or for reorganization or bumping purposes;

(e) reassignment, transfer, or career mobility of qualified employees to better utilize skills or assist management in meeting the organization's mission;

(f) reclassification; or

(g) conversion from schedule A to schedule B as authorized by Subsection R477-5-1(3).

(2) Agencies shall use the DHRM approved recruitment and selection system for all career service position vacancies. This includes recruitments open within an agency, across agency lines, or to the general public. Recruitment shall comply with federal and state laws and DHRM rules and procedures.

(a) All recruitment announcements shall include the following:

(i) Information about the DHRM approved recruitment and selection system; and

(ii) opening and closing dates.

(b) Recruitments for career service positions shall be posted for a minimum of seven calendar days.

(3) Agencies may carry out all the following steps for recruitment and selection of vacant career service positions concurrently. Management may make appointments according to the following order:

(a) from the reappointment register created prior to March 2, 2009, provided the applicant applies for the position and meets minimum qualifications.

(b) from a hiring list of qualified applicants for the position, or from another process pre-approved by the Executive Director, DHRM.

KEY: employment, fair employment practices, hiring practices

Date of Enactment or Last Substantive Amendment: 2010

Notice of Continuation: June 9, 2007

Authorizing, and Implemented or Interpreted Law: 67-19-6

Human Resource Management,
Administration

R477-14-1

Rules Governing a Drug-Free
Workplace

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33774

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendment clarifies restrictions for the use of preemployment drug testing for highly sensitive positions.

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-14-1(7), language is added to restrict the use of preemployment drug testing for current employees to those transferring or being promoted to a highly sensitive position.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-2-3 and Section 67-19-18 and Section 67-19-34 and Section 67-19-35 and Section 67-19-38 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only has administrative affect on agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

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ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ J.J. Acker by phone at 801-537-9096, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.**R477-14. Substance Abuse and Drug-Free Workplace.****R477-14-1. Rules Governing a Drug-Free Workplace.**

(1) This rule implements the federal Drug-Free Workplace Act of 1988, Omnibus Transportation Employee Testing Act of 1991, 49 USC 2505; 49 USC 2701; and 49 USC 3102, and Section 67-19-36 authorizing drug and alcohol testing, in order to:

(a) Provide a safe and productive work environment that is free from the effects of unlawful use, distribution, dispensing, manufacture, and possession of controlled substances or alcohol use during work hours. See the Federal Controlled Substance Act, 41 USC 701.

(b) Identify, correct and remove the effects of drug and alcohol abuse on job performance.

(c) Assure the protection and safety of employees and the public.

(2) State employees may not unlawfully manufacture, dispense, possess, distribute, use or be impaired by any controlled substance or alcohol during working hours, on state property, or while operating a state vehicle at any time, or other vehicle while on duty except where legally permissible.

(a) Employees shall follow Subsection R477-14-1(2) outside of work if any violations directly affect the eligibility of state agencies to receive federal grants or to qualify for federal contracts of \$25,000 or more.

(3) All drug or alcohol testing shall be done in compliance with applicable federal and state regulations and policies.

(4) All drug or alcohol testing shall be conducted by a federally certified or licensed physician or clinic, or testing service approved by DHRM.

(5) Drug or alcohol tests with positive results or a possible false positive result shall require a confirmation test.

(6) Employees are subject to one or more of the following drug or alcohol tests:

- (a) reasonable suspicion;
- (b) critical incident;
- (c) post accident;
- (d) return to duty; and
- (e) follow up.

(7) Final applicants for highly sensitive positions, or employees who are final candidates for, ~~are~~ transfer~~red~~ to, or are promoted to ~~assigned the duties of~~ a highly sensitive position~~;~~ are subject to preemployment drug testing at agency discretion except as required by law.

(a) An employee transferring or promoted from one highly sensitive position to another highly sensitive position is subject to preemployment drug testing at agency discretion except as required by law.

(b) An employee who is reassigned to a highly sensitive position or assigned the duties of a highly sensitive position is not subject to preemployment drug testing.

(8) Employees in highly sensitive positions, as designated by DHRM, are subject to random drug or alcohol testing without justification of reasonable suspicion or critical incident. Except when required by federal regulation or state policy, random drug or alcohol testing of employees in highly sensitive positions shall be conducted at the discretion of the employing agency.

(9) This rule incorporates by reference the requirements of 49 CFR 40.87 (2003).

(10) The State of Utah will use a blood alcohol concentration level of .04 for safety sensitive positions and .08 for all other positions as the cut off for a positive alcohol test except where designated otherwise by federal regulations.

(11) Agencies with employees in federally regulated positions shall administer testing and prohibition requirements and conduct training on these requirements as outlined in the current federal regulation and the DHRM Drug and Alcohol Testing Manual.

(12) Employees in federally regulated positions whose confirmation test for alcohol results are at or exceed the applicable federal cut off level, when tested before, during, or immediately after performing highly sensitive functions, shall be removed from performing highly sensitive duties for 8 hours, or until another test is administered and the result is less than the applicable federal cut off level.

(13) Employees in federally regulated positions whose confirmation test for alcohol results are at or exceed the applicable federal cut off level when tested before, during or after performing highly sensitive duties, are subject to discipline.

(14) Management may take disciplinary action if:

(a) there is a positive confirmation test for controlled substances;

(b) results of a confirmation test for alcohol meet or exceed the established alcohol concentration cutoff level;

(c) management determines an employee is unable to perform assigned job tasks, even when the results of a confirmation test for alcohol shows less than the established alcohol concentration cutoff level.

(15) The agency human resource field office or authorized official shall keep a separate, private record of drug or alcohol test results. The employee's official personnel file shall only contain a document making reference to the existence of the drug or alcohol test record.

KEY: personnel management, drug/alcohol education, drug abuse, discipline of employees

Date of Enactment or Last Substantive Amendment: 2010

Notice of Continuation: December 6, 2006

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 67-19-34; 67-19-35; 63G-2-3; 67-19-38

Human Resource Management, Administration **R477-15-1** Purpose

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33770

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment inserts the broader term "discrimination" to better define the purpose of the rule.

SUMMARY OF THE RULE OR CHANGE: In Section R477-15-1, the term "discrimination" is reinserted. This term was used until July 1 and will simply be added back in.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Governor's Executive Order, Number 2006/0012 and Section 63G-2-3 and Section 67-19-18 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.

◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.

◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only has administrative affect on agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees.

However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

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 HUMAN RESOURCE MANAGEMENT
 ADMINISTRATION
 ROOM 2120 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ J.J. Acker by phone at 801-537-9096, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-15. Workplace Harassment Prevention Policy and Procedure.
R477-15-1. Purpose.

It is the State of Utah's policy to provide all employees a working environment that is free from discrimination and harassment based on race, religion, national origin, color, gender, age, disability, or protected activity or class under state and federal law.

KEY: administrative procedures, hostile work environment
Date of Enactment or Last Substantive Amendment: 2010
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 63G-2-3; Governor's Executive Order on Prohibiting Unlawful Harassment, December 13, 2006, Number 2006/0012

Human Services, Child and Family
 Services
R512-31
 Foster Parent Due Process

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 33763
 FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to reflect changes to Utah Statute per H.B. 170 from the 2010 Legislative General Session. (DAR NOTE: H.B. 170 (2010) is found at Chapter 56, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: The proposed changes to this rule specify due process rights of foster parents when a child in out-of-home care is removed from their home.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-105 and Section 62A-4a-206 and Section 63G-4-201 and Section 78A-6-318

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** There will be no increase in costs or savings to the state budget because these proposed changes clarify practice, but do not increase workload that would require additional staff or other costs.
 ♦ **LOCAL GOVERNMENTS:** There will be no increase in costs or savings to local government because this rule does not apply to local government.
 ♦ **SMALL BUSINESSES:** There will be no increase in costs or savings to small businesses because this rule does not apply to small businesses.
 ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no increase in costs or savings to persons other than small businesses, businesses, or local government entities because this rule does not apply to persons other than small businesses, businesses, or local government entities.

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 cost or savings to 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 801-538-4424, 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 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.

R512-31. Foster Parent Due Process.

R512-31-1. Purpose and Authority.

(1) The purpose of this rule is to define the due process rights of foster parents when a decision is made to remove a foster child from their home.

(2) This rule is authorized by Section 62A-4a-102.

R512-31-[3]2. Definitions.

(1) For the purpose of this rule, the following definitions apply:

(a) "Child and Family Services" means the Division of Child and Family Services.

(b) "Emergency foster care" means temporary placement of a child in a foster home or crisis placement.

(c) "Natural parent" means a child's biological or adoptive parent, and includes a child's noncustodial parent.

(d) "Removal" means taking a child from a foster home for the purpose of placing the child in another foster home or facility, or not returning a child who has run from a foster home back to that foster home.

R512-31-[2]3. Due Process Rights.

(1) As authorized by Section 62A-4a-206, a foster parent has a right to due process when a decision is made to remove a foster child from their home if the foster parent disagrees with the decision, ~~[except if the child is being returned to the natural parent; unless the removal is for the purpose of:~~

(a) Returning the child to the child's natural parent or legal guardian.

(b) Immediately placing the child in an approved adoptive home.

(c) Placing the child with a relative, as defined in Subsection 78A-6-307(1)(b), who obtained custody or asserted an interest in the child within the preference period described in Subsection 78A-6-307(18)(a).

(d) Placing an Indian child in accordance with preplacement preferences and other requirements described in the Indian Child Welfare Act, 25 U.S.C., Section 1915.

R512-31-4. Notice to Foster Parents.

(1) A foster parent shall be notified that a foster child in the foster parent's care is to be moved to another placement ten days prior to removal, unless there is a reasonable basis to believe that immediate removal is necessary, as specified in R512-31-4(4). The foster parent shall be notified by personal communication and by Notice of Agency Action.

(2) The Notice of Agency Action shall be sent by certified mail, return receipt requested, or personally delivered.

(3) In addition to requirements specified in Section 63G-4-201, the Notice of Agency Action shall include the date of removal, the reason for removal, a description of the foster parent conflict resolution procedure, and notice regarding the ability of the foster parent to petition ~~[the juvenile court directly]~~the juvenile court judge currently assigned to the case if the child has been in the foster home for 12 months or longer in accordance with Section 78A-6-318.

(4) If there is a reasonable basis to believe that the child is in danger or that there is a substantial threat of danger to the health or welfare of the child, the notification to the foster parent may occur after removal of the child. Notification shall be provided through personal communication on the day of removal and by Notice of Agency Action. The Notice of Agency Action shall be sent by certified mail, return receipt requested, within three working days of removal of the child.

R512-31-5. Request for Due Process.

(1) The foster parent shall submit a written request for a hearing prior to removal of the child from the home, unless the child was removed as specified in Rule R512-31-4(4). The request shall be sent to the entity specified in the Notice of Agency Action.

(2) If the child was removed as specified in Rule R512-31-4(4), the foster parent shall submit a written request for a hearing no later than ten days after receiving the Notice of Agency Action.

(3) Prior to a hearing being granted, an attempt to resolve the conflict shall be made as specified in Rule R512-31-(6)(1)(a) and Rule R512-31-(6)(1)(b).

R512-31-6. Foster Parent Conflict Resolution Procedure.

(1) The Foster Parent Conflict Resolution Procedure consists of the following:

(a) A foster parent must first attempt to resolve a conflict with Child and Family Services informally through discussion with the caseworker or supervisor. If a conflict is not resolved through informal discussion, an agency conference may be requested by the foster parent.

(b) The foster parent shall have the opportunity to provide written and oral comments to Child and Family Services in an agency conference chaired by the regional director or designee. The agency conference shall include the foster parent, foster care caseworker, and the caseworker's supervisor, and may include other individuals at the request of the foster parent or caseworker.

(c) If the foster parent is not satisfied with the results of the agency conference with Child and Family Services, the foster parent shall have the opportunity to request a review, to be held before removal of the child, by a third party neutral fact finder. If the child has been placed with the foster parents for a period of at least two years, the foster parent may request a review to be held before removal of the child, by:

(i) The juvenile court judge currently assigned to the child's case, or

(ii) If the juvenile court judge currently assigned to the child's case is not available, another juvenile court judge.

~~[(e)]~~(d) If the foster parent is not satisfied with the results of the agency conference with Child and Family Services and a foster child is to be removed from the foster home, an

administrative hearing shall be held through the Department of Human Services, Office of Administrative Hearings. The Office of Administrative Hearings shall serve as the neutral fact finder required by Subsection 62A-4a-206(2)(b)(ii).

R512-31-7. Administrative Hearing.

(1) An administrative hearing regarding removal of a child from a foster home for another placement shall be conducted in accordance with Rule R497-100. The Administrative Law Judge shall determine if Child and Family Services has abused its discretion in removing the child from the foster home, i.e., the decision was arbitrary and capricious.

(2) If there is a criminal investigation of the foster parent in progress relevant to the reason for removal of the child, no administrative hearing shall be granted until the criminal investigation is completed and, if applicable, charges are filed against the foster parent.

(3) If there is an investigation for child abuse, neglect, or dependency involving the foster home, no administrative hearing shall be granted until the investigation is completed.

R512-31-8. Removal of a Foster Child.

(1) The foster child shall remain in the foster home until the conflict resolution procedure specified in Rule R512-31-6 is completed, unless the child was removed as specified in Rule R512-31.4(4). The time frame for the conflict resolution procedure shall not exceed 45 days.

(2) If the child was removed as specified in Rule R512-31.4(4), the child shall be placed in emergency foster care until the conflict is resolved or a final determination is made by the Office of Administrative Hearings as required by Subsection 62A-4a-206(2)(c).

KEY: child welfare, foster care, due process

Date of Enactment or Last Substantive Amendment: [February 9], 2010

Notice of Continuation: August 7, 2007

Authorizing, and Implemented or Interpreted Law: 62A-41-102; 62A-4a-105; 62A-4a-206; 63G-4-201; 78A-6-318

Human Services, Child and Family
Services
R512-200
Child Protective Services, Intake
Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33764

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to reflect changes to Utah Statute per H.B. 86 from the 2010 Legislative General Session. (DAR NOTE: H.B. 86 (2010) is found at Chapter 239, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: The proposed changes to this rule add a reference to Section 62A-4a-202.6, which specifically addresses who shall perform conflict child protective services investigations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-105 and Section 62A-4a-202.6

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There will be no increase in costs or savings to the state budget because these proposed changes clarify practice, but do not increase workload that would require additional staff or other costs.

◆ **LOCAL GOVERNMENTS:** There will be no increase in costs or savings to local government because this rule does not apply to local government.

◆ **SMALL BUSINESSES:** There will be no increase in costs or savings to small businesses because this rule does not apply to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no increase in costs or savings to persons other than small businesses, businesses, or local government entities because this rule does not apply to persons other than small businesses, businesses, or local government entities.

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 cost or savings to 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 801-538-4424, or by Internet E-mail at jhones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.

R512-200. Child Protective Services, Intake Services.

R512-200-1. Purpose and Authority.

- (1) The purpose of Intake Services is:
 - (a) To receive and evaluate whether an investigation is needed;
 - (b) Assign for investigation referrals of suspected child abuse, neglect, and dependency.
- (2) Pursuant to Section 62A-4a-105 and 62A-4a-403, Child and Family Services is authorized to provide CPS.
- (3) This rule is authorized by Section 62A-4a-102.

R512-200-2. Definitions.

- (1) The following terms are defined for the purposes of this rule:
 - (a) "Child and Family Services" means the Division of Child and Family Services.
 - (b) "CPS" means Child Protective Services.
 - (c) "SAFE" means Child and Family Services' Child Welfare Management Information System.

R512-200-3. Scope of Services.

- (1) Qualification for Services.
 - (a) Child and Family Services will maintain a system for receiving referrals or reports about child abuse, neglect, or dependency. The system shall supply Child and Family Services CPS workers with a complete previous Child and Family Services history for each child, including siblings, foster care episodes, all reports of abuse, neglect, or dependency, treatment plans, and casework deadlines.
 - (2) Priority of the referral.
 - (a) Child and Family Services establishes CPS priority time frames as follows:
 - (i) A Priority 1 response shall be assigned when the child referred is in need of immediate protection. Intake will begin to collect information immediately after the completion of the initial contact from the referent. As soon as possible thereafter, Intake will obtain additional information, staff the referral to determine the priority, notify law enforcement, and assign to the Child and Family Services CPS worker. Intake shall provide the Child and Family Services CPS worker with information concerning prior investigations on SAFE. The Child and Family Services CPS worker has as a standard of 60 minutes from the time Intake notifies the worker to initiate efforts to make face-to-face contact with an alleged victim. For a Priority 1R (rural) referral, a Child and Family Services CPS worker has, as a standard, three hours to initiate efforts to make face-to-face contact if the alleged victim is more than 40 miles from the investigator who is assigned to make the face-to-face contact.

(ii) A Priority 2 response shall be assigned when physical evidence is at risk of being lost or the child is at risk of further abuse, neglect, or dependency, but the child does not have immediate protection and safety needs, as determined by the Intake checklist. Intake will begin to collect information as soon as possible after the completion of the initial contact from the referent. As soon as possible Intake will obtain additional information, staff the referral to determine the priority, assign the referral to the Child and Family Services CPS worker, and notify law enforcement. Intake shall give verbal notification to the assigned Child and Family Services CPS worker. Intake shall also provide the Child and Family Services CPS worker with information concerning prior investigations on SAFE. The Child and Family Services CPS worker has, as a standard, 24 hours from the time Intake notifies the worker to initiate efforts to make face-to-face contact with the alleged victim. Notification of a Priority 2 referral received after normal working hours (8:00 a.m. through 5:00 p.m.) shall occur as early as possible following morning.

(iii) A Priority 3 response shall be assigned when potential for further harm to the child and the loss of physical evidence is low. Prior to transferring the case to a Child and Family Services CPS worker, Intake will obtain additional information, research data sources, staff the referral as necessary, determine the priority, complete documentation including data entry, make disposition to CPS, and notify law enforcement. Intake shall also provide the Child and Family Services CPS worker with information concerning prior investigations on SAFE. The Child and Family Services CPS worker will make the face-to-face contact with the alleged victim within a reasonable period of time.

(3) If Child and Family Services received a report concerning a runaway child, Intake will gather information to determine if there is an allegation of abuse, neglect, or dependency that requires a CPS referral or will refer the caller to contact a youth services agency in accordance with Section 62A-4a-501.

(4) Out-of-State Abuse or Neglect Report.

(a) Child and Family Services will take reasonable steps to ensure that reports of abuse or neglect are referred for investigation to the appropriate out-of-state agency and shall take reasonable steps to adequately protect children in Utah who were victims of abuse in another state or country from the alleged perpetrator.

(b) When the referent identifies an incident of abuse or neglect that occurred outside Utah but the child is in Utah at the time of the referral, the Child and Family Services CPS worker shall:

(i) Obtain all the information needed to complete a referral.

(ii) Determine whether the child is at risk of abuse or neglect from the alleged perpetrator.

(iii) Contact the CPS agency in the state where the incident of abuse occurred and complete the referral process of that state.

(iv) Assign the referral to a Child and Family Services CPS worker for a courtesy interview and coordination with the other state's investigation, when requested.

(v) In domestic violence related child abuse cases, recognize another state's protective order.

(vi) If the other state refuses to open an investigation or the investigation is contrary to the evidence acquired in Utah, the referral shall be assigned to a Child and Family Services CPS worker for investigation. The Child and Family Services CPS worker completing the investigation shall review the case with the Attorney General's Office for assistance with jurisdictional issues.

(5) When a referent identifies an incident of abuse or neglect that occurred in Utah, and the child is not in Utah at the time of the referral, the Intake worker shall:

(a) Obtain all the information needed to complete a referral.

(b) Determine the location of the child and the length of time the child will be at their current location. If the child will be outside the state of Utah longer than 30 days, a request for courtesy casework will be made in the state where the child is currently located.

(c) If the child is determined to be at risk, a request will be made for courtesy casework within the priority time frame.

(6) The Department of Health Child Care Licensing unit and/or the Department of Human Services Office of Licensing and appropriate Child and Family Services staff shall be notified by Intake when Child and Family Services receives a referral for an allegation of child abuse, neglect, or dependency against a licensed child care provider or out-of-home care provider. The referral shall be forwarded to the assigned personnel for conflict of interest investigations when the allegation involves a child living in substitute care while in protective custody or temporary custody of Child and Family Services, or any other Child and Family Services conflict of interest in accordance with Section 62A-4a-202.6.

(7) Availability.

(a) CPS are available in all geographic regions of the state.

KEY: social services, child welfare, domestic violence, child abuse

Date of Enactment or Last Substantive Amendment: [~~October 22, 2009~~2010

Notice of Continuation: August 20, 2008

Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-105; 62A-4a-202.6

**Human Services, Child and Family
Services
R512-300
Out-of-Home Services**

**NOTICE OF PROPOSED RULE
(Amendment)**

**DAR FILE NO.: 33765
FILED: 06/15/2010**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to reflect changes to Utah Statute per H.B. 239 from the 2010 Legislative General Session. This rule is also being changed to add the statutory language that authorizes Child and Family Services to perform rulemaking and makes minor formatting and grammatical changes. (DAR NOTE: H.B. 239 (2010) is found at Chapter 322, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: The proposed changes to this rule add a reference to Section 62A-4a-415, which is a new section that states that Child and Family Services staff shall not consent to the interview of a child in state custody by a law enforcement agency without the consent of the child's Guardian ad Litem. In addition, the proposed changes to this rule add the citation to Section 62A-41-102 and make minor grammatical and formatting changes for consistency purposes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 U.S.C. 671 and Section 62A-4a-102 and Section 62A-4a-105

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds 45 CFR Part 1355, published by U.S. Government Printing Office via GPO Access, 10/01/2008
- ◆ Adds Title 42, Sec. 672, published by U.S. Government Printing Office, 01/03/2007
- ◆ Adds Title 42, Sec. 671, published by U.S. Government Printing Office, 01/03/2007
- ◆ Adds 45 CFR Part 1356, published by U.S. Government Printing Office, 10/01/2008

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will be no increase in costs or savings to the state budget because these proposed changes clarify practice, but do not increase workload that would require additional staff or other costs.
- ◆ **LOCAL GOVERNMENTS:** There will be no increase in costs or savings to local government because this rule does not apply to local government.
- ◆ **SMALL BUSINESSES:** There will be no increase in costs or savings to small businesses because this rule does not apply to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no increase in costs or savings to persons other than small businesses, businesses, or local government entities because this rule does not apply to persons other than small businesses, businesses, or local government entities.

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 cost or savings to 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 801-538-4424, or by Internet E-mail at jhones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.

R512-300. Out-of-Home Services.

R512-300-1. Purpose and Authority.

(1)[A-] The purposes of Out-of-Home Services are:

(a)[+] To provide a temporary, safe living arrangement for a child placed in the custody of the Division of Child and Family Services (Child and Family Services) or the Department of Human Services by court order or through voluntary placement by the child's parent or legal guardian.

(b)[2-] To provide services to protect the child and facilitate the safe return of the child home or to another permanent living arrangement.

(c)[3-] To provide safe and proper care and address the child's needs while in state custody.

(2)[B-] Sections 62A-4a-105 and 62A-4a-106 authorize Child and Family Services to provide Out-of-Home Services and 42 USC Section [4]672 authorizes federal foster care. 42 USC Sections [4]671 and [4]672 (2007[6]), and 45 CFR Parts 1355 and 1356 (2008[0]) are incorporated by reference.

(3) This rule is authorized by Section 62A-4a-102.

R512-300-2. Definitions.

The following terms are defined for the purposes of this rule:

(1)[A-] "Custody by court order" means temporary custody or custody authorized by Sections 78A-6-117 or 78A-6-322. It does not include protective custody.

(2)[B-] "Child and Family Services" means the Division of Child and Family Services.

(3)[C-] "Department" means the Department of Human Services.

(4)[D-] "Least restrictive" means most family-like.

(5)[E-] "Placement" means living arrangement.

R512-300-3. Scope of Services.

(1)[A-] Qualification for Services. Out-of-Home Services are provided to:

(a)[+] A child placed in the custody of Child and Family Services by court order and the child's parent or guardian, if the court orders reunification;

(b)[2-] A child placed in the custody of the Department by court order for whom Child and Family Services is given primary responsibility for case management or for payment for the child's placement, and the child's parent or guardian if reunification is ordered by the court;

(c)[3-] A child voluntarily placed into the custody of Child and Family Services and the child's parent or guardian.

(2)[B-] Service Description. Out-of-Home Services consist of:

(a)[+] Protection, placement, supervision, and care of the child;

(b)[2-] Services to a parent or guardian of a child receiving Out-of-Home Services when a reunification goal is ordered by the court or to facilitate return of a child home upon completion of a voluntary placement.

(c)[3-] Services to facilitate another permanent living arrangement for a child receiving Out-of-Home Services if a court determines that reunification with a parent or guardian is not required or in the child's best interests.

(3)[C-] Availability. Out-of-Home Services are available in all geographic regions of the state.

(4)[D-] Duration of Services. Out-of-Home Services continue until a child's custody is terminated by a court or when a voluntary placement agreement expires or is terminated.

(5) As specified in Section 62A-4a-415, Child and Family Services may not consent to the interview of a child in state custody by a law enforcement officer, unless consent for the interview is obtained from the child's Guardian ad Litem. This provision does not apply if a Guardian ad Litem is not appointed for the child.

R512-300-4. Child and Family Services Responsibility to a Child Receiving Out-of-Home Services.

(1)[A-] Child and Family Team.

(a)[+] With the family's assistance, a child and family team shall be established for each child receiving Out-of-Home Services.

(b)[2-] At a minimum, the child and family team shall assist with assessment, child and family plan development, and selection of permanency goals; oversee progress towards completion of the plan; provide input into adaptations to the plan; and recommend placement type or level.

(2)[B-] Assessment.

(a)[+] A written assessment is completed for each child placed in custody of Child and Family Services through court order or voluntary placement and for the child's family.

(b)[2-] The written assessment evaluates the child and family's strengths and underlying needs.

(c)[3-] The type of assessment is determined by the unique needs of the child and family, such as cultural considerations, special medical or mental health needs, and permanency goals.

~~(d)[4-]~~ Assessment is ongoing.

~~(3)[C-]~~ Child and Family Plan.

~~(a)[+]~~ Based upon an assessment, each child and family receiving Out-of-Home Services shall have a written child and family plan in accordance with Section 62A-4a-205.

~~(b)[2-]~~ The child's parent or guardian and other members of the child and family team shall assist in creating the plan based on the assessment of the child and family's strengths and needs.

~~(c)[3-]~~ In addition to requirements specified in Section 62A-4a-205, the child and family plan shall include the following to facilitate permanency:

~~(i)[a-]~~ The current strengths of the child and family as well as the underlying needs to be addressed.

~~(ii)[b-]~~ A description of the type of placement appropriate for the child's safety, special needs and best interests, in the least restrictive setting available and, when the goal is reunification, in reasonable proximity to the parent. If the child with a goal of reunification has not been placed in reasonable proximity to the parent, the plan shall describe reasons why the placement is in the best interests of the child.

~~(iii)[e-]~~ Goals and objectives for assuring the child receives safe and proper care including the provision of medical, dental, mental health, educational, or other specialized services and resources.

~~(iv)[d-]~~ If the child is age 14 or older, a written description of the programs and services to help the child prepare for the transition from foster care to independent living in accordance with Rule R512-305.

~~(v)[e-]~~ A visitation plan for the child, parents, and siblings, unless prohibited by court order.

~~(vi)[f-]~~ Steps for monitoring the placement and plan for worker visitation and supports to the Out-of-Home caregiver for a child placed in Utah or out of state.

~~(vii)[g-]~~ If the goal is adoption or placement in another permanent home, steps to finalize the placement, including child-specific recruitment efforts.

~~(d)[4-]~~ The child and family plan is modified when indicated by changing needs, circumstances, progress towards achievement of service goals, or the wishes of the child, family, or child and family team members.

~~(e)[5-]~~ A copy of the completed child and family plan shall be provided to the parent or guardian, Out-of-Home caregiver, juvenile court, assistant attorney general, guardian ad litem, legal counsel for the parent, and the child, if the child is able to understand the plan.

~~(4)[D-]~~ Permanency Goals.

~~(a)[+]~~ A child in Out-of-Home care shall have a primary permanency goal and a concurrent permanency goal identified by the child and family team.

~~(b)[2-]~~ Permanency goals include:

~~(i)[a-]~~ Reunification.

~~(ii)[b-]~~ Adoption.

~~(iii)[e-]~~ Guardianship (Relative).

~~(iv)[d-]~~ Guardianship (Non-Relative).

~~(v)[e-]~~ Individualized Permanency.

~~(c)[3-]~~ For a child whose custody is court ordered, both primary and concurrent permanency goals shall be submitted to the court for approval.

~~(d)[4-]~~ The primary permanency goal shall be reunification unless the court has ordered that no reunification efforts be offered.

~~(e)[5-]~~ A determination that Transition to Adult Living services are appropriate for a child does not preclude adoption as a primary permanency goal. Enrollment in Transition to Adult Living services can occur concurrently with continued efforts to locate and achieve placement of an older child with an adoptive family.

~~(5)[E-]~~ Placement.

~~(a)[+]~~ A child receiving Out-of-Home Services shall receive safe and proper care in an appropriate placement according to placement selection criteria specified in Rule R512-302.

~~(b)[2-]~~ The type of placement, either initial or change in placement, is determined within the context of the child and family team utilizing a need level screening tool designated by Child and Family Services.

~~(c)[3-]~~ Placement decisions are based upon the child's needs, strengths, and best interests.

~~(d)[4-]~~ The following factors are considered in determining placement:

~~(i)[a-]~~ Age, special needs, and circumstances of the child;

~~(ii)[b-]~~ Least restrictive placement consistent with the child's needs;

~~(iii)[e-]~~ Placement of siblings together;

~~(iv)[d-]~~ Proximity to the child's home and school;

~~(v)[e-]~~ Sensitivity to cultural heritage and needs of a minority child;

~~(vi)[f-]~~ Potential for adoption.

~~(e)[5-]~~ A child's placement shall not be denied or delayed on the basis of race, color, or national origin of the Out-of-Home caregiver or the child involved.

~~(f)[6-]~~ Placement of an Indian child shall be in compliance with the Indian Child Welfare Act, 25 USC Section 1915 ~~(2007)~~, which is incorporated by reference.

~~(g)[7-]~~ When a young woman in state custody is the mother of a child and desires and is able to parent the child with the support of the Out-of-Home caregiver, the child shall remain in the Out-of-Home placement with the mother. Child and Family Services shall only petition for custody of the young woman's child if there are concerns of abuse, neglect, or dependency in accordance with Section 78A-6-322.

~~(h)[8-]~~ The child and family team may recommend a Transition to Adult Living placement for a child age 14 years or older in accordance with Rule R512-305 when in the child's best interests.

~~(6)[G-]~~ Federal Benefits.

~~(a)[+]~~ Child and Family Services may apply for eligibility for Title IV-E foster care and Medicaid benefits for a child receiving Out-of-Home Services. Information provided by the parent or guardian, as specified in Rule R512-301, shall be utilized in determining eligibility.

~~(b)[2-]~~ Child and Family Services may apply to be protective payee for a child in state custody who has a source of unearned income, such as Supplemental Security Income or Social Security Income. A representative payee account shall be maintained by Child and Family Services for management of the child's income. The unearned income shall be utilized only towards costs of the child's care and personal needs in accordance with requirements of the regulating agency.

(7)[H-] Visitation with Familial Connections.

(a)[I-] The child has a right to purposeful and frequent visitation with a parent or guardian and siblings, unless the court orders otherwise.

(b)[2-] Visitation is not a privilege to be earned or denied based on behavior of the child or the parent or guardian.

(c)[3-] Visitation may be supplemented with telephone calls and written correspondence.

(d)[4-] The child also has a right to communicate with extended family members, the child's attorney, physician, clergy, and others who are important to the child.

(e)[5-] Intensive efforts shall be made to engage a parent or guardian in continuing contacts with a child, when not prohibited by court order.

(f)[6-] If clinically contraindicated for the child's safety or best interests, Child and Family Services may petition the court to deny or limit visitation with specific individuals.

(g)[7-] Visitation and other forms of communication with familial connections shall only be denied when ordered by the court.

(h)[8-] A parent whose parental rights have been terminated does not have a right to visitation.

(8)[F-] Out-of-Home Worker Visitation with the Child.

(a)[I-] The Out-of-Home worker shall visit with the child to ensure that the child is safe and is appropriately cared for while in an Out-of-Home placement. If the child is placed out of the area or out of state, arrangements may be made for another worker to perform some of the visits. The child and family team shall develop a specific plan for the worker's contacts with the child based upon the needs of the child.

(9)[J-] Case Reviews.

(a)[I-] Pursuant to Sections 78A-6-313 and 73-3a-312, periodic reviews of court ordered Out-of-Home Services shall be held no less frequently than once every six months.

(b)[2-] Child and Family Services shall seek to ensure that each child receiving Out-of-Home Services has timely and effective case reviews and that the case review process:

(i)[a-] Expedites permanency for a child receiving Out-of-Home Services,

(ii)[b-] Assures that the permanency goals, child and family plan, and services are appropriate,

(iii)[c-] Promotes accountability of the parties involved in the child and family planning process, and

(iv)[d-] Monitors the care for a child receiving Out-of-Home Services.

(10)[K-] Maximum Number of Children in Out-of-Home Care.

(a)[I-] At no time during the fiscal year will the proportion of children in Out-of-Home care for over 24 months exceed one-third of the total number of children currently in Out-of-Home care.

(b)[2-] On an annual basis, the statewide quality improvement committee will review data on the proportion of children in foster care over 24 months and the steps taken by Child and Family Services to ensure that proportion is not exceeded. As appropriate, recommendations for improvement will be made from the committee to Child and Family Services administration.

KEY: social services, child welfare, domestic violence, child abuse

Date of Enactment or Last Substantive Amendment: ~~October 25, 2007~~ 2010

Notice of Continuation: August 20, 2008

Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-105; 42 U.S.C. 671

**Money Management Council,
Administration
R628-13
Collateralization of Public Funds**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33728

FILED: 06/09/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Federal deposit insurance limits have been temporarily increased and a reference to another rule is changed.

SUMMARY OF THE RULE OR CHANGE: The dollar amount of \$100,000 has been deleted and the term "the applicable federal deposit insurance limit" has been inserted. This allows the rule to stay current regardless of how the federal insurance agencies may change limits in the future. This rule refers to a definition in Rule R628-11. The cite has been re-numbered in a previous change to that rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 51-7-18.1(5)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no costs associated with this change for the state as the rule deals with qualified depositories.

♦ **LOCAL GOVERNMENTS:** There are no costs associated with this change for local governments as the rule deals with qualified depositories.

♦ **SMALL BUSINESSES:** The rule does not govern small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no cost to comply with this rule for financial institutions as the change in insurance amounts are set by the federal insurance agency. The change is bringing the rule into alignment with these limits.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule does not govern persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule has no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 MONEY MANAGEMENT COUNCIL
 ADMINISTRATION
 ROOM 180 UTAH STATE CAPITOL COMPLEX
 350 N STATE ST
 STE 180
 SALT LAKE CITY, UT 84114
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Ann Pedroza by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at apedroza@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: William Wallace, Chair

R628. Money Management Council, Administration.

R628-13. Collateralization of Public Funds.

R628-13-1. Authority.

This rule is issued pursuant to Sections 51-7-18.1(5).

R628-13-2. Scope.

This rule applies to all qualified depositories required to pledge collateral security for public funds.

R628-13-3. Purpose.

The purpose of this rule is to establish the requirements for pledging of collateral security to insure that public treasurers have a perfected security interest in the collateral security pledged, to define the conditions under which the Council may require the pledging of collateral security in lieu of relinquishment of deposits in excess of the maximum amount a qualified depository may hold under the Money Management Act and the rules of the Council, and to impose restrictions on a qualified depository which is required to pledge collateral security for the public deposits which it holds.

R628-13-4. Definitions.

A. Deposits means balances due to persons having an account at the qualified depository institution whether in the form of a transaction account, savings account, share account, or certificate of deposit and repurchase agreements other than qualifying repurchase agreements.

B. Designated trustee means the trustee selected to serve as the agent of the State Treasurer to hold and administer collateral security pledged for public funds.

C. Eligible collateral means obligations of or fully guaranteed by the United States or its agencies as to principal and interest, a segregated earmarked deposit account, or notes, drafts, bills of exchange or bankers' acceptances that are eligible for rediscount or purchase by a federal reserve bank, obligations of the State of Utah or any of its political subdivisions, and readily marketable bonds, notes or debentures.

D. Excess deposit means that portion of the public funds held on deposit with a qualified depository by public treasurers which exceeds the most recently adopted maximum amount of public funds allowed pursuant to the Money Management Act and the rules of the Money Management Council as of the effective date of an order issued by the Commissioner of Financial Institutions pursuant to Section 51-7-18.1(6).

E. Market value means the bid or closing price listed for financial instruments in a regularly published listing or an electronic reporting service or, in the case of obligations which are not regularly traded, the bid price received from at least one registered securities broker/dealer.

F. Readily marketable bonds, notes or debentures means obligations in the form of a bond, note, or debenture rated in one of the three highest ratings of a nationally recognized rating agency; it does not include investments which are predominantly speculative in nature.

R628-13-5. General Rule.

A. Conditions Under Which Collateral Will Be Allowed

(1) The Money Management Council may vote to allow collateral security to be pledged to secure excess deposits when a qualified depository has accepted and holds public funds in excess of its public funds allotment.

(2) If the public funds allotment is reduced to one times capital, the Money Management Council may vote to allow collateral security to be pledged to secure excess deposits. The qualified depository will not be precluded or prohibited from accepting, renewing or maintaining deposits of public funds if the total amount of deposits from each public treasurer does not exceed ~~[\$100,000]~~ the applicable federal deposit insurance limit.

(3) If the public funds allotment is reduced to zero, the qualified depository will be required to pledge sufficient eligible collateral with the state treasurer's designated trustee for all uninsured deposits. The qualified depository is not precluded or prohibited from accepting, renewing or maintaining deposits of public funds when the total amount of all deposits from each public treasurer does not exceed ~~[\$100,000]~~ the applicable federal deposit insurance limit.

After the effective date of any order requiring the pledging of collateral, the qualified depository may not accept, receive or renew uninsured deposits of public funds.

(4) If the amount of capital as defined in R628-11-4-[B]A. is zero or less, the institution is no longer a qualified depository and must relinquish all deposits of public funds within 15 days of the effective date of any order issued by the Commissioner of Financial Institutions requiring relinquishment.

(5) The requirements for pledging of collateral set forth in this rule shall remain in effect until the public funds allotment has been increased to the statutory maximum or 12 months, whichever occurs first. If at the end of the 12 month period the qualified depository institution's public funds allotment has not been

increased to the statutory maximum, the qualified depository shall immediately relinquish all excess deposits.

B. Delivery of Collateral

Within 15 days of the effective date of an order requiring collateralization of excess deposits in accordance with the provisions of this rule, a qualified depository shall deliver to the state treasurer or the designated trustee eligible collateral sufficient to meet the statutory collateralization requirements and shall execute a pledge agreement and trust indenture as required by the state treasurer. Collateral delivered to the state treasurer or the designated trustee may not be released until the state treasurer has received written confirmation from the Commissioner of Financial Institutions that the excess deposits have been surrendered or that the qualified depository is eligible to accept, receive and hold public funds without collateralization.

KEY: public investments, collateral, trustees, financial institutions

Date of Enactment or Last Substantive Amendment:
[1990]2010

Notice of Continuation: November 7, 2005

Authorizing, and Implemented or Interpreted Law:
51-7-18.1(5)

**Natural Resources, Parks and
Recreation
R651-206
Carrying Passengers For Hire**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33733

FILED: 06/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: It was brought to the Division of State Parks and Recreation's attention during the past legislative session by Representative Ferry, that there were boat operators who worked on the private property of Migratory Bird Areas that should not be included in our Carrying Passengers for Hire program as they are guiding members and doing so only on private property. There was no bill sponsored by Representative Ferry. It was brought to his attention by his constituents and he discussed it with our Division representatives. It was determined that it could be taken care of through the Utah State Parks and Recreation Board rule process. It was passed by them at our last board meeting.

SUMMARY OF THE RULE OR CHANGE: There are owners and employees of Migratory Bird Production Areas that are currently included in the Carrying Passengers For Hire rules pertaining to boat operators and outfitting companies. These areas are on private property and should not be included.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 73-18-4(4) and Title 73, Chapter 18

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** No cost or savings to the state budget. The only persons affected are the owners and employees of Migratory Bird Production Areas.

◆ **LOCAL GOVERNMENTS:** No cost or savings to the local governments. The only persons affected are the owners and employees of Migratory Bird Production Areas.

◆ **SMALL BUSINESSES:** There will be savings to the Migratory Bird Production Areas in that they will not have to pay fees as an outfitting company and their employees/members will not need to register as captain/guides.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be savings to the Migratory Bird Production Areas in that they will not have to pay fees as an outfitting company and their employees/members will not need to register as captain/guides.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons - only cost savings to the Migratory Bird Production Areas in that they will not have to pay fees as an outfitting company and their employees/members will not need to register as captain/guides.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change should have a positive impact on business by reducing restrictions.

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

NATURAL RESOURCES

PARKS AND RECREATION

ROOM 116

1594 W NORTH TEMPLE

SALT LAKE CITY, UT 84116-3154

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Fred Hayes, Acting Operations Deputy Director

R651. Natural Resources, Parks and Recreation.

R651-206. Carrying Passengers for Hire.

R651-206-2. Outfitting Company Responsibilities.

(1) Each outfitting company carrying passengers for hire on waters of this state shall register with the Division annually, prior to commencement of operation.

(a) Outfitting company registration with the Division requires the completion of the prescribed application form and providing the following:

- (i) Evidence of a current and valid business license;
- (ii) Evidence of a current and valid river trip authorization(s), Special Use Permit(s), or performance contract(s) issued by an appropriate federal or state land managing agency;
- (iii) Evidence of general liability insurance coverage; and
- (iv) Payment of a \$150 fee for an outfitting company whose place of business is physically located within the State of Utah, or
- (v) Payment of a \$200 fee for an outfitting company whose place of business is physically located outside of the State of Utah.

(b) Owners and employees of a migratory bird production area created under Title 23, Chapter 28, Migratory Bird Production Area and operating within that Migratory Bird Production Area shall not be considered an outfitting company.

(2) Upon successful registration with the Division, the Division shall issue a certificate of outfitting company registration in the name of the outfitting company. An outfitting company shall display its certificate of outfitting company registration at its place of business in a prominent location, visible to persons and passengers who enter the place of business.

(3) An agent of an outfitting company shall certify that each license or permit applicant sponsored by the outfitting company has:

- (a) Obtained the minimum levels of required vessel operation experience corresponding to the type of license or permit applied for;
- (b) Obtained the appropriate first aid and CPR certificates; and
- (c) Completed the prescribed application form with true and correct identifying information.

(4) An outfitting company's annual registration with the Division may be suspended, denied, or revoked for a length of time determined by the Division director, or an individual designated by the Division director, if one of the following occurs:

- (a) The outfitting company's, or agent's negligence caused personal injury or death as determined by due process of law;
- (b) The outfitting company or agent is convicted of three violations of Title 73, Chapter 18, or rules promulgated thereunder during a calendar year period;

(c) False or fictitious statements were certified or false qualifications were used to qualify a person to obtain a license or permit for an employee or others;

(d) The Division determines that the outfitting company intentionally provided false or fictitious statements or qualifications when registering with the Division;

(e) The outfitting company has utilized a private trip permit for carrying passengers for hire and has been prosecuted by the issuing agency and found guilty of the violation;

(f) The outfitting company used a vessel operator without a valid license or permit or without the appropriate license or permit while engaging in carrying passengers for hire; or

(g) The outfitting company is convicted of violating a resource protection regulation or public safety regulation in effect by the respective land managing and/or access permitting agency.

(5) An outfitting company shall have a written policy describing a program for a drug free workplace.

(6) An outfitting company shall maintain a training log for each of its vessel operators.

(7) An outfitting company shall maintain a voyage plan and a passenger manifest, on shore, for each trip or excursion the company conducts.

(8) An outfitting company shall maintain a daily or trip operations log for each of its vessels.

(9) An outfitting company shall ensure that each of its vessel operators conducts a check of the vessel he or she will be operating. The vessel check shall include:

- (a) Passenger count;
- (b) A discussion of safety protocols and emergency operations with passengers on board the vessel.
- (c) A check of the vessel's required carriage of safety equipment.

(d) A check of the vessel's communication systems;

(e) A check of the operation and control of the vessel's steering controls and propulsion system; and

(f) A check of the vessel's navigation lights, if the vessel will be operating between sunset and sunrise.

(10) An outfitting company shall ensure that each vessel in its fleet is equipped with the required safety equipment.

(11) An outfitting company shall maintain each vessel in its fleet according to good marine practices and standards.

(a) The outfitting company shall ensure that each vessel used in the service of carrying passengers for hire meets the maintenance and inspection requirements, if such inspections are required of a vessel.

(b) The outfitting company shall maintain a file of its maintenance and inspections for each vessel, or the components and equipment that configure a float trip vessel, that is required to be inspected in its fleet. Maintenance and inspection files shall be maintained for the duration in which the vessel is in the service of carrying passengers for hire, plus one additional year.

(12) The owner of a vessel carrying passengers for hire, shall carry general liability insurance. The insurance coverage shall be for a minimum of \$1,000,000 aggregate per incident.

(13) Upon request of an agent of the Division, an outfitting company shall provide the Division with a copy of the company's

- (a) Drug free workplace policy;
- (b) A passenger manifest and trip voyage plan;
- (c) Trip operation logs;
- (d) A vessel's maintenance and inspection files; or
- (e) A vessel operator's training log.

(14) An outfitting company that is registered to carry passengers for hire in another state and possesses a state-issued certificate of outfitting company registration, or similar license, permit or registration accepted and recognized by the Division, where the state has similar outfitting company registration provisions, shall not be required to obtain and display a Utah certificate of outfitting company registration as required by this section when:

(a) Operating vessels on Bear Lake, Flaming Gorge, and Lake Powell where a trip embarks and disembarks from the out-of-state portion of the lake and less than 25 percent of a trip is conducted on the Utah portion of the lake.

(b) Operating vessels on rivers flowing into Utah where the river trip originates out-of-state and terminates at the first available launch ramp/take-out.

(i) For vessels operating on the Colorado River, the first available take-out is the Westwater Ranger Station launch ramp/take-out.

(ii) For vessels operating on the Dolores River, the first available take-out is the Dewey Bridge launch ramp/take-out on the Colorado River.

(iii) For vessels operating on the Green River, the first available take out is the Split Mountain launch ramp/take-out.

(iv) For vessels operating on the San Juan River, the first available take-out is the Montezuma Creek launch ramp/take-out.

R651-206-3. Utah Captain's/Guides License and Utah Boat Crew Permit.

(1) No person shall operate a vessel engaged in carrying passengers for hire on sole state waters unless that person has in his possession a valid and appropriately endorsed Utah Captain's/Guide's License or Utah Boat Crew Permit issued by the Division, or a valid and appropriately endorsed U.S. Coast Guard Master's License.

(a) When carrying passengers for hire on a motorboat on the waters of Bear Lake, Flaming Gorge or Lake Powell, the operator must have a valid and appropriately endorsed U.S. Coast Guard Master's License.

(b) A Utah Captain's/Guide's License is valid on the waters of Bear Lake, Flaming Gorge, and Lake Powell when the holder is carrying or leading persons for hire on non-motorized vessels.

(c) A Utah Captain's/Guide's License or Utah Boat Crew Permit, with the appropriate whitewater river or other river endorsement, is valid when operating a vessel exiting from a river to the first appropriate and usable take-out or launch ramp on a lake or reservoir.

(d) A boat operator, carrying passengers within a migratory bird production area created under Title 23, Chapter 28, Migratory Bird Production Area shall comply with the guidelines for safe boat operation adopted by the management of the Migratory Bird Production Area.

_____ (2) License and Permit Requirements.

(a) The license or permit must be accompanied by current and appropriate first aid and CPR certificates. A photocopy of both sides of the first aid and CPR certificates is allowed when carrying passengers for hire on rivers.

(b) A license with a "Lake and Reservoir Captain" endorsement is required when carrying passengers for hire on any lake or reservoir.

(c) A license with a "Tow Vessel Captain" endorsement is required when towing or assisting other vessels for hire on waters of this state.

(d) A license with a "Whitewater River guide" endorsement is required when carrying passengers for hire on any river section, including "whitewater," "other," and "flatwater" river designations.

(e) A license with an "Other River Guide" endorsement is required when carrying passengers for hire on any river or river section designated as "other" or "flatwater."

(f) A permit with a "lake and Reservoir Crew" endorsement is valid only when the holder is accompanied, on board the vessel, by a qualified license holder with a "Lake and Reservoir Captain" endorsement.

(g) A permit with a "Tow Vessel Crew" endorsement is valid only when the holder is accompanied, on board the vessel, by a qualified license holder with a "Tow Vessel Captain" endorsement.

(h) A permit with a "Whitewater River Crew" endorsement is valid only when the holder is accompanied on the river trip, by a qualified license holder with a "Whitewater River Guide" endorsement.

(i) A permit with an "Other River Crew" endorsement is valid only when the holder is accompanied on the river trip, by a qualified license holder with either a "Whitewater River Guide" or "Other River Guide" endorsement.

(j) All Vessel Operator Permits and River Guide 1, 2, 3, and 4 Permits will expire at the end of their current term. Applications for renewal or duplicate of a Vessel Operator or River Guide Permit will be changed to the respective Utah Captain's/Guide's License or Utah Boat Crew Permit.

(k) All Boatman Permits issued by the Division are expired.

(3) Requirements to obtain a Utah Captain's/Guides License.

(a) The applicant shall be at least 18 years of age as of the date the application is received by the Division.

(b) The applicant shall complete the prescribed application form.

(i) Information on the application form must be verified by an agent of the employing/sponsoring outfitting company.

(ii) The completed application form must be signed by the applicant and by an agent of the employing/sponsoring outfitting company.

(iii) For persons who are applying for their first license, the application, testing, and issuance of the license shall be done in a manner accepted by the Division.

(c) The applicant shall pay a \$50 application fee for the license and first endorsement. A fee of \$10 will be charged for each additional license endorsement.

(d) The applicant shall choose from the four types of license endorsements:

- (i) Lake and Reservoir Captain (LCG)
- (ii) Tow Vessel Captain (TCG)
- (iii) Whitewater River Guide (WCG)
- (iv) Other River Guide (OCG)

(e) The applicant shall provide an original proof of current and valid first aid and CPR certifications:

(i) The first aid certificate must be issued for an American Red Cross "Emergency Response" course or an equivalent course from a reputable provider whose curriculum is in accordance with the USDOT First Responder Guidelines or the Wilderness Medical Society Guidelines for Wilderness First Responder.

(ii) The CPR certificate must be issued for an American Red Cross, American Heart Association, American Safety and Health Institute, National Safety Council CPR or BLS course, or an equivalent course from a reputable provider whose curriculum is in accordance with the 2005 Consensus on Science for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC).

(iii) First aid and CPR certificates must include the following information: name, or title of the course; course provider; length of certification; name of the person certified and legible name of the course instructor.

(f) A current Utah Vessel Operator Permit holder, whose permit was issued prior to January 1, 2008, and who is renewing and converting their permit to a Utah Captain's/Guide's License, is exempt from showing proof of completion of a National Association of State Boating Law Administrators (NASBLA) approved boating safety course.

(g) The applicant shall complete a multiple-choice, written examination administered by an agent of the Division:

(i) 80 percent correct is required to pass.

(ii) In relation to the respective endorsement, the examination will have a specific focus on the carrying passengers for hire laws and rules along with general safety, etiquette and courtesy.

(iii) If an applicant fails to pass the exam, there is a seven-day waiting period to re-test.

(iv) Pay a \$15 fee for each re-test.

(h) The applicant shall provide documentation of vessel operation experience that has been obtained within 10 years previous to the date of application.

(i) Lake and Reservoir Captain (LCG) - A minimum of at least 80 hours of actual vessel operation experience. At least 40 of these hours must be obtained while operating the vessel, or a similar vessel, that will be carrying passengers for hire on the specific lake or reservoir on which the operator will be carrying passengers for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(ii) Tow Vessel Captain (TCG) - A minimum of at least 80 hours of actual vessel operation experience. At least 40 of these hours must be obtained while operating the vessel, or a similar vessel, that will be towing for hire on the specific lake or reservoir on which the operator will be towing vessels for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(iii) Whitewater River Guide (WCG) - A minimum of nine river trips on whitewater river sections. At least one of these

trips must be obtained while operating the vessel, or similar vessel, on the respective river section on which the operator will be carrying passengers for hire. A Whitewater River Guide endorsement meets the requirements for an Other River Guide endorsement.

(iv) Other River Guide (OCG) - A minimum of six river trips on any river section. At least one of these trips must be obtained while operating the vessel or similar vessel, on the respective river section on which the operator will be carrying passengers for hire.

(4) A Utah Captain's/Guide's License is valid for a term of five years. The license will expire five years from the date of issue, unless suspended or revoked.

(a) A Utah Captain's/Guide's License may be renewed within the six months prior to its expiration.

(b) To renew a Utah Captain's/Guide's License, the applicant must complete the prescribed application form along with adhering to the requirements described above. A current license holder may renew his license in a manner accepted by the Division

(c) The renewed license will have the same month and day expiration as the original license.

(d) A Utah Captain's/Guide's License that has expired shall not be renewed and the applicant shall be required to apply for a new license.

(5) Requirements to obtain a Utah Boat Crew Permit.

(a) The applicant shall be at least 18 years of age as of the date the application is received by the Division.

(b) The applicant shall complete the prescribed application form.

(i) Information on the application form must be verified by an agent of the employing/sponsoring outfitting company.

(ii) The completed application form must be signed by the applicant and by an agent of the employing/sponsoring outfitting company.

(iii) For persons who are applying for their first permit, the application and issuance of the permit shall be done in a manner accepted by the Division.

(c) The applicant shall pay a \$50 application fee for the original permit and first endorsement. A \$10 fee shall be charged for each additional crew permit endorsement.

(d) The applicant shall choose from the four types of permit endorsements:

(i) Lake and Reservoir Crew (LRC)

(ii) Tow Vessel Crew (TVC)

(iii) Whitewater River Crew (WRC)

(iv) Other River Crew (ORC)

(e) The applicant shall provide original proof of current and valid first aid and CPR certifications:

(i) The first aid certificate must be issued for an American Red Cross "Standard" or "Basic" first aid course, or an equivalent course from a reputable provider.

(ii) The CPR certificate must be issued for an American Red Cross, American Heart Association, American Safety and Health Institute, National Safety Council CPR or BLS course, or an equivalent course from a reputable provider whose curriculum is in accordance with the 2005 Consensus on Science for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC).

(iii) First aid and CPR certificates must include the following information: name, or title of the course; course provider; length of certification; name of the person certified and legible name of the course instructor.

(f) The applicant shall provide documentation of vessel operation experience that has been obtained within the 10 years previous to the date of application.

(i) Lake and Reservoir Crew (LRC) - A minimum of at least 20 hours of actual vessel operation experience. At least 10 of these hours must be obtained while operating the vessel, or a similar vessel, on which the operator will be carrying passengers for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(ii) Tow Vessel Crew (TVC) - A minimum of at least 20 hours of actual vessel operation experience. At least 10 of these hours must be obtained while operating the vessel, or a similar vessel, that will be towing for hire on the specific lake or reservoir on which the operator will be towing vessels for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(iii) Whitewater River Crew (WRC) - A minimum of three river trips on "whitewater" rivers or river sections. At least one of these trips must be obtained while operating the vessel, or similar vessel, on the respective river or river section on which the operator will be carrying passengers for hire. A Whitewater River Crew endorsement meets the requirements for an Other River Crew endorsement.

(iv) Other River Crew (ORC) - A minimum of three river trips on any river or river section. At least one of these trips must be obtained while operating the vessel on a respective river or river section on which the operator will be carrying passengers for hire.

(6) A Utah Boat Crew Permit is valid for a term of five years. The permit will expire five years from the date of issue, unless suspended or revoked.

(a) A Utah Boat Crew Permit may be renewed within the six months prior to its expiration.

(b) To renew a Utah Boat Crew Permit, the applicant must complete the prescribed application form along with the requirements described above. A current permit holder may renew his license in a manner accepted by the Division.

(c) The renewed permit will have the same month and day expiration as the original permit.

(d) A Utah Boat Crew Permit that has expired shall not be renewed and the applicant shall be required to apply for a new permit.

(e) A Utah Boat Crew Permit holder who upgrades to a Utah Captain's/Guide's License, within one year of when the permit was issued, shall receive a \$25 discount on the fee for the Utah Captain's/Guide's License.

(7) In the event a Utah Captain's/Guide's License or a Utah Boat Crew permit is lost or stolen, a duplicate license or permit may be issued with the same expiration date as the original license or permit.

(a) The applicant must complete the prescribed application form.

(b) The fee for a duplicate license or permit is \$15.

(8) Current Utah Captain's/Guide's License and Utah Boat Crew Permit holders shall notify the Division within 30 days of any change of address.

(9) A Utah Captain's/Guide's License or Utah Boat Crew Permit may be suspended, revoked, or denied for a length of time determined by the Division director, or individual designated by the Division director, if one of the following occurs:

(a) The license or permit holder is convicted of three violations of the Utah Boating Act, Title 73, Chapter 18, or rules promulgated thereunder during a three-year period.

(b) The license or permit holder is convicted of driving under the influence of alcohol or any drug while carrying passengers for hire, or refuses to submit to any chemical test that determines blood or breath alcohol content resulting from an incident while carrying passengers for hire;

(c) The license or permit holder's negligence or recklessness causes personal injury or death as determined by due process of the law;

(d) The license or permit holder is convicted of utilizing a private trip permit to carry passengers for hire;

(e) The license or permit holder is convicted of violating a resource protection regulation or public safety regulation in effect by the respective land managing and/or access permitting agency.

(f) The Division determines that the license or permit holder intentionally provided false or fictitious statements or qualifications to obtain the license or permit.

(10) A Utah Captain's/Guide's License or Utah Boat Crew Permit holder shall not carry passengers for hire while operating an unfamiliar vessel or operating on an unfamiliar lake, reservoir, or river section, unless there is a license holder aboard who is familiar with the vessel and the lake, reservoir, or river section. An exception to this rule allows a license or permit holder to lead passengers for hire on a lake, reservoir, or designated flatwater river section, as long as there is a license holder who is familiar with the vessel and the lake, reservoir, or river section and remains within sight of the rest of the group.

(11) Number of passengers carried for each license or permit holder.

(a) On a vessel that is carrying more than 49 passengers for hire, there shall be at least one license holder and one permit holder or two license holders on board.

(b) On a vessel carrying more than 24 passengers for hire, and operating more than one mile from shore, there shall be an additional license or permit holder on board.

(c) On a vessel carrying passengers for hire, there shall be a minimum of one license or permit holder on board for each passenger deck on the vessel.

(12) Low capacity vessels being led requirements.

(a) On all river sections, except as noted in Subsection (b) below, there shall be at least one qualified license or permit holder for every four low capacity vessels being led in a group.

(b) On lakes, reservoirs, and designated flatwater river sections, there shall be at least one qualified license or permit holder for every six low capacity vessels being led in a group.

(13) A license or permit holder shall not operate a vessel carrying passengers for hire for more than 12 hours in a 24 hour period.

(14) A license or permit holder shall conduct a safety and emergency protocols discussion with passengers prior to the vessel getting underway. This discussion shall include the topics of water safety, use and stowage of safety equipment, wearing and usage of life jackets and initiating the rescue of a passenger(s).

(15) Vessel operators who are licensed or permitted to carry passengers for hire in another state, and possess a state-issued vessel captain's license, or similar license or permit accepted and recognized by the Division, where the state has similar vessel operator licensing provisions, shall not be required to obtain and possess a Utah Captain's/Guide's License or Utah Boat Crew Permit as required by this section.

KEY: boating, parks

Date of Enactment or Last Substantive Amendment: [~~April 21, 2010~~]**August 9, 2010**

Notice of Continuation: February 13, 2006

Authorizing, and Implemented or Interpreted Law: 73-18-4(4)

**Natural Resources, Parks and
Recreation
R651-215-9
Required Wearing of PFDs**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33725

FILED: 06/08/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The river running community wanted the Division to take a look at the designated flatwater section of the boating rules and make changes as recommended by a committee consisting of staff and representatives of the river running committee.

SUMMARY OF THE RULE OR CHANGE: The committee recommended strengthening the language requiring Personal Flotation Device (PFD) wear on rivers as they felt the current language was not specific enough. The wording changes recommended do not change the intent of the rule, but only clarifies the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 73-18-8

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget with regards to this change. The change clarifies the rule only.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local governments with regards to this change. The change clarifies the rule only.

◆ **SMALL BUSINESSES:** There is no fiscal impact associated with the clarification of this rule to small business.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no fiscal impact associated with the clarification of this rule as it is for clarification purposes only. The intent of the rule does not change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs do not change with regards to the clarification of this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact.

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

NATURAL RESOURCES
PARKS AND RECREATION
ROOM 116
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Fred Hayes, Acting Operations Deputy Director

R651. Natural Resources, Parks and Recreation.

R651-215. Personal Flotation Devices.

R651-215-9. Required Wearing of PFDs.

(1) An inflatable PFD may not be used to meet the requirements of this [S]section.

(2) All persons on board a personal watercraft shall wear a PFD.

(3) The operator of a vessel under 19 feet in length shall require each passenger 12 years of age or younger to wear a PFD. This rule is also applicable to vessels 19 feet or more in length, except when the child is inside the cabin area.

(4) On every river[s], every person on board a vessel [shall] must wear a PFD, except PFDs may be loosened or removed by persons 13 years of age or older on designated flat water [areas] river section(s) as listed in Section R651-215-[12]10.

KEY: boating, parks

Date of Enactment or Last Substantive Amendment: [~~November 3, 2008~~]**August 9, 2010**

Notice of Continuation: February 13, 2006

Authorizing, and Implemented or Interpreted Law: 73-18-8

Natural Resources, Parks and
Recreation
R651-215-10
River Flat Water Areas

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 33730
FILED: 06/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The river running community requested the Division take a look at the designated flatwater section of the boating rules and make changes as recommended by a committee consisting of staff and representatives of the river running committee.

SUMMARY OF THE RULE OR CHANGE: The current title of this rule is not clear. It is recommended that the wording be changed to reflect the proposed changes in R651-215-9(4). (DAR NOTE: The proposed amendment to Section R651-215-9 is under DAR No. 33725 in this issue, July 1, 2010, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 73-18-8

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There are no anticipated cost of savings to this rule change as it is for clarification purposes only.

♦ LOCAL GOVERNMENTS: No cost or savings. It is for clarification purposes only.

♦ SMALL BUSINESSES: This rule change is for clarification purposes only. There is no cost or savings to small business.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No fiscal impact to anyone. The change is for clarification purposes only.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None. The change is for clarification purposes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact.

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

NATURAL RESOURCES
PARKS AND RECREATION
ROOM 116
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: Fred Hayes, Acting Operations Deputy Director

R651. Natural Resources, Parks and Recreation.

R651-215. Personal Flotation Devices.

R651-215-10. [~~River Flat Water Areas~~Designated Flatwater River Sections.

- (1) On the Green River:
- (a) from Red Creek Camp below Red Creek Rapids to the Indian Crossing Boat Ramp;
 - (b) from 100 yards below Taylor Flats Bridge to the Utah/Colorado state line in Browns Park;
 - (c) within Dinosaur National Monument, from the mouth of Whirlpool Canyon to the head of Split Mountain Gorge;
 - (d) from the mouth of Split Mountain to Jack Creek in Desolation Canyon; and
 - (e) from the Green River Diversion Dam below Gray Canyon to the confluence with the Colorado River.
- (2) On the Colorado River:
- (a) from the Colorado/Utah state line to the Westwater Ranger Station;
 - (b) from Big Hole Canyon in Westwater Canyon to Onion Creek;
 - (c) from Drinks Canyon, mile 70, to the confluence with the Green River; and
 - (d) after the last active rapid in Cataract Canyon.
- (3) On the San Juan River, after the last active rapid prior to Lake Powell.

KEY: boating, parks

Date of Enactment or Last Substantive Amendment: [~~November 3, 2008~~August 9, 2010

Notice of Continuation: February 13, 2006

Authorizing, and Implemented or Interpreted Law: 73-18-8

Natural Resources, Wildlife Resources
R657-12
Hunting and Fishing Accommodations
for People With Disabilities

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33758

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division's administrative rules.

SUMMARY OF THE RULE OR CHANGE: Provisions are being amended to this rule to allow increased hunting opportunities for disabled hunters by establishing guidelines for season extensions, as well as a review process for application that are denied.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-19-1 and Section 23-19-36 and Section 23-20-12 and Section 63-46a-3

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment allows accommodations or opportunities for disabled people to participate in big game hunting, and establishes the review process for any application that is denied. The Division of Wildlife Resources (DWR) has determined that this amendment does not create a cost or savings impact to DWR's budget or the state budget.

◆ **LOCAL GOVERNMENTS:** This amendment allows accommodations or opportunities for disabled people to participate in big game hunting, and establishes a review process for any applicant who is denied a certificate of registration. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the amendment. Nor are local governments indirectly impacted because the amendment does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment allows accommodations or opportunities for disabled people to participate in big game hunting, and establishes a review process for any applicant who may be denied a certificate of registration. The amendment does not impose any additional requirements on other persons, nor generate a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment allows accommodations or opportunities for disabled people to participate in big game hunting, and establishes a review process for any applicant who may be denied a certificate of registration. The amendment does not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment allows accommodations or opportunities for disabled people to participate in big game hunting, and establishes a review process for any applicant who is denied a Certificate of Registration. There are not any additional compliance costs associated with this amendment.

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

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

NATURAL RESOURCES

WILDLIFE RESOURCES

1594 W NORTH TEMPLE

SALT LAKE CITY, UT 84116-3154

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-12. Hunting and Fishing Accommodations for People With Disabilities.

R657-12-1. Purpose and Authority.

Under authority of Sections 23-14-18, 23-19-1, 23-19-36, 23-20-12 and 63G-3-201, this rule provides the standards and procedures for a person with disabilities to:

- (1) obtain a certificate of registration for taking wildlife from a vehicle;
- (2) obtain a fishing license as authorized under Section 23-19-36(1);
- (3) obtain a certificate of registration to participate in companion hunting;
- (4) obtain a certificate of registration to receive a limited entry season extension;

(5) obtain a certificate of registration to receive a general deer or elk season extension;

(6) obtain a certificate of registration to hunt with a crossbow or draw-lock; or

(7) obtain a certificate of registration to use telescopic sights on a weapon when otherwise prohibited.

R657-12-6. Special Season Extension for Disabled Persons - Limited Entry Hunts.

(1) A person may obtain a Certificate of Registration from a division office requesting an extension [~~of 30 days~~] for any limited entry hunt, provided the person requesting the extension:

(a) is blind, quadriplegic, upper extremity disabled, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities;

(b) satisfies the hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains the appropriate license, permit, and tag.

(2) The division shall not issue a Certificate of Registration for [~~a 30-day~~]an extension on any limited entry hunt where the extension will violate federal law.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(2)(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(2)(a); or

(d) a signed statement by a licensed physician verifying the person is quadriplegic, upper extremity disabled as defined under Section R657-12-2(2)(d), paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

R657-12-7. Special Season Extension for Disabled Persons - General Deer, Elk and Wild Turkey Hunts.

(1) A person may obtain a Certificate of Registration from a division office to hunt an extended general deer, elk or wild turkey season as provided in Subsection (2), provided the person requesting the extension:

(a) is blind, quadriplegic, upper extremity disabled, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities;

(b) satisfies the hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains the appropriate license, permit and tag.

(2)(a) The extended general deer season may include:

(i) a [~~five-day~~]hunt immediately preceding the general any weapon buck deer season opening date published in the proclamation of the Wildlife Board for taking big game;

(A) the [~~five-day~~]extension [~~does~~]may not apply to general any weapon deer hunts with [~~seasons less than nine days in duration; and~~]season length restrictions.

[~~— (ii) a one time, experimental hunt beginning November 7, 2009 and ending November 8, 2009.~~

] (b) The extended general spike bull elk season may occur five days after the general season spike bull elk hunt published in the proclamation of the Wildlife Board for taking big game.

(c) The extended general any bull elk season may occur concurrently with the general youth any bull elk hunt published in the proclamation of the Wildlife Board for taking big game.

(d) The extended general wild turkey season may occur during the following dates;

(i) April 2 through April 4 2010;

(ii) April 1 through April 3 2011; and

(iii) March 30 through April 1 2012.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(2)(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(2)(a); or

(d) a signed statement by a licensed physician verifying the person is quadriplegic, upper extremity disabled as defined under Section R657-12-2(2)(d), paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

R657-12-10. Administrative and Judicial Review.

(1) A person may request administrative review of the division's partial or complete denial of a certificate of registration under this chapter by delivering a written request for administrative review to the division director or designee within 30 days of the date of denial.

(2) The request for administrative review shall include:

(a) the name, address, and phone number of the petitioner;

(b) a specific description of the disability involved and the physical limitations imposed by that disability;

(c) a specific description of the accommodations requested to mitigate the physical limitations caused by the disability; and

(d) verifiable medical or other information describing the disability and the medical need for the requested accommodation.

(3) A person may appeal the division director's or designee's decision under Subsection (1) by filing a request for agency action pursuant to R657-2.

KEY: wildlife, wildlife law, disabled persons

Date of Enactment or last Substantive Amendment: [October 22, 2009]2010

Notice of Continuation: September 10, 2007

Authorizing, and Implemented or Interpreted Law: 23-20-12; 63G-3-201

Natural Resources, Wildlife Resources R657-17 Lifetime Hunting and Fishing License

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 33755
FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Wildlife Board meetings conducted for taking public input and reviewing the Division's big game program, which directly affects the Lifetime Hunting and Fishing License program.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to the above listed rule: 1) define "lifetime questionnaire", "recent lifetime licensee record", and "application deadline" for clarification purposes; 2) remove obsolete language relating to the paperless application process and questionnaires; 3) enable the division to use electronic forms of communication; and 4) make technical corrections for consistency and accuracy.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-19-17.5

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The reason for this rule amendment is to maintain consistency with all division application processes, so the amendment does not create a cost or savings impact to the state budget or the Division of Wildlife Resources' (DWRs) budget. Although there may be some additional programming costs the amendments will not create any cost or savings impact to the state budget or DWR's budget. Any additional work will be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** Since this amendment simply addresses a change in the process that a lifetime license holder chooses their region, this filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** Since Lifetime Licenses are no longer available for purchase, DWR determines that this amendment does not create a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Since Lifetime Licenses are no longer available for purchase, DWR determines that this amendment does not create a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment removes obsolete language relating to the application and questionnaire process for a lifetime license holder and enables DWR to use electronic forms of communication. DWR determines that there are no additional compliance costs for affected persons associated with this amendment.

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

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: James Karpowitz, Director

**R657. Natural Resources, Wildlife Resources.
R657-17. Lifetime Hunting and Fishing License.
R657-17-1. Purpose and Authority.**

(1) Under authority of Section 23-19-17.5, this rule provides the requirements and procedures applicable to lifetime hunting and fishing licenses.

(2) In addition to the provisions of this rule, a lifetime licensee is subject to:

(a) the provisions set forth in Title 23, Wildlife Resources Code of Utah; and

(b) the rules and proclamations of the Wildlife Board, including all requirements for ~~[special]~~ hunting permits and fishing ~~[permits and tags]~~ licenses.

(3) Unless specifically stated otherwise, lifetime licensees shall be subject to any amendment to this rule or any amendment to Section 23-19-17.5.

R657-17-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and Rule R657-5.

(2) In addition:

(a) "Lifetime Questionnaire" means a list of questions, accessible by a lifetime licensee at the division's website, used to

identify the lifetime licensee's preferred choice of a general season deer permit region and hunt type.

(b) "Recent Lifetime Licensee Record" means the most recent general deer permit issued within the immediately preceding 3 years.

(c) "Application Deadline" means the close of the annual Big Game application period, as established by the Wildlife Board in the Big Game Guidebook.

R657-17-3. Lifetime License Entitlement.

(1) (a) A permanent lifetime license card shall be issued to lifetime licensees in lieu of an annual hunting, and fishing license.

(b) The issuance of a permanent lifetime license card does not authorize a lifetime licensee to all hunting privileges. The lifetime licensee is subject to the requirements ~~[as provided]~~ in Subsection R657-17-1(2).

(2) Each year, a lifetime licensee who is eligible to hunt big game may receive without charge, a permit for the region of their choice for one of the following general deer hunts:

- (i) archery buck deer;
- (ii) any weapon buck deer; or
- (iii) muzzleloader buck deer.

(3) Sales of lifetime hunting and fishing licenses may not be refunded, except as provided in Section 23-19-38.

(4) Lifetime hunting and fishing licenses are not transferable.

(5) Lifetime hunting and fishing licenses are no longer for sale as of March 1, 1994.

(6)(a) Lifetime license holders may participate in the Dedicated Hunter Program.

(b) Upon entering the Dedicated Hunter Program, the lifetime license holder agrees to forego any rights to receive a buck deer permit for the general archery, general ~~[season]~~any weapon or general muzzleloader deer hunts as provided in Section 23-19-17.5 during enrollment in the Dedicated Hunter Program[~~:-~~].

~~(7)(a) Lifetime license holders may obtain a general any weapon buck deer and bull elk combination permit.~~

~~(b) Upon obtaining a general any weapon buck deer and bull elk combination permit, the lifetime license holder foregoes any rights to receive a buck deer permit for the general archery, general any weapon or general muzzleloader deer hunts as provided in Section 23-19-17.5 during the year the general any weapon buck deer and bull elk combination permit is valid].~~

R657-17-4. General Deer Permits.

(1)~~[(a)]~~ The division ~~[shall send a reminder notice]~~will issue a general buck deer permit to each lifetime licensee ~~[eligible]prior to [hunt big game prior to the beginning of the annual bucks, bulls and once in a lifetime application period as prescribed in the proclamation of the Wildlife Board for taking big game:]the big game general hunting season, provided:~~

(a) a current Lifetime Questionnaire has been completed prior to the application deadline, identifying the lifetime licensee's general season region and hunt type choice, or according to the recent lifetime licensee record; and

(b) provided t[F]he lifetime licensee [shall, prior to the end of the annual bucks, bulls and once in a lifetime application period, complete and submit an online Lifetime Questionnaire

through the division's web site]does not apply for a general deer permit in the big game drawing.

~~(2)~~[(a) Except as provided in Subsection (c) and Subsection (f), the division may not issue a permit to any lifetime licensee who was given notice of the deadline as provided in Subsection (1)(a) and fails to submit a complete Lifetime Questionnaire to]. A lifetime licensee may change their previous year's region choice, prior to the application deadline by completing the online Lifetime Questionnaire through the division's website.~~~~

~~[(b) If an error is found the division reserves the right to:
(i) contact the lifetime licensee to correct the error; or
(ii) correct the lifetime licensee's choice of general deer permits.~~

~~(d) If the division is unable to correct the error, the lifetime licensee may not receive a permit, except as provided in Subsection (f).~~

~~(e) The director or his designee may issue a permit to a lifetime licensee who did not receive reasonable notice of the deadline as provided in Subsection (1)(a).~~

~~(f) If a lifetime licensee fails to submit a Lifetime Questionnaire by the deadline provided in Subsection (1)(b), the lifetime licensee may obtain an available general deer permit on the date these permits are made available over the counter to the general public.~~

~~(3) As used in this section "notice" means that a reminder was sent within a reasonable time before the deadline as provided in Subsection (1)(b) to the most recent address given to the division by the lifetime licensee.~~

~~(4) The Division will provide lifetime licensees notification confirming the information received on the Lifetime Questionnaire.~~

~~(5)-(3) Lifetime licensees must notify the division of any change [of]in mailing address, email address, residency, address, telephone number, physical description, or driver[']s license number[or email address].~~

(4) If a general buck deer permit is not issued to a lifetime licensee during the preceding 3 years, the lifetime licensee must complete and submit the Lifetime Questionnaire on the division's website prior to the application deadline.

(5) If a lifetime licensee fails to submit a current year Lifetime Questionnaire and does not have a recent lifetime licensee record by the application deadline, the lifetime licensee may only obtain a remaining general deer permit when remaining drawing permits are made available to the public over-the-counter. If no general deer permits are remaining after the drawing, the lifetime licensee shall not be issued a permit.

(6)(a) Lifetime licensees may apply for [or obtain]any general deer permit in the big game drawing.

(b) Drawing applications are subject to the established application fee.

(c) A lifetime licensee that applies for a general deer permit in the drawing waives the opportunity to be issued a general deer permit according to the recent lifetime licensee record or the current Lifetime Questionnaire.

(7) Lifetime licensees may apply for general deer preference points [or permits]through the big game general buck deer drawing as provided in Rule R657-62 and the [proclamation]guidebooks of the Wildlife Board for taking big game, provided the lifetime licensee waives their [choice of general

deer permits as provided in Subsection R657-17-3(2) and the region in which the lifetime licensee chooses to hunt.

(b) ~~If a lifetime licensee does not draw a general deer permit through the big game general buck deer drawing, the lifetime licensee may only obtain a general deer permit when made available to the public for over-the-counter purchase.~~ opportunity to be issued a general buck deer permit that year according to the recent lifetime licensee record or the current Lifetime Questionnaire.

R657-17-5. Applying for ~~[Limited Entry]~~Big Game Permits ~~[in the Bucks, Bulls and Once-In-A-Lifetime Drawing].~~

(1) A lifetime licensee may apply for a limited entry permit offered through the ~~[bucks, bulls and once-in-a-lifetime]~~ big game drawing using a bucks, bulls and once-in-a-lifetime application.

(2) Limited entry permit species and application procedures are provided in Rule R657-~~[5]~~62 and the proclamation of the Wildlife Board for taking big game.

(3)(a) If the lifetime licensee applies for and is successful in obtaining a premium limited entry, limited entry, or cooperative wildlife management unit buck deer permit in the ~~[bucks, bulls and once-in-a-lifetime]~~ big game drawing, a general deer permit will not be issued.

(b) If the lifetime licensee does not draw a premium limited entry, limited entry, or cooperative wildlife management unit buck deer permit in the ~~[bucks, bulls and once-in-a-lifetime]~~ big game drawing, the general deer permit requested on the Lifetime Questionnaire or the recent lifetime licensee record shall be issued.

(4) Applying for or obtaining an antlerless deer, antlerless elk, or doe pronghorn permit does not affect eligibility for obtaining a general buck deer permit.

(5) All rules established by the Wildlife Board regarding the availability of big game permits in relation to obtaining general deer permits shall apply to lifetime licensees.

KEY: wildlife, game laws, hunting and fishing licenses
Date of Enactment or Last Substantive Change: [May 10], 2010
Notice of Continuation: November 21, 2005
Authorizing, and Implemented or Interpreted Law: 23-19-17.5; 23-19-40; 23-19-11

Natural Resources, Wildlife Resources
R657-41
Conservation and Sportsman Permits

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 33756

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional

Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to conservation and sportsman permits.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to the above listed rule: 1) establish criteria for issuing "Special Antelope Island State Park Conservation Permits"; 2) remove reference to Merriam and Rio Grand; and 3) change the 10-day requirement for conservation groups to submit vouchers to a 30-day period.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment establishes the process for issuing "Special Antelope Island State Park Conservation Permits"; removes the reference to Merriam and Rio Grand and changes a current 10-day limitation to 30 days, since there is already a system in place for the issuing of conservation permits and the removal of Merriam and Rio Grand are only name changes, DWR determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** This amendment establishes the process for issuing "Special Antelope Island State Park Conservation Permits"; removes the reference to Merriam and Rio Grand and changes a current 10 day limitation to 30 days, this should have little to no effect on the local government. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment establishes the process for issuing "Special Antelope Island State Park Conservation Permits"; and removes the reference to Merriam and Rio Grand and changes a current 10 day limitation to 30 days. Therefore, the amendments do not have the potential to generate a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment establishes the process for issuing "Special Antelope Island State Park Conservation Permits"; and removes the reference to Merriam and Rio Grand and changes a current 10-day limitation to 30 days. Therefore, the amendments do not have the potential to generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these changes will not create additional costs for residents and nonresidents wishing to hunt in Utah.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: James Karpowitz, Director

**R657. Natural Resources, Wildlife Resources.
 R657-41. Conservation and Sportsman Permits.
 R657-41-1. Purpose and Authority.**

(1) Under the authority of Section 23-14-18 and 23-14-19, this rule provides the standards and procedures for issuing:

(a) conservation permits to conservation organizations for sale at an auction, or for use as an aid to wildlife related fund raising activities; and

(b) sportsman permits.

(2) The division and conservation organizations shall use all revenue derived from conservation permits under Subsections R657-41-9(4) and R657-41-9(5)(b) for the benefit of the species for which the permit is issued, unless the division and conservation organization mutually agree in writing that there is a higher priority use for other species of protected wildlife.

R657-41-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Area Conservation Permit" means a permit issued for a specific unit or hunt area for a conservation permit species, and may include an extended season, or legal weapon choice, or both, beyond the season except turkey permits are valid during any season option.

(i) Area Conservation permits issued for limited entry units are not valid on cooperative wildlife management units.

(b) "Conservation Organization" means a nonprofit chartered institution, foundation, or association founded for the purpose of promoting wildlife conservation and has established tax exempt status under Internal Revenue Code, Section 501C-3 as amended.

(c) "Conservation Permit" means any harvest permit authorized by the Wildlife Board and issued by the division for purposes identified in Section R657-41-1.

(d) "Conservation Permit Species" means the species for which conservation permits may be issued and includes deer, elk, pronghorn, moose, bison, Rocky Mountain goat, Rocky Mountain bighorn sheep, desert bighorn sheep, wild turkey, cougar, and black bear.

(e) "Multi-Year Conservation Permit" means a conservation permit awarded to an eligible conservation organization pursuant to R657-41-7 for three consecutive years to sell, market or otherwise use as an aid in wildlife related fund raising activities.

(f) "Retained Revenue" means 60% of the revenue raised by a conservation organizations from the sale of conservation permits that the organization retains for eligible projects, excluding interest earned thereon.

(g) "Special Antelope Island State Park Conservation Permit" means a permit authorized by the Wildlife Board to hunt bighorn sheep or mule deer on Antelope Island State Park.

(h) "Sportsman Permit" means a permit which allows a permittee to hunt during the applicable season dates specified in Subsection ([g]i), and which is authorized by the Wildlife Board and issued by the division in a general drawing, requiring all applicants to pay an application fee and the successful applicant the cost of the permit.

([h]i) "Single Year Conservation Permit" means a conservation permit awarded to an eligible conservation organization pursuant to R657-41-6 for one year to sell, market or otherwise use as an aid in wildlife related fund raising activities.

([i]j) "Statewide Conservation Permit" means a permit issued for a conservation permit species that allows a permittee to hunt:

(i) big game species on any open unit with archery equipment during the general archery season published in the big game proclamation for the unit beginning before September 1, and with any weapon from September 1 through December 31, except pronghorn and moose from September 1 through November 15 and deer and elk from September 1 through January 15;

(ii) ~~one Merriam and one Rio Grand turkey~~two turkeys on any open unit from April 1 through May 31;

(iii) bear on any open unit during the season authorized by the Wildlife Board for that unit;

(iv) cougar on any open unit during the season authorized by the Wildlife Board for that unit and during the season dates authorized by the Wildlife Board on any harvest objective unit that has been closed by meeting its objective; and

(v) Antelope Island is not an open unit for hunting any species of wildlife authorized by a conservation or sportsman permit, except for the Special Antelope Island State Park Conservation [p]Permit.

R657-41-8. Distributing Conservation Permits.

(1) The division and conservation organization receiving permits shall enter into a contract.

(2)(a) The conservation organization receiving permits must insure that the permits are marketed and distributed by lawful means. Conservation permits may not be distributed in a raffle except where the following conditions are met:

(i) the conservation organization obtains and provides the division with a written opinion from a licensed attorney or a written confirmation by the local district or county attorney that the raffle scheme is in compliance with state and local gambling laws;

(ii) except as otherwise provided in R657-41-8(5), the conservation organization does not repurchase, directly or indirectly, the right to any permit it distributes through the raffle;

(iii) the conservation organization prominently discloses in any advertisement for the raffle and at the location of the raffle that no purchase is necessary to participate; and

(iv) the conservation organization provides the division with a full accounting of any funds raised in the conservation permit raffle, and otherwise accounts for and handles the funds consistent with the requirement in Utah Admin. Code R657-41-9.

(3) The conservation organization must:

(i) obtain the name of the proposed permit recipient at the event where the permit recipient is selected; and

(ii) notify the division of the proposed permit recipient within ~~[10]~~30 days of the recipient selection or the permit may be forfeited.

(4) If a person is selected by a qualified organization to receive a conservation permit and is also successful in obtaining a permit for the same species in the same year through the a division drawing, that person may designate another person to receive the conservation permit, provided the conservation permit has not been issued by the division to the first selected person.

(5) If a person is selected by a qualified organization to receive a conservation permit, but is unable to use the permit, the conservation organization may designate another person to receive the permit provided:

(a) the conservation organization selects the new recipient of the permit;

(b) the amount of money received by the division for the permit is not decreased;

(c) the conservation organization relinquishes to the division and otherwise uses all proceeds generated from the re-designated permit, pursuant to the requirements provided in Section R657-41-9;

(d) the conservation organization and the initial designated recipient of the permit, sign an affidavit indicating the initial designated recipient is not profiting from transferring the right to the permit; and

(e) the permit has not been issued by the division to the first designated person.

(6) Except as otherwise provided under Subsections (4) and (5), a person designated by a conservation organization as a recipient of a conservation permit, may not sell or transfer the rights to that designation to any other person. This does not preclude a person from bidding or otherwise lawfully acquiring a permit from a conservation organization on behalf of another person who will be identified as the original designated recipient.

(7) A person cannot obtain more than one conservation permit for a single conservation permit species per year, except for:

(a) elk, provided no more than two permits are obtained where one or both are antlerless permits; and

(b) turkey.

(8) the person designated on a conservation permit voucher must possess or obtain a current Utah hunting or

combination license to redeem the voucher for the corresponding conservation permit.

R657-41-11. Using a Conservation or Sportsman Permit.

(1)(a) A conservation or sportsman permit allows the recipient to take only one individual of the species for which the permit is issued, except a statewide turkey conservation or sportsman permit allows the holder to take ~~[one Merriam's and one Rio Grand turkey]~~two turkeys.

(b) The species that may be taken shall be printed on the permit.

(c) The species may be taken in the area and during the season specified on the permit.

(d) The species may be taken only with the weapon specified on the permit.

(2) The recipient of a conservation or sportsman permit is subject to all of the provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife.

(3) Bonus points shall not be awarded or utilized:

(a) when applying for conservation or sportsman permits; or

(b) in obtaining conservation or sportsman permits.

(4) Any person who has obtained a conservation or sportsman permit is subject to all waiting periods as provided in Rules R657-5, R657-6, R657-10 and R657-33.

R657-41-12. Special Antelope Island State Park Conservation Permit.

(1) If the Wildlife Board authorizes a hunt for bighorn sheep or mule deer on Antelope Island State Park, one permit for each species will be made available as a Special Antelope Island State Park Conservation Permit.

(2) Special Antelope Island State Park Conservation Permits will be issued for one year.

(3) Special Antelope Island State Park Conservation Permits will be issued under this section and will not be limited by the requirements of R657-41-3 through R657-41-8.

(4) Special Antelope Island State Park Conservation Permits will be provided to the conservation group awarded the wildlife convention permit series as provided in R657-55 for marketing at the wildlife convention where the wildlife convention permits are awarded.

(5) The division and conservation organization receiving Special Antelope Island State Park Conservation Permits shall enter into a contract

(6) The conservation organization receiving Special Antelope Island State Park Conservation Permits must insure that the permits are marketed and distributed by lawful means.

(7) The conservation organization must:

(a) obtain the name of the proposed permit recipient at the event where the permit recipient is selected; and

(b) notify the division of the proposed permit recipient within 10 days of the recipient selection or the permit may be forfeited.

(8) If a person is selected by a qualified organization to receive a Special Antelope Island State Park Conservation Permit and is also successful in obtaining a permit for the same species in

the same year through a division drawing, that person may designate another person to receive the Special Antelope Island State Park Conservation Permit, provided the permit has not been issued by the division to the first selected person.

(9) If a person is selected by a qualified organization to receive a Special Antelope Island State Park Conservation Permit, but is unable to use the permit, the conservation organization may designate another person to receive the permit provided:

(a) the conservation organization selects the new recipient of the permit;

(b) the amount of money received by the division for the permit is not decreased;

(c) the conservation organization relinquishes to the division and otherwise uses all proceeds generated from the re-designated permit, pursuant to the requirements provided below:

(i) the conservation organization and the initial designated recipient of the permit, sign an affidavit indicating the initial designated recipient is not profiting from transferring the right to the permit; and

(ii) the permit has not been issued by the division to the first designated person.

(10) Except as otherwise provided under Subsections (8) and (9), a person designated by a conservation organization as a recipient of a Special Antelope Island State Park Conservation Permit, may not sell or transfer the rights to that designation to any other person. This does not preclude a person from bidding or otherwise lawfully acquiring a permit from a conservation organization on behalf of another person who will be identified as the original designated recipient.

(11) A person cannot obtain a Special Antelope Island State Park Conservation Permit for a bighorn sheep or mule deer and any other permit for a male animal of the same species in the same year.

(12) The person designated to receive a Special Antelope Island State Park Conservation Permit must possess or obtain a current Utah hunting or combination license before being issued the permit.

(13) Within 30 days of the convention, but no later than May 1 annually, the conservation organization must submit to the division:

(a) a final report on the distribution of the Special Antelope Island State Park Conservation Permits;

(b) the total funds raised on each permit; and

(c) the funds due to the division.

(14)(a) Permits shall not be issued until the permit fees are paid to the division.

(b) If the conservation organization is paying the permit fees for the permit recipient, the fees must be paid from the 10% retained by the conservation organization as provided in R657-41-9(5)(a).

(15)(a) Conservation organizations shall remit to the division 90% of the total revenue generated by the Special Antelope Island State Park Conservation Permit sales in that year.

(b) Failure to remit 90% of the total permit revenue to the division by the September 1 deadline may result in criminal prosecution under Title 76, Chapter 6, Part 4 of the Utah Code.

(16) A conservation organization may retain 10% of the revenue generated by the permits for administrative expenses.

(17) Upon receipt of the permit revenue from the conservation organization, the division will transfer the revenue in its entirety to the Division of Parks and Recreation as provided in a cooperative agreement between the two divisions.

R657-41-13. Failure to Comply.

Any conservation organization administratively or criminally found in violation of this rule or the Wildlife Resources Code may be suspended from participation in the conservation permit program and required to surrender all conservation permit vouchers.

KEY: wildlife, wildlife permits, sportsmen[†], conservation permits

Date of enactment or last Substantive Change: [~~August 7, 2007~~2010

Notice of Continuation: November 21, 2005

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

Natural Resources, Wildlife Resources R657-42 Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33754

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to fees, exchanges, surrenders, refunds, and reallocation of permits and other documents.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to this rule establish criteria for refunding permits under certain situations and establish protocol for reissuing surrendered, unissued, or unpaid for permits.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-19-1 and Section 23-19-38

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This rule amendment requires certain conditions be met in order for a permit holder to surrender his permit and receive a refund. It requires small programming changes and can be implemented with the

Division's current budget. Therefore, DWR determines that these amendments will not create any cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ LOCAL GOVERNMENTS: Since the amendment sets the criteria for surrendering a hunting permit and would impact only individual permit holders, this filing does not create any direct cost or savings impact to local governments since they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ SMALL BUSINESSES: Since the amendment sets the criteria for surrendering a hunting permit and would impact only individual permit holders, this filing does not create any direct cost or savings impact to small businesses since they are not directly affected by the rule. Nor are small businesses indirectly impacted because the rule does not create a situation requiring services.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This amendment sets criteria for hunters wishing to surrender a permit and receive a refund it does not have an additional financial requirement on persons who wish to surrender a permit, and would not generate a cost or saving impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments will not create additional costs for hunters who wish to surrender a permit under the criteria to receive a refund. Participation is voluntary and the rule amendments do not create a cost or savings impact to individuals who participate in hunting in Utah.

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

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

NATURAL RESOURCES
 WILDLIFE RESOURCES
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: James Karpowitz , Director

R657. Natural Resources, Wildlife Resources.

R657-42. Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents.

R657-42-1. Purpose and Authority.

(1) Under the authority of Sections 23-19-1 and 23-19-38 the division may issue wildlife documents in accordance with the rules of the Wildlife Board.

(2) This rule provides the standards and procedures for the:

- (a) exchange of permits;
- (b) surrender of wildlife documents;
- (c) refund of wildlife documents;
- (d) reallocation of permits; and
- (e) assessment of late fees.

R657-42-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and the applicable rules, guidebooks and proclamations of the Wildlife Board.

(2) In addition:

(a) "Alternate drawing lists" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

(b) "CWMU" means cooperative wildlife management unit.

(c) "Deployed or mobilized" means that a person provides military or emergency services in the interest of national defense or national emergency pursuant to the demand, request or order of their employer.

([e]d) "General season permit" means any:

(i) bull elk, buck deer, or turkey permit identified in the guidebooks of the Wildlife Board as a general season permit;

(ii) antlerless permit for elk, deer, or pronghorn antelope;

or

(iii) harvest objective cougar permit.

(e) "Landowner association operator" for purposes of this rule, means:

(i) a landowner association or any of its members eligible to receive limited entry landowner permits as provided in Rule R657-43; or

(ii) ~~[Cooperative Wildlife Management Unit (CWMU)]~~ CWMU - landowner association or its designated operator as provided in Rule R657-37.

([e]f) "Limited entry permit" means any permit, including a CWMU, conservation, convention, sportsman, or limited entry landowner permit, identified in the guidebooks of the Wildlife Board as limited entry or premium limited entry for the following:

(i) bull elk, buck deer, buck pronghorn, bear, cougar, or turkey; and

(ii) antlerless moose.

(g) "Once-in-a-lifetime permit" means any permit, including a CWMU, conservation, convention, sportsman, or limited entry landowner permit, identified in the guidebooks of the Wildlife Board as once-in-a-lifetime for the following:

(i) bison, bull moose, Rocky Mountain goat, desert bighorn sheep, and Rocky Mountain bighorn sheep.

(h) "Wildlife document" means any license, permit, tag, or certificate of registration issued by the division.

R657-42-4. Surrenders.

(1) Any person who has obtained a wildlife document and decides not to use it, may surrender the wildlife document to any division office.

(2) Any person who has obtained a wildlife document may surrender the wildlife document prior to the season opening date of the wildlife document for the purpose of:

(a) waiving the waiting period normally assessed and reinstating the number of bonus points, including a bonus point for the current year as if a permit had not been drawn, if applicable;

(b) reinstating the number of preference points, including a preference point for the current year as if a permit had not been drawn, if applicable; ~~or~~

(c) purchasing a reallocated permit or any other permit available for which the person is eligible ~~or~~

(d) receiving a refund as provided in R657-42-5.

(3) A CWMU permit must be surrendered prior to the applicable season opening date provided by the CWMU operator, except as provided in Section R657-42-11.

(4) Dedicated hunter participants must surrender their permits prior to the general archery deer season, except as provided in Section R657-38-6.

(5) A person may surrender a limited-entry, ~~premium limited-entry~~ or once-in-a-lifetime permit received through a group application in the ~~[Bucks, Bulls and Once-in-a-Lifetime]~~ Big Game drawing and have their bonus points for that permit species reinstated, provided;

(a) all group members surrender their permits; and

(b) all permits are surrendered to the division more than 30 days before the start of the season for which the permit is valid.

(6) A person may surrender a general season permit received through a group application in the ~~[Bucks, Bulls and Once-in-a-Lifetime]~~ Big Game drawing and have their preference points reinstated, provided;

(a) all members of the group surrender their permits to the division prior to the start of the season for which the permit is valid.

(7) Notwithstanding Subsections (5)(b) and (6)(a), a person who obtains a permit through a group application in the ~~[Bucks, Bulls and Once-in-a-Lifetime]~~ Big Game drawing may surrender that permit after the opening date of the applicable hunting season and have the bonus points for the permit species restored, provided the person;

(a) is a member of United States Armed Forces or public health or public safety organization and is deployed or mobilized in the interest of national defense or national emergency;

(b) surrenders the permit to the division, with the tag attached and intact, or signs an affidavit verifying the permit is no longer in their possession within one year of the end of hunting season authorized by the permit; and

(c) satisfies the requirements for receiving a refund in R657-42-5(3)(c) and (d).

(8) The division may not issue a refund, except as provided in ~~[Section]~~ Sections 23-19-38, 23-19-38.2, and R657-42-5.

R657-42-5. Refunds.

(1) The refund of a license, certificate of registration or permit shall be made in accordance with:

(a) Section 23-19-38 and Rule R657-50;

(b) Section 23-19-38.2 and Subsection (3); or

(c) Section 23-19-38 and ~~[Subsection (4)]~~ this section.

(2)(a) An application for a refund may be obtained from any division office.

(b) All refunds must be processed through the Salt Lake Division office.

(3) A person may receive a refund ~~[in accordance with Subsection (3)]~~ for a wildlife document if that person was deployed or mobilized on or after September 11, 2001, in the interest of national defense or national emergency and is thereby completely precluded from participating in the hunting or fishing activity authorized by the wildlife document, provided:

(a) the refund request is made to the division within one year of the end of the hunting or fishing season authorized by the wildlife document;

(b) the person surrenders the wildlife document to the division, or signs an affidavit stating the wildlife document is no longer in the person's possession; and

(c) the person verifies that the deployment or mobilization completely precluded them from participating in the activity authorized by the wildlife document ~~[except as provided in Subsection (5)]~~; and

(d) the person provides military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:

(i) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which they were deployed or mobilized; and

(ii) the nature and length of their duty while deployed or mobilized.

(4) The division may issue a refund for a wildlife document if the person to whom it was issued dies prior to participating in the hunting or fishing activity authorized by the wildlife document, provided:

(a) The person legally entitled to administer the decedent's estate provides the division with:

(i) picture identification;

(ii) letters testamentary, letters of administration, or such other evidence establishing the person is legally entitled to administer the affairs of the decedent's estate;

(iii) a photocopy of the decedent's certified death certificate; and

(iv) the wildlife document for which a refund is requested.

(5) A person may receive a refund for a surrendered permit provided the permit is surrendered to the division no less than 30 days prior to the season opening date identified on the permit and the permit is:

(a) a once-in-a-lifetime or limited entry permit; or

(b) a general season permit that must be surrendered in order to accept a reallocated limited entry permit for the same species.

(6) The established wildlife document refund fee shall be deducted from all refunds.

(7) A refund will not be issued where the wildlife document purchase price is equal to or less than the wildlife document refund fee.

~~(8) The director may determine that a person did not have the opportunity to participate in an activity authorized by the wildlife document.~~

~~(6)9) The division may reinstate a bonus point or preference point, whichever is applicable, and waive waiting periods, if applicable, when issuing a refund in accordance with this Section.~~

R657-42-6. Reallocation of Permits.

(1)(a) The division may reallocate surrendered limited entry~~;~~ and once-in-a-lifetime ~~and CWMU~~ permits.

(b) The division shall not reallocate ~~[resident and nonresident big game general permits]~~ general season permits for big game and turkey, but the number of permits surrendered may be added to the appropriate permit quota the following year.

(2) Permits shall be reallocated through the Salt Lake Division office.

(3)(a) Any limited entry, once-in-a-lifetime or public CWMU permit surrendered to the division shall be reallocated through the drawing process by contacting the next person listed on the alternate drawing list or as provided in Subsection (b).

(b) A person who is denied a permit due to an error in issuing permits may be placed on the alternate drawing list to address the error, if applicable, in accordance with the Rule R657-50.

(c) The alternate drawing lists are classified as private and therefore, protected under the Government Records Access Management Act.

(d) The division shall make a reasonable effort to contact the next person on the alternate list by telephone or mail.

(e) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public CWMU permit, does not accept the permit or the division is unable to contact that person, the reallocation process will continue until the division has reallocated the permit or the season closes for that permit.

(4) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public CWMU permit has obtained a permit, that person may be required to surrender the previously obtained permit in accordance with Section R657-42-4(2) and any other applicable rules and ~~[proclamations]~~ guidebooks of the Wildlife Board.

(5) Any private CWMU permit surrendered to the division will be reallocated by the landowner through a voucher, issued to the landowner by the division in accordance with Rule R657-37.

~~(6)(a) The division may allocate additional general deer permits and limited entry permits, if it is consistent with the unit's biological objectives, to address errors in accordance with Rule R657-50.~~

~~(b) The division shall not allocate additional CWMU and Once-In-A-Lifetime permits.~~

~~(c) The division may extend deadlines to address errors in accordance with Rule R657-50.~~

R657-42-8. Accepted Payment of Fees.

(1) Personal checks, business checks, money orders, cashier's checks, and credit or debit cards are accepted for payment of wildlife documents.

(2) Personal or business checks drawn on an out-of-state account are not accepted.

(3) Third-party checks are not accepted.

(4) All payments must be made payable to the Utah Division of Wildlife Resources.

(5)(a) Credit or debit cards must be valid at least 30 days after any drawing results are posted.

(b) Checks, and credit or debit cards will not be accepted as combined payment on single or group applications.

(c) If ~~[applicable, if]~~ applicants are applying as a group, all fees for all applicants in that group charged to a credit or debit card must be charged to [one credit or debit] a single card.

(d) Handling fees and donations are charged to the credit or debit card when the application is processed.

(e) Application amendment fees must be paid by credit or debit card.

(f) Permit fees may be charged to the credit or debit card prior to the posting date of the drawings, if successful.

(g) The division shall not be held responsible for bank charges incurred for the use of credit or debit cards.

(6)(a) An application is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

(b) The division charges a returned check collection fee for any check returned unpaid.

(7)(a) A license or permit is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

(b) The Division may make attempt to contact the successful applicant by phone or mail to collect payment prior to voiding the license or permit.

~~[(c) The Division shall reinstate the applicant's bonus points or preference points, whichever is applicable, and waive waiting periods, if applicable, when voiding a permit in accordance with Subsection (b).~~

~~(d) A permit which is deemed void in accordance with Subsection (b) may be reissued by the Division to the next person listed on the alternate drawing list.~~

~~(8)(a) A license or permit received by a person shall be deemed invalid if payment for that license or permit is not received, or a check is returned unpaid from the bank, or the credit or debit card is invalid or refused.~~

(b) A person must notify the division of any change of credit or debit card numbers if the credit or debit card is invalid or refused.

(9) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(10) The division may require a money order or cashier's check to correct payment for a license, permit, or certificate of registration.

(11) Any person who fails to pay the required fee for any wildlife document, shall be ineligible to obtain any other wildlife document until the delinquent fees and associated collection costs are paid.

(12) The Division may take any of the following actions when a wildlife document is voided for nonpayment or remains unissued and unpaid:

_____ (a) reissue the wildlife document using the alternate drawing list for that document;

_____ (b) reissue the wildlife document over-the-counter; or

_____ (c) elect to withhold the wildlife document from reissuance.

(13) The Division may reinstate the applicant's bonus points or preference points and waive waiting periods, where applicable, when:

_____ (a) voiding a permit in accordance with this section and the permit is reallocated;

_____ (b) withholding a wildlife document from a successful applicant for nonpayment and the permit is reallocated; or

_____ (c) full payment is received by the successful applicant on a voided or withheld wildlife document that is not reallocated.

R657-42-9. Assessment of Late Fees.

(1) Any wildlife application submitted under the Utah Administrative Code Rules provided in Subsection (a) through (e), within 30 days of the applicable application deadline established in such rules, in the [~~proclamations~~]guidebooks of the Wildlife Board, or by the division may be processed only upon payment of a late fee as provided by the approved fee schedule.

(a) R657-52, Commercial Harvesting of Brine Shrimp and Brine Shrimp Eggs;

(b) R657-21, Cooperative Wildlife Management Units for Small Game;

(c) R657-22, Commercial Hunting Areas;

(d) R657-37, Cooperative Wildlife Management Units for Big Game; or

(e) R657-43, Landowner Permits.

(2) Any person who fails to report their Big Game hunt information pursuant to R657-5 Taking Big Game, within 30 calendar days of the ending season date for their once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit hunt may apply for a Big Game permit or bonus point in the following year provided:

(a) the survey is completed and submitted to the division at least 5 days prior to the close of the Big Game application period established in the [~~proclamation~~]guidebooks of the Wildlife Board.

(b) the late fee established in the approved fee schedule is paid to the Division through the 1-800 number [~~as~~]listed in the Big Game [~~proclamation~~]guidebook.

(c) The accepted method of payment of fee is only a credit or debit card.

(3) Any person who fails to report their Swan hunt information pursuant to R657-9-7, within 30 calendar days of the ending season date for their Swan hunt may apply for a Swan permit in the following year provided:

(a) the survey is completed and submitted to the division at least 5 days prior to the close of the Swan application period established in the [~~proclamation~~]guidebooks of the Wildlife Board.

(b) the late fee established in the approved fee schedule is paid to the Division through the 1-800 number [~~as~~]listed in the Waterfowl [~~proclamation~~]guidebook.

(c) The accepted method of payment of fee is only a credit or debit card.

KEY: wildlife, permits

Date of Enactment or Last Substantive Amendment: [~~April 7, 2009~~]2010

Notice of Continuation: May 8, 2008

Authorizing, and Implemented or Interpreted Law: 23-19-1; 23-19-38; 23-19-38.2

Natural Resources, Wildlife Resources R657-55 Wildlife Convention Permits

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33757

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to convention permits.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to the above listed rule: 1) extend the authorization to issue wildlife convention permits through 2016; 2) add the guidelines for a Wildlife Convention Audit; and 3) establish the selection process for an applicant who draws more than one permit for the same species.

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This amendment extends the authorization for issuing wildlife convention permits for an additional five years and establishes a criteria for a wildlife convention audit. DWR determines that this amendment does not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

♦ **LOCAL GOVERNMENTS:** Since this amendment only extends the authority on a process currently in place this should have little to no effect on the local government. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

♦ **SMALL BUSINESSES:** This amendment allows the division to authorize the issuance of wildlife convention permits for an additional five years and therefore, it does not have the potential to increase the cost to individuals. Therefore, this amendment does not have the potential to generate a cost or savings impact to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment allows the division to authorize the issuance of wildlife convention permits for an additional five years and therefore, it does not have the potential to increase the cost to individuals. Therefore, this amendment does not have the potential to generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that this amendment will not create additional costs for people attending and participating in the annual convention. Therefore, the rule amendment does not create a cost or savings impact to individuals.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule does not create an impact on businesses.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-55. Wildlife Convention Permits.

R657-55-1. Purpose and Authority.

(1) Under the authority of Sections 23-14-18 and 23-14-19 of the Utah Code, this rule provides the standards and requirements for issuing wildlife convention permits.

(2) Wildlife convention permits are authorized by the Wildlife Board and issued by the division to a qualified conservation organization for purposes of generating revenue to fund wildlife conservation activities and attracting a regional or national wildlife convention to Utah.

(3) The selected conservation organization will conduct a random drawing at a convention held in Utah to distribute the opportunity to receive wildlife convention permits.

(4) This rule is intended as authorization to issue one series of wildlife convention permits per year beginning in ~~[2007]~~2012 through ~~[2011]~~2016 to one qualified conservation organization.

R657-55-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Conservation organization" means a nonprofit chartered institution, corporation, foundation, or association founded for the purpose of promoting wildlife conservation.

(b) "Special nonresident convention permit" means one wildlife convention permit for each once-in-a-lifetime species that is only available to a nonresident hunter legally eligible to hunt in Utah.

(c) "Wildlife Convention" means a multi-day event held within the state of Utah that is sponsored by multiple wildlife conservation organizations as their national or regional convention or event that is open to the general public and designed to draw nationwide attendance of more than 10,000 individuals. The wildlife convention may include wildlife conservation fund raising activities, outdoor exhibits, retail marketing of outdoor products and services, public awareness programs, and other similar activities.

(d) "Wildlife Convention Audit" means an annual review by the division of the conservation organization's processes used to handle applications for convention permits and conduct the drawing, and the protocols associated with collecting and using client data.

(e) "Wildlife Convention Permit" means a permit which:

(i) is authorized by the Wildlife Board to be issued to successful applicants through a drawing or random selection process conducted at a Utah wildlife convention; and

(ii) allows the permittee to hunt for the designated species on the designated unit during the respective season for each species as authorized by the Wildlife Board.

([e]f) "Wildlife Convention Permit series" means a single package of permits to be determined by the Wildlife Board for:

(i) deer;

(ii) elk;

(iii) pronghorn;

(iv) moose;

(v) bison;

(vi) rocky mountain goat;

(vii) desert bighorn sheep;

(viii) rocky mountain bighorn sheep;

(ix) wild turkey;

(x) cougar; or

(xi) black bear.

([f]g) "Secured Opportunity" means the opportunity to participate in a specified hunt that is secured by an eligible applicant through the drawing process.

([g]h) "Successful Applicant" means an individual selected to receive a wildlife convention permit through the drawing process.

R657-55-4. Obtaining Authority to Distribute Wildlife Convention Permit Series.

(1) The wildlife convention permit series is issued for a period of five years as provided in Section R657-55-1(4).

(2) The wildlife convention permit series is available to eligible conservation organizations for distribution through a drawing or other random selection process held at a wildlife convention in Utah open to the public.

(3) Conservation organizations may apply for the wildlife convention permit series by sending an application to the division ~~[July 1 through]~~ between August 1 and September 1, [2005-]2010.

(4) Each application must include:

(a) the name, address and telephone number of the conservation organization;

(b) a description of the conservation organization's mission statement;

(c) the name of the president or other individual responsible for the administrative operations of the conservation organization; and

(d) a detailed business plan describing how the wildlife convention will take place and how the wildlife convention permit drawing procedures will be carried out.

(5) An incomplete or incorrect application may be rejected.

(6) The division shall recommend to the Wildlife Board which conservation organization may receive the wildlife convention permit series based on:

(a) the business plan for the convention and drawing procedures contained in the application; and

(b) the conservation organization's, including its constituent entities, ability, including past performance in marketing conservation permits under Rule R657-41, to effectively plan and complete the wildlife convention.

(7) The Wildlife Board shall make the final assignment of the wildlife convention permit series based on the:

(a) division's recommendation;

(b) applicant conservation organization's commitment to use convention permit handling fee revenue to benefit [to] protected wildlife in Utah;

(c) historical contribution of the applicant conservation organization, including its constituent entities, to the conservation of wildlife in Utah; and

(d) previous performance of the applicant conservation organization, including its constituent entities.

(8) The conservation organization receiving the wildlife convention permit series must:

(a) require each wildlife convention permit applicant to verify they possess a current Utah hunting or combination license before allowing them to apply for a convention permit;

(b) select successful applicants for the wildlife convention permits by drawing or other random selection process in accordance with law, provisions of this rule, proclamation, and order of the Wildlife Board;

(c) allow applicants to apply for the wildlife convention permits without purchasing admission to the wildlife convention;

(d) notify the division of the successful applicant of each wildlife convention permit within 10 days of the applicant's selection;

(e) maintain records demonstrating that the drawing was conducted fairly; and

(f) submit to an annual wildlife convention ~~[permit series audits]audit~~ by a division-appointed auditor ~~[upon division request]~~.

(9) The division shall issue the appropriate wildlife convention permit to the designated successful applicant after:

(a) completion of the random selection process;

(b) verification of the recipient being found eligible for the permit; and

(c) payment of the appropriate permit fee is received by the division.

(10) The division and the conservation organization receiving the wildlife convention permit series shall enter into a contract, including the provisions outlined in this rule.

(11) If the conservation organization awarded the wildlife convention permit series withdraws before the end of the 5 year period, any remaining co-participants with the conservation organization may be given an opportunity to assume the contract and to distribute the convention permit series consistent with the contract and this rule for the remaining years left in the 5 year period, provided:

(a) The original contracted conservation organization submits a certified letter to the division identifying that it will no longer be participating in the convention.

(b) The partner or successor conservation organization files an application with the division as provided in subsection 4 for the remaining period.

(c) The successor conservation organization submits its application request at least 60 days prior to the next scheduled convention so that the wildlife board can evaluate the request under the criteria in this section.

(d) The Wildlife Board authorizes the successor conservation organization to assume the contract and complete the balance of the 5 year convention permit period.

(12) The division may suspend or terminate the conservation organization's authority to distribute wildlife convention permits at any time during the five year award term for:

(a) violating any of the requirements set forth in this rule or the contract; or

(b) failing to bring or organize a wildlife convention in Utah, as described in the business plan under R657-55-4(4)(d), in any given year.

R657-55-5. Hunter Application Procedures.

(1) Any hunter legally eligible to hunt in Utah may apply for a wildlife convention permit except that only a nonresident of Utah may apply for a special nonresident convention permit.

(2) Any handling fee assessed by the conservation organization to process applications shall not exceed \$5 per application submitted at the convention.

(3) Applicants must validate their application in person at the wildlife convention to be eligible to participate in the random drawing process, for wildlife convention permits, and no person may submit an application in behalf of another.

(4) Applicants may apply for each individual hunt for which they are eligible.

(5) Applicants may apply only once for each hunt, regardless of the number of permits for that hunt.

(6) Applicants must submit an application for each desired hunt.

(7) Applicants must possess a current Utah hunting or combination license in order to apply for a permit.

(8) The conservation organization shall advertise, accept, and process applications for wildlife convention permits and conduct the drawing in compliance with this rule and all other applicable laws.

R657-55-6. Drawing Procedures.

(1) A random drawing or selection process must be conducted for each wildlife convention permit.

(2) No preference or bonus points shall be awarded in the drawings.

(3) Waiting periods do not apply, except any person who obtains a wildlife convention permit for a once-in-a-lifetime species is subject to the once-in-a-lifetime restrictions applicable to obtaining a subsequent permit for the same species through a division application and drawing process, as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(4) No predetermined quotas or restrictions shall be imposed in the application or selection process for wildlife convention permits between resident and nonresident applicants, except that special nonresident convention permits may only be awarded to a nonresident of Utah.

(5) Drawings will be conducted ~~[at]~~within five days of the close of the convention.

(6) Applicants do not have to be present at the drawing to be awarded a wildlife convention permit.

(7) The conservation organization shall ~~[draw twenty-five]~~identify all eligible alternates for each wildlife convention permit and provide the division with a finalized list. This list will be maintained by the conservation organization until all permits are issued.

(8) The division shall contact successful applicants by phone or mail, and the conservation organization ~~[may]~~shall post ~~[results]~~the name of all successful applicants on a designated website.

R657-55-7. Issuance of Permits.

(1) The division shall provide a wildlife convention permit to the successful applicant as designated by the conservation organization.

(2) The division must provide a wildlife convention permit to each successful applicant, except as otherwise provided in this rule.

(3) The division shall provide each successful applicant a letter indicating the permit secured in the drawing, the appropriate fee owed the division, and the date [this]the fee is due, ~~and a postage paid envelope to return payment to the division~~.

(4) Successful applicants must provide the permit fee payment in full to the division and will be issued the designated wildlife convention permit upon receipt of the appropriate permit fee and providing proof they possess a current Utah hunting or combination license.

(5) Residents will pay resident permit fees and nonresidents will pay nonresident permit fees.

(6) Applicants are eligible to obtain only one permit per species, except as provided in Rule R657-5, but no restrictions apply on obtaining permits for multiple species.

(7) In an applicant is selected for more than one convention permit for the same species, the Division will contact the applicant to determine which permit the applicant selects.

(a) The applicant must select the permit of choice within five days of receiving notification.

(b) If the Division is unable to contact the applicant within 5 days, the Division will issue to the applicant the permit with the most difficult drawings odds based on drawing results from the Division's Big Game drawing for the preceding year.

(c) Permits not issued to the applicant will go to the next person on the alternate drawing list for that permit.

~~[(7)](8)~~ Any successful applicant who fails to satisfy the following requirements will be ineligible to receive the wildlife convention permit and the next drawing alternate for that permit will be selected.

(a) The applicant fails to return the appropriate permit fee in full by the date provided in Subsection (3) or

(b) The applicant did not possess a valid Utah hunting or combination license at the time the convention permit application was submitted and the permit received.

R657-55-8. Surrender or Transfer of Wildlife Convention Permits.

(1)(a) If a person selected to receive a wildlife convention permit is also successful in obtaining a Utah limited entry permit for the same species in the same year or obtaining a general permit for a male animal of the same species in the same year, that person cannot possess both permits and must select the permit of choice.

(b) In the event the secured opportunity is willingly surrendered before the permit is issued, the next eligible applicant on the alternate drawing list will be selected to receive the secured opportunity.

(c) In the event the wildlife convention permit is surrendered, the next eligible applicant on the alternate drawing list for that permit will be selected to receive the permit, and the permit fee ~~[will not]~~may be refunded, ~~[except]~~as provided in Sections 23-19-~~[38 and]~~38, 23-19-~~[38.2.]~~38.2, and R657-42-5.

~~(2) [If a person is successful in obtaining more than one wildlife convention permit for the same species, the applicant must select the permit of choice and the remaining permit will go to the next eligible applicant on the alternate drawing list.~~

~~(3)~~ A person selected by a conservation organization to receive a wildlife convention permit, may not sell or transfer the permit, or any rights thereunder to another person in accordance with Section 23-19-1.

~~[(4)](3)~~ If a person is successful in obtaining a wildlife convention permit but is legally ineligible to hunt in Utah the next eligible applicant on the alternate drawing list for that permit will be selected to receive the permit.

KEY: wildlife, wildlife permits

Date of Enactment or Last Substantive Change: ~~[March 10, 2009]~~

Notice of Continuation: May 26, 2010

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

Natural Resources, Wildlife Resources
R657-60
 Aquatic Invasive Species Interdiction

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 33759
 FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add a reservoir to the infested waters list in Utah and make technical corrections.

SUMMARY OF THE RULE OR CHANGE: This amendment adds Sand Hollow Reservoir in Washington County, Utah, to the list of infested waters, and makes technical corrections. (DAR NOTE: A corresponding 120-day (emergency) rule that is effective as of 06/15/2010 is under DAR No. 33753 in this issue, July 1, 2010, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19 and Section 23-27-401

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division of Wildlife Resources (DWR) determines that these amendments do create a cost impact to the state budget or DWR's budget. The 2008 Utah Legislative Session appropriated \$2,500,000 in S.B. 238 to aid in the implementation costs associated with this rule. (DAR NOTE: S.B. 238 (2008) is found at Chapter 284, Laws of Utah 2008, and was effective 05/05/2008.)

◆ **LOCAL GOVERNMENTS:** This rule does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This rule may create a cost impact to boat owners and other water enthusiasts in Utah in that if Dreissena Mussels are found in Utah the cost to decontaminate boats and other conveyances will be at the expense of the owner.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule may create a cost impact to boat owners and other water enthusiasts in Utah in that if Dreissena Mussels are found in Utah the cost to decontaminate boats and other conveyances will be at the expense of the owner.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that this rule may create a cost impact to individuals who own water vessels and boats in infested waters, because they would be required to decontaminate the conveyance.

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

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

NATURAL RESOURCES
 WILDLIFE RESOURCES
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: James Karpowitz, Director

**R657. Natural Resources, Wildlife Resources.
 R657-60. Aquatic Invasive Species Interdiction.
 R657-60-1. Purpose and Authority.**

(1) The purpose of this rule is to define procedures and regulations designed to prevent and control the spread of aquatic invasive species within the State of Utah.

(2) This rule is promulgated pursuant to authority granted to the Wildlife Board in Sections 23-27-401, 23-14-18, and 23-14-19.

R657-60-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and 23-27-101.

(2) In addition:

(a) "Conveyance" means a terrestrial or aquatic vehicle, including a vessel, or a vehicle part that may carry or contain a Dreissena mussel.

(b) "Decontaminate" means to:

(i) Self-decontaminate equipment or a conveyance that has been in an infested water in the previous 30 days by:

(A) removing all plants, fish, mussels and mud from the equipment or conveyance;

(B) draining all water from the equipment or conveyance, including water held in ballast tanks, bilges, livewells, and motors; and

(C) drying the equipment or conveyance for no less than 7 days in June, July and August; 18 days in September, October, November, March, April and May; 30 days in December, January and February; or expose the equipment or conveyance to sub-freezing temperatures for 72 consecutive hours; or

(ii) Professionally decontaminate equipment or a conveyance that has been in an infested water in the previous 30 days by:

(A) Using a professional decontamination service approved by the division to apply scalding water (140 degrees Fahrenheit) to completely wash the equipment or conveyance and flush any areas where water is held, including ballast tanks, bilges, livewells, and motors.

(c) "Detects or suspects" means visually identifying:

(i) a veliger Dreissena mussel through microscopy and confirming the identity of the organism as a Dreissena mussel through two independent polymerase chain reaction (PCR) tests; or

(ii) a juvenile or adult Dreissena mussel.

(d) "Dreissena mussel" means a mussel of the genus Dreissena at any life stage, including a zebra mussel, a quagga mussel and a Conrad's false mussel.

(e) "Controlling entity" means the owner, operator, or manager of a water body, facility, or a water supply system.

(f) "Equipment" means an article, tool, implement, or device capable of carrying or containing water or Dreissena mussel.

(g) "Facility" means a structure that is located within or adjacent to a water body.

(h) "Infested water" includes all the following:

~~(i) Grand Lake, Colorado;~~

~~(ii) Jumbo Reservoir, Colorado;~~

~~(iii) lower Colorado River between Lake Mead and the Gulf of California;~~

~~(iv) Lake Granby, Colorado;~~

~~(v) Lake Mead in Nevada and Arizona;~~

~~(vi) Lake Mohave in Nevada and Arizona;~~

~~(vii) Lake Havasu in California and Arizona;~~

~~(viii) Lake Pueblo in Colorado;~~

~~(ix) Lake Pleasant in Arizona;~~

~~(x) San Justo Reservoir in California;~~

~~(xi) Southern California inland waters in Orange, Riverside, San Diego, Imperial, and San Bernardino counties;~~

~~(xii) Shadow Mountain Reservoir, Colorado;~~

~~(xiii) Tarryall Reservoir, Colorado;~~

~~(xiv) Willow Creek Reservoir, Colorado;~~

~~(xv) all coastal and inland waters [east of the 100th Meridian in North America; and] in:~~

~~(A) Colorado;~~

~~(B) California;~~

~~(C) Nevada;~~

~~(D) Arizona;~~

~~(E) all states east of Montana, Wyoming, Colorado, and New Mexico;~~

~~(F) the provinces of Ontario and Quebec Canada; and~~

~~(G) Mexico;~~

~~(ii) Sand Hollow Reservoir in Washington County, Utah; and~~

~~([xvi]iii) other waters established by the Wildlife Board and published on the DWR website.~~

(i) "Juvenile or adult Dreissena mussel" means a macroscopic Dreissena mussel that is not a veliger.

(j) "Veliger" means a microscopic, planktonic larva of Dreissena mussel.

(k) "Vessel" means every type of watercraft used or capable of being used as a means of transportation on water.

(l) "Water body" means natural or impounded surface water, including a stream, river, spring, lake, reservoir, pond, wetland, tank, and fountain.

(m) "Water supply system" means a system that treats, conveys, or distributes water for irrigation, industrial, wastewater treatment, or culinary use, including a pump, canal, ditch or, pipeline.

(n) "Water supply system" does not include a water body.

R657-60-7. Wildlife Board Designations of Infested Waters.

(1) The Wildlife Board may designate a geographic area, water body, facility, or water supply system as infested with Dreissena mussels pursuant to Section 23-27-102 and 23-27-401 without taking the proposal to or receiving recommendations from the regional advisory councils.

(a) The Wildlife Board may designate a particular water body, facility, or water supply system within the state as infested with Dreissena mussels when a juvenile or adult mussel from the subject water is visually identified as a Dreissena mussel and that identity is ~~confirmed~~ confirmed by two independent positive polymerase chain reaction (PCR) tests.

(b) The Wildlife Board may designate a particular water body, facility, or water supply system outside the state as infested with Dreissena mussels when a veliger, juvenile or adult Dreissena mussel is detected by the state having jurisdiction over the water or when the Wildlife Board has credible evidence suggesting the presence of a Dreissena mussel.

(c) Where the number of infested waters in a particular area is ~~pervasive or too~~ numerous ~~[to individually list]~~ or growing, or where surveillance activities or infestation containment actions are deficient, the Wildlife Board may designate geographic areas as infested with Dreissena mussels.

KEY: fish, wildlife, wildlife law

Date of Enactment or Last Substantive Amendment: [July 27, 2009]2010

Authorizing, and Implemented or Interpreted Law: 23-27-401; 23-14-18; 23-14-19

Regents (Board of), Administration
R765-604
 New Century Scholarship

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 33760
FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Recent legislative action due to state budget constraints limiting available funding has necessitated a limit of \$5,000 for future New Century Scholarship award amounts. This amendment also allows the Utah State Board of Regents to make future adjustments to the maximum award as allowed by available funding from the Utah Legislature.

SUMMARY OF THE RULE OR CHANGE: Future award amounts are changed from the current limit of 75% of tuition to a limit of \$5,000 to complete a bachelor's degree. This amendment also allows the Board of Regents to adjust the maximum award either up or down as allowed by allocations from the state legislature from year to year. This amendment also clarifies enrollment and attendance requirements and appeal processes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53B-8-105

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** State budgets constraints necessitated these changes to this rule. As a result, the proposed changes will reduce what costs would have been incurred by approximately \$937,500. This is merely an estimate based on current levels of applicants and tuition costs. The Legislature appropriates an amount to fund the New Century Scholarship Program. Recent increases in the level of interest for this scholarship required adjustments to the maximum award and qualifying standards that are intended to contain costs within the state budget amount.

◆ **LOCAL GOVERNMENTS:** There are no costs or savings to local governments as a result of this rule or this amendment to the rule.

◆ **SMALL BUSINESSES:** There are no costs or savings to small businesses as a result of this rule or this amendment to the rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no direct costs nor savings to any persons as a result of this rule or this amendment to the rule. However, this amendment may limit the amount of scholarship funds available for future recipients depending on appropriated funding from the State legislature from year to year. Such aspect of funding could indirectly affect the amount an individual student would need to provide by other means that may include a cash outlay in order to pay any remaining tuition charge.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any persons associated with this rule or this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
There is no fiscal impact on businesses from this rule.

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

REGENTS (BOARD OF)
ADMINISTRATION
BOARD OF REGENTS BUILDING, THE GATEWAY
60 SOUTH 400 WEST
SALT LAKE CITY, UT 84101-1284
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ronell Crossley by phone at 801-321-7291, by FAX at 801-321-7299, or by Internet E-mail at rcrossley@utahsbr.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: William Sederburg, Commissioner

R765. Regents (Board of), Administration.

R765-604. New Century Scholarship.

R765-604-1. Purpose.

To provide policy and procedures for the administration of the New Century Scholarship which was established to encourage and reward high school students who~~[will be awarded to high school graduates who either]~~ complete the requirements for an ~~[a]~~Associate's degree while still in high school~~[with at least a 3.0 grade point average prior to September 1 of the same year they would normally graduate with their high school class]~~, or who complete a rigorous math and science curriculum approved by the State Board of Regents~~[with a 3.0 grade point average]~~.

R765-604-2. References.

2.1. 53B-8-105, Utah Code Annotated 1953

R765-604-3. Definitions.

~~3.1. "Program" - New Century Scholarship program.~~
~~3.2. "Awards" - New Century Scholarship funds which provide payment as provided in this rule.~~
~~3.3. "SBR" - State Board of Regents.~~
~~3.4. "Reasonable progress" - A recipient must be enrolled at least full-time (12 credit hours) during any semester for which he or she receives an award. Effective for new 2010 recipients and continuing students starting Summer Semester 2010.~~
~~3.5. "Recipient" - A Utah resident who either: (1) completes the requirements for an associate degree with at least a 3.0 grade point average either prior to September 1 of the year he or she graduates from a Utah high school, or, if he or she graduates early or is home schooled, prior to the September 1 of the year in~~

which he or she normally would have graduated with his or her class; or (2) completes the rigorous math and science curriculum approved by the State Board of Regents with at least a 3.0 grade-point average.

3.6. "High school graduation date" - The date when an applicant or recipient graduates from high school with his or her class, or if he or she graduates early or is home schooled, the date on which he or she normally would have graduated from high school with his or her class.

3.7. "Associate Degree" - An Associate of Arts, Associate of Science, or Associate of Applied Science degree, or equivalent academic requirements, as received from or verified by a regionally accredited Utah public college or university, provided that if the college or university does not offer the associate degree, the requirement can be met if the institution's registrar verifies that the student has completed academic requirements equivalent to an associate degree prior to the September 1 deadline.

3.8. "Math and Science Curriculum" - The rigorous math and science curriculum developed and approved by the State Board of Regents which, if completed, qualifies a high school student for a New Century Scholarship.]3.1. "Associate's Degree": An Associate of Arts, Associate of Science, or Associate of Applied Science degree received from, or verified by, a regionally accredited institution within the Utah System of Higher Education. If the institution does not offer the above listed degrees, equivalent academic requirements will suffice under subsection 3.4.2. of this policy.

3.2. "Awards": New Century Scholarship funds.

3.3. "Board": The Utah State Board of Regents.

3.4. "Completes the requirements for an Associate's degree": Means that a student completes either of the following:

3.4.1. all the required courses for an Associate's degree from an institution within the Utah System of Higher Education that offers Associate's degrees; and applies for the Associate's degree from the institution; or

3.4.2. all the required courses for an equivalency to the Associate's degree from a higher education institution within the Utah System of Higher Education that offers Baccalaureate degrees but does not offer Associate's degrees.

3.5. "Full-time": A minimum of twelve credit hours.

3.6. "High school": A public or private high school within the boundaries of the State of Utah. If a private high school, it must be accredited by a regional accrediting body approved by the Board.

3.7. "High school graduation date": The day on which the recipient's class graduates from high school. For home-schooled students refer to subsection 4.2.1 of this policy.

3.8. "Home-schooled": Refers to a student who has not received a high school grade point average.

3.9. "Math and science curriculum": The rigorous math and science curriculum developed and approved by the Board which, if completed, qualifies a high school student for an award. Curriculum requirements can be found at the Web site of the Utah System of Higher Education.

3.10. "Reasonable progress": A recipient must complete at least twelve credit hours during Fall and Spring semester or apply for and receive an approved Deferral or Leave of Absence from the Board. If applicable, students attending summer must enroll full-time according to their institution and or program policy regarding full-time status.

3.11. "Recipient": A student who receives an award under the requirements set forth in this policy.

3.12. "Scholarship": The New Century Scholarship.

R765-604-4. [Conditions of the Scholarship]Recipient Requirements.

4.1. Program Terms - The program scholarship may be used at any 4 year public or private not-for-profit higher education institution in the state accredited by the Northwest Association of Schools and Colleges that offers baccalaureate programs.

4.2. Applicant Qualification - To qualify for the award, an applicant must have either: (1) completed the requirements for an associate degree with at least a 3.0 college grade point average by September 1 of the year of his or her high school graduation date; or

(2) completed the approved math and science curriculum with at least a 3.0 grade point average by September 1 of the year of his or her high school graduation date.

4.3. Accredited College or University - The associate degree must be received from, or the approved math and science curriculum must be completed through, a regionally accredited Utah public institution, provided the institution's academic on-campus residency requirements, if any, will not affect a student's eligibility for the scholarship if the institution's registrar's office verifies that the student has completed the necessary class credits for an associate degree or completed the approved math and science curriculum.

4.4. Eligible Institutions - The award may be used at any 4-year public or private not-for-profit higher education institution in the state accredited by the Northwest Association of Schools and Colleges that offers baccalaureate programs.

4.5. Enrollment at More Than One Institution - The award may be used at more than one of Utah's eligible institutions within the same semester.

4.6. Student Transfer - The award may be transferred to a different eligible Utah institution upon the request of the student.]

4.1. General Academic Requirements: Unless an exception applies, to qualify as a recipient a student shall:

4.1.1. complete the requirements for an Associate's degree or the math and science curriculum at a regionally accredited institution within the Utah System of Higher Education

4.1.1.1. with at least a 3.0 grade point average

4.1.1.2. by student's high school graduation date; and

4.1.2. complete the high school graduation requirements of a Utah high school with at least a 3.5 cumulative grade point average.

4.2. Utah Home-schooled Students: For Utah home-schooled students the following exceptions and requirements apply:

4.2.1. High School Graduation Date for Home-schooled Students:

4.2.1.1. Completes High School in 2011 and After: If a home-schooled student would have completed high school in 2011 or after, the high school graduation date (under subsection 4.1.1.2.) is June 15 of the year the student would have completed high school;

4.2.1.2. Completes High School in 2010 and Before: If a home-schooled student would have completed high school in 2010 or before, the high school graduation date (under subsection 4.1.1.2.) is September 1 of the year the student would have completed high school.

4.2.2. ACT Composite Score Requirement: A composite ACT score of 26 or higher is required in place of the high school grade point average requirement (under subsection 4.1.2).

4.3. Exception for High School Graduating Class of 2010 and Before: For students whose high school graduation date is in 2010 or before the following exceptions apply:

4.3.1. Change in Deadline: The deadline to complete the requirements for an Associate's degree or the math and science curriculum (under subsection 4.1.1.2.) is changed to September 1 of the year of the student's graduation date; and the documentation submission deadline is October 15.

4.3.2. No High School GPA Requirement: Subsection 4.1.2. shall not apply.

4.4. Mandatory Fall Term Enrollment: A recipient shall enroll full-time at an eligible institution by Fall semester immediately following the student's high school graduation date or receive an approved Deferral or Leave of Absence from the Board under subsection 8.7 of this policy.

4.5. Citizenship Requirement: A recipient shall be a citizen of the United States or a noncitizen who is eligible to receive federal student aid.

4.6. No Criminal Record Requirement: A recipient shall not have a criminal record, with the exception of a misdemeanor traffic citation.

4.7. Regents Scholarship: A recipient shall not receive both an award and the Regents' Scholarship established in Utah Code Section 53B-8-108.

R765-604-5. Application Procedures.

5.1. Application Contact: [-]Qualifying students may apply for the award through the [SBR office]Board.

5.2. [Support Documentation - Applicants must provide an official high school transcript verifying their high school graduation date and ACT score where applicable, an official college transcript, and if the student is enrolled at an institution which does not offer an associate degree or an institution that will not award the associate degree until the academic on-campus residency requirement has been met, the registrar must verify that the applicant has completed the equivalent academic requirements prior to September 1 of the year of the recipient's graduation date.]General procedure: An application for an award shall contain the following:

5.2.1. Application Form: the official application will become available on the New Century Web site each November prior to the February 1 deadline; and

5.2.2. College Transcript: an official college transcript showing college courses, Advanced Placement and transfer work a student has completed to meet the requirements for the Associate's degree and verification of the date the award was earned; and

5.2.3. High School Transcript: an official high school transcript with high school graduation dated posted (if applicable).

5.2.4. ACT Score: a copy of the student's verified ACT score (if applicable).

5.3. Registrar Verification: If a student is enrolled at an institution which does not offer an Associate's degree or an institution that will not award the Associate's degree until the academic on-campus residency requirement has been met, the registrar must verify that the applicant has completed the equivalent academic requirements under 4.1.1.

5.[3]4. Application Deadline[s-]: [Beginning on or after January 1, 2010, a]Applicants shall meet the following deadlines to qualify for an award:

5.[3]4.1. Application Submission: [An]Students must submit a scholarship application [shall be submitted on or before January 8 of the applicant's high school graduation year. A priority deadline may be established each year. Students who meet the priority deadline may be given first priority of consideration for awards.]to the scholarship review committee no later than February 1 of the year of their high school graduation date or the year they would have graduated from high school.

5.[3]4.2. Support Documentation Submission: All necessary support documentation shall be submitted on or before [October 15]August 1 following the applicant's high school graduation date. In some cases exceptions may be made as Advanced Placement and transfer work verification may be delayed at an institutional level and no fault of the applicant.

5.4.3. Priority Deadline: A priority deadline may be established each year. Students who meet the priority deadline may be given first priority of consideration for awards.

5.[4]5. Incomplete Documentation: [-]Applications or other submissions that have missing information or missing documents are considered incomplete, will not be considered, and may result in failure to meet a deadline.

R765-604-6. [Amount of]Awards[and Distribution of Award Funds].

6.1. [Amount]Value of the Award[s]: [-]Unless an exception applies, the maximum total value of the award is \$5000. The award amount up to \$5000 is allocated over a time period described in subsection 7.1. Recipients are not entitled to the maximum award. The award amount is subject to Legislative funding and may be reduced. The total value may change in accordance with subsection 6.3.

6.[1-1]2. Exception for High School Graduating Class of 2010 and Before: For a student who graduates from high school in [the 2009-10 school year]2010, or before, the maximum total value of the award is as follows:

6.[1-1]2.1. Public Institutions: If used at an institution within the [state]Utah [s]System of [h]Higher [e]Education, the amount of the award, depending on available funding and may be reduced, will be up to 75% of the total cost of tuition based on the number of hours the student is enrolled; or

6.[1-1]2.2. Private Nonprofit Institutions: If used at an eligible private nonprofit institution [not within the state system of higher education,]the award, depending on available funding and may be reduced, will be up to 75% of the tuition costs at the institution, not to exceed 75% of the average tuition costs at the baccalaureate degree granting institutions within the [state]Utah [s]System of [h]Higher [e]Education.

[6.1.2. For a student who graduates from high school in or after the 2010-11 school year, the total award is up to \$5,000, allocated semester-by-semester throughout whichever of the following time periods is the shortest:]6.3. Changes in Award Amount

6.3.1 The Board May Increase Award: The Board may increase the total value of the award in subsection 6.1. by an amount not to exceed the average percentage tuition increase approved by the Board for institutions in the Utah System of Higher Education.

6.3.2. The Board May Decrease Award: If the appropriation from the Utah Legislature for the scholarship is insufficient to cover the costs associated with the scholarship, the Board may reduce the award under both subsections 6.1. and 6.2.

6.4. Eligible Institutions: An award may be used at either

6.4.1. Public Institution: a four-year institution within the Utah System of Higher Education that offers baccalaureate programs; or

6.4.2. Private Nonprofit Institution: a private not-for-profit higher education four-year institution in the state of Utah accredited by the Northwest Association of Schools and Colleges that offers baccalaureate programs.

6.5. Enrollment at Multiple Institutions: The award may be used at more than one of the eligible institutions within the same semester for the academic year 2010-11. However, starting in 2011 when the award goes to a flat rate the award may only be used at the institution from which the students is earning a baccalaureate degree.

6.6. Student Transfer: The award may be transferred to a different eligible institution upon request of the recipient.

6.7. Financial Aid and other Scholarships: With the exception of the Regents' Scholarship (as detailed in subsection 4.7 of this policy) tuition waivers, financial aid, or other scholarships will not affect a recipient's total award amount.

R765-604-7. Disbursement of Award.

7.1. Disbursement Schedule of Award: The award shall be disbursed semester-by-semester over the shortest of the following time periods:

[6.1.2.1]7.1.1. [Two years]Four semester of full-time [equivalent] enrollment;

[6.1.2.2]7.1.2. [60]sixty credit hours; or

[6.1.2.3]7.1.3. Until the [student]recipient meets the requirements for a baccalaureate degree.

[6.1.3. Tuition waivers, financial aid, or other scholarships will not affect the total award amount.

6 [7.2. Tuition Documentation: [-]The [award]-recipient shall submit to [SBR]the Board a copy of a class schedule verifying the number of hours enrolled. [SBR]The Board will calculate the amount of the award based on the published tuition costs at the enrolled institution(s) and the availability of program funding.

[6]7.3. Award Payable to Institution: [-]The [scholarship] award will be made payable to the institution. The institution shall pay over to the recipient any excess award funds not required for tuition payments. Award funds should be used for higher education expenses including tuition, fees, books, supplies and equipment required for courses of instruction.

7.4. Dropped Hours after Award: If a student drops credit hours after having received the award which results in enrollment below full-time the scholarship will be revoked (see 8.1) unless the student needs fewer than twelve hours for completion of a degree. Students will be required to pay back the entire payment received for that semester.

7.5. Exception for High School Graduating Class of 2010 and Before: For a recipient whose high school graduation date is in 2010 or before, the following additional provisions apply:

7.5.1. Tuition Calculation by the Board: The Board will calculate the award disbursement amount based on the published

tuition costs at the enrolled institution(s) and the availability of scholarship funding.

[6.4]7.5.2. Added Hours after Award: [-]The award will be increased up to 75% of the tuition costs of any hours added in the semester after the initial award has been made, depending on available funding. Recipient shall submit to [SBR]the Board a copy of the tuition invoice or class schedule verifying the added hours before a supplemental award is made.

[6.5]7.5.3. Dropped Hours [a]After Award: [-]If a student drops hours which were included in calculating the award amount, either the subsequent semester award will be reduced accordingly, or the student shall repay the excess award amount to [SBR]the Board. If a recipient fails to complete a minimum of twelve semester hours, the scholarship [may]will be revoked (see [7]8.1) unless the student needs fewer than twelve hours for completion of a degree. [No award will be made for that semester, and a grade earned in a class completed in that semester, if any, will not be considered in evaluating the recipient's reasonable progress.]Students will be required to pay back the entire payment received for that semester.

[6.6. Funding Constraints of Awards - The SBR may limit or reduce awards, depending on the annual legislative appropriations and the number of qualified applicants.

]

R765-604-7]8. [Time Constraints and]Continuing Eligibility.

[7]8.1. Reasonable Progress toward Degree Completion: [-]In order to renew and award, the recipient must maintain reasonable progress toward degree completion by achieving a 3.0 GPA each semester and enrolling full-time (12 credit hours) each semester. If the recipient fails to maintain a 3.0 GPA or fails to enroll full-time, the award may be revoked.

[7.1.1]8.2. Duty of Student to Report Reasonable Progress: Each semester, the recipient must submit to SBR a copy of his or her grades to verify that he or she is meeting the required grade point average and is completing a minimum of twelve semester hours. Students will not be paid for the coming semester until the requested documentation has been received. These documents must be submitted by the following dates:[-effective for new 2010 recipients and continuing students starting Summer Semester 2010:]

[7.1.1]8.2.1. Proof of enrollment for Fall Semester and proof of completion of the previous semester must be submitted by September 30.

[7.1.1]8.2.2. Proof of enrollment for Spring Semester and proof of completion of the previous semester must be submitted by February 15.

[7.1.1]8.2.3. Proof of enrollment for Summer Semester and proof of completion of the previous semester must be submitted by June 30.

[7.1.1]8.2.4. Proof of enrollment if you are attending Brigham Young University during Winter Semester and proof of completion of the previous semester must be submitted by February 15.

[7.1.1]8.2.5. Proof of enrollment if you are attending Brigham Young University during Spring Term and proof of completion of the previous semester must be submitted by May 30.

[7.1.1]8.2.6. Proof of enrollment if you are attending Brigham Young University during Summer Term and proof of

completion of the previous semester or term must be submitted by July 30.

~~[7.1.2]~~8.3. Probation: If a recipient earns less than a 3.0 GPA in any single semester, the recipient must earn a 3.0 GPA or better the following semester to maintain eligibility for the award.

~~[7.1.3]~~8.4. Final Semester: A recipient will not be required to enroll full-time if the recipient can complete the degree program with fewer credits.

~~[7.2]~~8.5. No Awards after Five Years: ~~[—]~~The [SBR]Board will not make an award to a recipient for an academic term that begins more than five years after the recipient's high school graduation date.

~~[7.3]~~8.6. No Guarantee of Degree Completion: ~~[—]~~An ~~[New Century Scholarship]~~award does not guarantee that the recipient will complete his or her baccalaureate program within the recipient's scholarship eligibility period.

~~[7.4. Awards Initiated Within Twelve Months of High School Graduation — An award recipient must enroll full-time at an eligible institution of higher education within twelve months of the recipient's high school graduation unless the recipient seeks and obtains an approved deferral or leave of absence from the SBR.~~

~~R765-604-8. Deferral or Leave of Absence.~~

~~]~~8.7. Deferral or Leave of Absence.

~~]~~8.7.1. A recipient may apply to the Board for a deferral of award or a leave of absence.

8.~~[+]~~7.2. ~~[Does Not Extend Time—]~~A deferral or leave of absence will not extend the time limits of the scholarship under subsection 8.5.

8.~~[2]~~7.3. Deferrals or leaves of absence may be granted, at the discretion of the [SBR]Board, for military service, humanitarian/religious service, documented medical reasons, and other exigent reasons.

R765-604-9. Appeals.

9.1. Scholarship Determinations: Submission of a scholarship application does not guarantee a scholarship award. Individual scholarship applications will be reviewed, and award decisions made, at the discretion of a Scholarship Review Committee, based on available Legislative funding, applicant pool, and applicants' completion of scholarship criteria. Each applicant will receive a letter informing the applicant of the decision on his/her application, whether the decision is a scholarship award or denial of scholarship.

9.2. Appeals: Applicants may appeal a denial of the scholarship by submitting a written appeal to the Board within 30 days of receipt of the decision letter. Appeals will be reviewed and decided by an appeals committee appointed by the commissioner of higher education. A list of required documents for an appeal is listed on the New Century Scholarship Appeal Form.

KEY: higher education, secondary education, scholarships
Date of Enactment or Last Substantive Amendment: [May 11], 2010

Notice of Continuation: December 21, 2009

Authorizing, and Implemented or Interpreted Law: 53B-8-105

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive public comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period, and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends August 2, 2010.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [~~example~~]). A row of dots in the text between paragraphs (.) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Division of Administrative Rules will include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

From the end of the 30-day waiting period through October 29, 2010, an agency may notify the Division of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303; Rule R15-2; and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-33D
Targeted Case Management by
Community Mental Health Centers for
Individuals with Serious Mental Illness**

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 33590

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify that the provision for the maximum number of hours allowed per admission does not apply to patients who reside in the Utah State Hospital.

SUMMARY OF THE RULE OR CHANGE: This change clarifies that the provision for the maximum number of hours allowed per admission does not apply to patients who reside in the Utah State Hospital. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the May 15, 2010, issue of the Utah State Bulletin, on page 80. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Department does not anticipate a cost or savings to the state budget because this change simply clarifies service coverage for individuals with serious mental illness.
- ◆ **LOCAL GOVERNMENTS:** This change does not impact local governments because they do not fund or provide targeted case management services for Medicaid clients.
- ◆ **SMALL BUSINESSES:** The Department does not anticipate a cost or savings to small businesses because this change simply clarifies service coverage for individuals with serious mental illness.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate a cost or savings to Medicaid providers or to Medicaid clients because this

change simply clarifies service coverage for individuals with serious mental illness.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not anticipate a cost or savings to a single Medicaid provider or a Medicaid client because this change simply clarifies service coverage for individuals with serious mental illness.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment assures that Medicaid recipients at the Utah State Hospital will not be subject to the maximum hours cap applicable in other institutions. No fiscal impact on private business is expected.

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:

- ◆ Kimi Gomez by phone at 801-538-6381, by FAX at 801-237-0785, or by Internet E-mail at kgomez@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-33D. Targeted Case Management by Community Mental Health Centers for Individuals with Serious Mental Illness.

R414-33D-1. Introduction and Authority.

(1) This rule outlines targeted case management services provided to individuals with serious mental illness to assist in gaining access to needed medical, educational, social, and other services.

(2) This rule implements 42 USC 1396n(g), which authorizes targeted case management services and is authorized under UCA 26-18-3.

R414-33D-2. Definitions.

"Serious mental illness" means a serious and often persistent mental illness in an adult or a serious emotional disorder in a child that severely limits the individual's welfare and development or functioning.

R414-33D-3. Client Eligibility Requirements.

Targeted case management is available for individuals with serious mental illness who are categorically or medically needy.

R414-33D-4. Program Access Requirements.

(1) Targeted case management is provided to individuals with serious mental illness for whom a case management needs assessment completed by a qualified targeted case manager documents that:

(a) the individual requires a comprehensive coordinated system of care and treatment or services from a variety of agencies and providers to meet his documented medical, social, educational, and other needs; and

(b) there is reasonable indication that the individual will access needed services only if assisted by a qualified targeted case manager who in accordance with an individualized case management service plan, locates, coordinates, and regularly monitors the service.

(2) Targeted case management services are at the option of the individual in the target population.

(3) Targeted case management services may not restrict an individual's free choice of providers of case management services or other Medicaid services.

R414-33D-5. Service Coverage.

(1) Medicaid covers:

(a) client assessment to determine service needs, including activities that focus on needs identification to determine the need for any medical, educational, social, or other services. Assessment activities include taking client history, identifying the needs of the client and completing related documentation, gathering information from other sources such as family members, medical providers, social workers, and educators, if necessary, to form a complete assessment of the client;

(b) development of a written, individualized, and coordinated case management service plan based on information collected through an assessment that specifies the goals and actions to address the client's medical, social, educational and other service needs. This includes input from the client, the client's authorized health care decision maker, family, and other agencies knowledgeable about the client, to develop goals and identify a course of action to respond to the client's assessed needs;

(c) referral and related activities to help the client obtain needed services, including activities that help link the client with medical, social, educational providers or other programs and services that are capable of providing needed services, such as making referrals to providers for needed services and scheduling appointments for the client;

(d) coordinating the delivery of services to the client, including CHEC screening and follow-up;

(e) client assistance to establish and maintain eligibility for entitlements other than Medicaid;

(f) monitoring and follow-up activities, including activities and contacts that are necessary to ensure the targeted case management service plan is effectively implemented and adequately addressing the needs of the client, which activities may be with the client, family members, providers or other entities, and conducted as frequently as necessary to help determine whether services are

furnished in accordance with the client's case management service plan, whether the services in the case management service plan are adequate, whether there are changes in the needs or status of the client, and if so, making necessary adjustments in the case management service plan and service arrangements with providers;

(g) contacting non-eligible or non-targeted individuals when the purpose of the contact is directly related to the management of the eligible individual's care. For example, family members may be able to help identify needs and supports, assist the client to obtain services, and provide case managers with useful feedback to alert them to changes in the client's status or needs;

(h) instructing the client or caretaker, as appropriate, in independently accessing needed services; and

(i) monitoring the client's progress and continued need for targeted case management and other services.

(2) The agency may bill Medicaid for the above activities only if[;]:

(a) the activities are identified in the case management service plan and the time spent in the activity involves a face-to-face encounter, telephone or written communication with the client, family, caretaker, service provider, or other individual with a direct involvement in providing or assuring the client obtains the necessary services documented in the service plan; and

(b) there are no other third parties liable to pay for services, including reimbursement under a medical, social, educational, or other program.

(3) Covered case management service provided to a hospital or nursing facility patient[~~except a patient in an Institution for Mental Disease (IMD)~~] is limited to a maximum of five hours per admission in the 30-day period before the patient's discharge into the community. This provision does not apply to a patient who resides in the Utah State Hospital.

(4) Medicaid does not cover:

(a) documenting targeted case management services with the exception of time spent developing the written case management needs assessment, service plans, and 180-day service plan reviews;

(b) teaching, tutoring, training, instructing, or educating the client or others, except when the activity is specifically designed to assist the client, parent, or caretaker to independently obtain client services. For example, Medicaid does not cover client assistance in completing a homework assignment or instructing a client or family member on nutrition, budgeting, cooking, parenting skills, or other skills development;

(c) directly assisting with personal care or daily living activities that include bathing, hair or skin care, eating, shopping, laundry, home repairs, apartment hunting, moving residences, or acting as a protective payee;

(d) routine courier services. For example, running errands or picking up and delivering food stamps or entitlement checks;

(e) direct delivery of an underlying medical, educational, social, or other service to which an eligible individual has been referred. For example, providing medical and psychosocial evaluations, treatment, therapy and counseling, otherwise billable to Medicaid under other categories of service;

(f) direct delivery of foster care services that include research gathering and completion of documentation, assessing adoption placements, recruiting or interviewing potential foster care

placements, serving legal papers, home investigations, providing transportation, administering foster care subsidies, or making foster care placement arrangements;

(g) traveling to the client's home or other location where a covered case management activity occurs, nor time spent transporting a client or a client's family member;

(h) services for or on behalf of a non-Medicaid eligible or a non-targeted individual if services relate directly to the identification and management of the non-eligible or non-targeted individual's needs and care. For example, Medicaid does not cover counseling the client's sibling or helping the client's parent obtain a mental health service;

(i) activities for the proper and efficient administration of the Medicaid State Plan that include client assistance to establish and maintain Medicaid eligibility. For example, locating, completing and delivering documents to a Medicaid eligibility worker;

(j) recruitment activities in which the mental health center or case manager attempts to contact potential service recipients;

(k) time spent assisting the client to gather evidence for a Medicaid hearing or participating in a hearing as a witness; and

(l) time spent coordinating between case management team members for a client.

R414-33D-6. Qualified Providers.

Targeted case management for individuals with serious mental illness must be provided by an individual employed by community mental health centers who is:

(1) a licensed physician, a licensed psychologist, a licensed clinical social worker, a licensed certified social worker, a

licensed social service worker, a licensed advanced practice registered nurse, a licensed registered nurse, a licensed professional counselor, a licensed marriage and family counselor; or

(2) an individual working toward licensure in one of the professions identified in subsection (1) to the extent permitted by Utah Code Title 58; or

(3) a licensed practical nurse or a non-licensed individual who has met the State Division of Substance Abuse and Mental Health's training standards for case managers and who is working under the supervision of one of the individuals identified in subsection (1) or (2).

R414-33D-7. Reimbursement Methodology.

(1) For fee-for-service community mental health centers, the Department pays the lower of the amount billed or the rate on the mental health center's fee schedule. The fee schedule was initially established after consultation with provider representatives. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private-pay patients.

(2) For capitated community mental health centers, the Department pays monthly premiums to the centers for all mental health services, including targeted case management.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: 2010

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

End of the Notices of Changes in Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-Day (EMERGENCY) RULE** when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-Day RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-Day RULE** including the name of a contact person, justification for filing a **120-Day RULE**, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-Day RULE** is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A **120-Day RULE** is effective for 120 days or until it is superseded by a permanent rule.

Because **120-Day RULES** are effective immediately, the law does not require a public comment period. However, when an agency files a **120-Day RULE**, it usually files a **PROPOSED RULE** at the same time, to make the requirements permanent. Comments may be made on the **PROPOSED RULE**. Emergency or **120-Day RULES** are governed by Section 63G-3-304; and Section R15-4-8.

Natural Resources, Wildlife Resources **R657-60** Aquatic Invasive Species Interdiction

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 33753

FILED: 06/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this emergency rule is to add a reservoir to the infested waters list in Utah.

SUMMARY OF THE RULE OR CHANGE: This emergency rule is to add Sand Hollow Reservoir in Washington County, UT to the list of infested waters. (DAR NOTE: A corresponding proposed amendment is under DAR No. 33759 in this issue, July 1, 2010, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19 and Section 23-27-401

EMERGENCY RULE REASON AND JUSTIFICATION:
REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare.
JUSTIFICATION: Quagga and Zebra mussels are invasive aquatic wildlife species from the European continent. The two species became established in the Eastern United States a decade ago by transatlantic ocean liners taking on ballast

water in European ports and then discharging the water in North American ports. Since then the species have spread throughout the Mississippi River basin causing millions of dollars in damage each year to hydroelectric facilities, heavy industry, irrigation companies, and wild fisheries. The mussels attach to solid objects in the water and colonize by building layer upon layer of shells. Their prolific reproduction and colonization characteristics plug water lines in reservoirs, hydroelectric plants, industrial facilities, boat engines, irrigation systems, etc. The mussels spread from one water to another primarily by attaching to boats. Last year, lower Colorado River reservoirs, such as Lake Mead and Lake Havasu, were found infested with Quagga mussels. Many recreationists that boat in these waters also boat in Utah waters which presents an imminent threat to Utah's industrial and agricultural infrastructure that uses and transports water through pipeline. S.B. 238 was passed into law during the 2008 General Legislative Session which makes it unlawful to transport a boat from an infested water without first decontaminating it and gives the state specialized interdiction tools to prevent the spread of the mussels into Utah waters. S.B. 238 charges the Division of Wildlife Resources to promulgate administrative rules designating the waters that are considered infested for purposes of boat decontamination and to establish decontamination requirements and procedures. Without these regulatory components in rule, S.B. 238 is largely unenforceable. Given the recreational boat traffic between Lower Colorado River waters and Utah waters, the threat of Quagga mussels spreading to Utah is imminent without the rule's interdiction elements that give S.B. 238 traction to move forward and fulfill its purpose. Emergency rule making is necessary to effectively protect Utah waters from Quagga mussel infestation and the imminent peril infestation presents to public health, safety,

and welfare. (DAR NOTE: S.B. 238 (2008) is found at Chapter 284, Laws of Utah 2008, and was effective 05/05/2008.)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division of Wildlife Resources (DWR) determines that these amendments do create a cost impact to the state budget or DWR's budget. The 2008 Utah Legislative Session appropriated \$2,500,000 to aid in the implementation costs associated with this rule.

◆ **LOCAL GOVERNMENTS:** This rule does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This rule does not create any direct cost or savings impact to small businesses because they are not directly affected by the rule. Nor are small businesses indirectly impacted because the rule does not create a situation requiring services from small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule may create a cost impact to boat owners and other water enthusiasts in Utah in that if Dreissena Mussels are found in Utah the cost to decontaminate boats and other conveyances will be at the expense of the owner.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that this rule may create a cost impact to individuals who own water vessels and boat in infested waters, because they would be required to decontaminate the conveyance.

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

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

EFFECTIVE: 06/15/2010

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-60. Aquatic Invasive Species Interdiction.

R657-60-1. Purpose and Authority.

(1) The purpose of this rule is to define procedures and regulations designed to prevent and control the spread of aquatic invasive species within the State of Utah.

(2) This rule is promulgated pursuant to authority granted to the Wildlife Board in Sections 23-27-401, 23-14-18, and 23-14-19.

R657-60-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and 23-27-101.

(2) In addition:

(a) "Conveyance" means a terrestrial or aquatic vehicle, including a vessel, or a vehicle part that may carry or contain a Dreissena mussel.

(b) "Decontaminate" means to:

(i) Self-decontaminate equipment or a conveyance that has been in an infested water in the previous 30 days by:

(A) removing all plants, fish, mussels and mud from the equipment or conveyance;

(B) draining all water from the equipment or conveyance, including water held in ballast tanks, bilges, livewells, and motors; and

(C) drying the equipment or conveyance for no less than 7 days in June, July and August; 18 days in September, October, November, March, April and May; 30 days in December, January and February; or expose the equipment or conveyance to sub-freezing temperatures for 72 consecutive hours; or

(ii) Professionally decontaminate equipment or a conveyance that has been in an infested water in the previous 30 days by:

(A) Using a professional decontamination service approved by the division to apply scalding water (140 degrees Fahrenheit) to completely wash the equipment or conveyance and flush any areas where water is held, including ballast tanks, bilges, livewells, and motors.

(c) "Detects or suspects" means visually identifying:

(i) a veliger Dreissena mussel through microscopy and confirming the identity of the organism as a Dreissena mussel through two independent polymerase chain reaction (PCR) tests; or

(ii) a juvenile or adult Dreissena mussel.

(d) "Dreissena mussel" means a mussel of the genus Dreissena at any life stage, including a zebra mussel, a quagga mussel and a Conrad's false mussel.

(e) "Controlling entity" means the owner, operator, or manager of a water body, facility, or a water supply system.

(f) "Equipment" means an article, tool, implement, or device capable of carrying or containing water or Dreissena mussel.

(g) "Facility" means a structure that is located within or adjacent to a water body.

(h) "Infested water" includes all the following:

(i) ~~Grand Lake, Colorado;~~

(ii) ~~Jumbo Reservoir, Colorado;~~

- ~~(iii) lower Colorado River between Lake Mead and the Gulf of California;~~
- ~~(iv) Lake Granby, Colorado;~~
- ~~(v) Lake Mead in Nevada and Arizona;~~
- ~~(vi) Lake Mohave in Nevada and Arizona;~~
- ~~(vii) Lake Havasu in California and Arizona;~~
- ~~(viii) Lake Pueblo in Colorado;~~
- ~~(ix) Lake Pleasant in Arizona;~~
- ~~(x) San Justo Reservoir in California;~~
- ~~(xi) Southern California inland waters in Orange, Riverside, San Diego, Imperial, and San Bernardino counties;~~
- ~~(xii) Shadow Mountain Reservoir, Colorado;~~
- ~~(xiii) Tarryall Reservoir, Colorado;~~
- ~~(xiv) Willow Creek Reservoir, Colorado;~~
- ~~(xv) all coastal and inland waters [east of the 100th Meridian in North America; and] in:~~
 - ~~(A) Colorado;~~
 - ~~(B) California;~~
 - ~~(C) Nevada;~~
 - ~~(D) Arizona;~~
 - ~~(E) all states east of Montana, Wyoming, Colorado, and New Mexico;~~
 - ~~(F) the provinces of Ontario and Quebec Canada; and~~
 - ~~(G) Mexico;~~
- ~~(ii) Sand Hollow Reservoir in Washington County, Utah;~~
~~and~~
 - ~~(xvi) (iii) other waters established by the Wildlife Board and published on the DWR website.~~
 - (i) "Juvenile or adult Dreissena mussel" means a macroscopic Dreissena mussel that is not a veliger.
 - (j) "Veliger" means a microscopic, planktonic larva of Dreissena mussel.
 - (k) "Vessel" means every type of watercraft used or capable of being used as a means of transportation on water.
 - (l) "Water body" means natural or impounded surface water, including a stream, river, spring, lake, reservoir, pond, wetland, tank, and fountain.

- (m) "Water supply system" means a system that treats, conveys, or distributes water for irrigation, industrial, wastewater treatment, or culinary use, including a pump, canal, ditch or pipeline.
- (n) "Water supply system" does not include a water body.

R657-60-7. Wildlife Board Designations of Infested Waters.

(1) The Wildlife Board may designate a geographic area, water body, facility, or water supply system as infested with Dreissena mussels pursuant to Section 23-27-102 and 23-27-401 without taking the proposal to or receiving recommendations from the regional advisory councils.

(a) The Wildlife Board may designate a particular water body, facility, or water supply system within the state as infested with Dreissena mussels when a juvenile or adult mussel from the subject water is visually identified as a Dreissena mussel and that identity is ~~confirmed~~ confirmed by two independent positive polymerase chain reaction (PCR) tests.

(b) The Wildlife Board may designate a particular water body, facility, or water supply system outside the state as infested with Dreissena mussels when a veliger, juvenile or adult Dreissena mussel is detected by the state having jurisdiction over the water or when the Wildlife Board has credible evidence suggesting the presence of a Dreissena mussel.

(c) Where the number of infested waters in a particular area is ~~pervasive or too~~ numerous ~~to individually list~~ or growing, or where surveillance activities or infestation containment actions are deficient, the Wildlife Board may designate geographic areas as infested with Dreissena mussels.

KEY: fish, wildlife, wildlife law

Date of Enactment or Last Substantive Amendment: June 15, 2010

Authorizing, and Implemented or Interpreted Law: 23-27-401; 23-14-18; 23-14-19

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to remove obsolete rules from the Utah Administrative Code. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **NOTICE**. By filing a Notice, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. **NOTICES** are effective upon filing.

NOTICES are governed by Section 63G-3-305.

Environmental Quality, Air Quality **R307-302** Davis, Salt Lake, Utah, Weber Counties: Residential Fireplaces and Stoves.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33698
FILED: 06/02/2010

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: Rule R307-302 identifies no-burn periods for residential woodburning stoves and fireplaces in areas that sometimes exceed the health standards for fine particulate and carbon monoxide. Subsection 19-2-104(1)(a) allows the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminant source."

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 has been one amendment since the last five-year review, DAR No. 31388, effective date 09/27/2008 in response to the update of the National Ambient Air Quality Standards for PM2.5, where the 24-hr standard was lowered from 65 to 35 ug/m3. There were no comments on this action. There have been no comments since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The provisions to regulate residential woodburning are part of the requirements to reduce particulates and carbon monoxide that are included in Utah's state implementation plans for PM10 and carbon monoxide. The provisions in this rule are needed to reduce pollution during winter temperature inversions when pollutants build up in the air so the rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Joel Karmazyn by phone at 801-536-4423, by FAX at 801-536-4099, or by Internet E-mail at jkarmazyn@utah.gov

AUTHORIZED BY: Bryce Bird, Planning Branch Manager

EFFECTIVE: 06/02/2010

Environmental Quality, Air Quality **R307-305** Nonattainment and Maintenance Areas for PM10: Emission Standards

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33703
FILED: 06/02/2010

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: Rule R307-305 sets visible emission limits, testing methods and schedules, and compliance schedules for sources of air pollution that are regulated under Utah's PM10 state implementation plan to protect public health. Subsection 19-2-104(1)(a) allows the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminant source."

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 comments since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Emission limits and testing of emissions helps to ensure that industrial facilities are operating properly and emitting the least possible pollution to protect human health which this rule outlines and should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Joel Karmazyn by phone at 801-536-4423, by FAX at 801-536-4099, or by Internet E-mail at jkarmazyn@utah.gov

AUTHORIZED BY: Bryce Bird , Planning Branch Manager

EFFECTIVE: 06/02/2010

Environmental Quality, Air Quality
R307-306

PM10 Nonattainment and Maintenance Areas: Abrasive Blasting**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 33699
FILED: 06/02/2010

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule establishes requirements that apply to abrasive blasting operations in PM10 nonattainment and maintenance areas. Subsection 19-2-104(1)(a) allows the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminant source."

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 is the first five-year review. There have been no comments since rule enactment.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Emission limits help to ensure that industrial facilities are operating properly and emitting the least possible pollution to protect human health which this rule outlines and should be continued. This rule is also part of the EPA enforceable State Implementation Plan (SIP). Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Joel Karmazyn by phone at 801-536-4423, by FAX at 801-536-4099, or by Internet E-mail at jkarmazyn@utah.gov

AUTHORIZED BY: Bryce Bird , Planning Branch Manager

EFFECTIVE: 06/02/2010

Environmental Quality, Air Quality
R307-307

Davis, Salt Lake, and Utah Counties:
 Road Salting and Sanding

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 33700
 FILED: 06/02/2010

**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: Rule R307-307 sets limits on the particulate matter that may be included in salt used on roads. The limits are needed to reduce the particulate matter that is harmful to human health, and are one of the measures included in Utah's state implementation plan for PM10. Subsection 19-2-104(1)(a) allows the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminant source."

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 comments since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The limits in this rule are needed to reduce particulate matter, and are one of the measures included in Utah's state implementation plan for PM10 and should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Joel Karmazyn by phone at 801-536-4423, by FAX at 801-536-4099, or by Internet E-mail at jkarmazyn@utah.gov

AUTHORIZED BY: Bryce Bird , Planning Branch Manager

EFFECTIVE: 06/02/2010

Environmental Quality, Air Quality
R307-309

Nonattainment and Maintenance Areas
 for PM10: Fugitive Emissions and
 Fugitive Dust

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 33701
 FILED: 06/02/2010

**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: Rule R307-309 regulates the amount of dust and fugitive emissions that are allowed to leave the site of any source of air pollution. These regulations are part of the state implementation plan to control PM10 in geographic areas where levels of pollution have exceeded federal health standards in the past; the plan is incorporated by reference under Section R307-110-10. The plan is required under the Clean Air Act, 42 U.S.C. 7410. Subsection 19-2-104(1) authorizes the Air Quality Board to make rules "(a) regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contamination that may be emitted by any air contaminant source"; and "b) establishing air quality standards." Subsection 19-2-104(3)(q) authorizes the Board to make rules to "meet the requirements of federal air pollution laws."

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 comments since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-309 protects the public health by reducing emissions from industries, gravel pits, constructions sites, haul trucks, mines, and tailings ponds. In addition, Rule R307-309 is required under the state implementation plan for

PM10, incorporated by reference under Section R307-110-10. The plan is required under the Clean Air Act, Section 110; without the state plan, the EPA is required to put in place its own plan. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Joel Karmazyn by phone at 801-536-4423, by FAX at 801-536-4099, or by Internet E-mail at jkarmazyn@utah.gov

AUTHORIZED BY: Bryce Bird , Planning Branch Manager

EFFECTIVE: 06/02/2010

Environmental Quality, Air Quality **R307-310**

Salt Lake County: Trading of Emission Budgets for Transportation Conformity

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33702

FILED: 06/02/2010

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-2-104(1)(a) allows the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminant source." In addition, Subsection 19-2-104(3)(e) allows the Board to "...prepare and develop a comprehensive plan or plans for the prevention, abatement, and control of air pollution in this state." Rule R307-310 protects the public health by setting forth a mechanism to trade PM10 for NOx to demonstrate conformity with Salt Lake County PM10 State Implementation Plan (SIP).

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 comments since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-310 establishes a conformity budget for Salt Lake County because the PM10 SIP did not. This budget allows continued funding of transportation projects in Salt Lake County. Rule R307-310 will no longer be needed after the EPA approves the new conformity budget, which is established in the PM10 maintenance plan adopted by the Air Quality Board on 07/06/2005. In addition, Rule R307-310 is a component of Utah's SIP.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Joel Karmazyn by phone at 801-536-4423, by FAX at 801-536-4099, or by Internet E-mail at jkarmazyn@utah.gov

AUTHORIZED BY: Bryce Bird , Planning Branch Manager

EFFECTIVE: 06/02/2010

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-33D**

Targeted Case Management by Community Mental Health Centers for Individuals with Serious Mental Illness

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33723

FILED: 06/07/2010

**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 26-1-5 grants the Department of Health the power to adopt rules that shall have the force and effect of law and Section 26-18-3 requires the Department to implement the Medicaid program through its administrative rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received 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 should be continued because it outlines eligibility requirements, access requirements, service coverage, and reimbursement methodology for targeted case management services provided to individuals with serious mental illness.

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:

♦ Kimi Gomez by phone at 801-538-6381, by FAX at 801-237-0785, or by Internet E-mail at kgomez@utah.gov

AUTHORIZED BY: David Sundwall, MD, Executive Director

EFFECTIVE: 06/07/2010

Natural Resources, Parks and
Recreation
R651-223
Vessel Accident Reporting

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 33724
FILED: 06/08/2010

**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 73-18-13 states the duties of operator involved in accident -- notification and reporting procedures -- use of accident reports -- giving false information as misdemeanor. Subsection 73-18-13(3)(a) states the board shall adopt rules governing the notification and reporting procedure for vessels involved in accidents. Subsection 73-18-13(3)(b) states that the rules shall be consistent with federal requirements. The statute authorizes the board to adopt rules for Vessel Accident Reporting. These rules are consistent with federal law governing vessel accidents. The Division is required to report all boat accidents occurring in Utah to the United States Coast Guard using the requirements set forth in federal law and adopted in our rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division has not received any comments from interested persons concerning 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: Complying with federal boat accident reporting criteria as adopted in this rule is one of the requirements that qualifies the State of Utah for annual boating safety grants from the United States Coast Guard. Utah receives in excess of \$1,000,000 a year from these grants to help fund statewide boating safety programs. Therefore, this rule should be continued.

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

NATURAL RESOURCES
PARKS AND RECREATION
ROOM 116
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

AUTHORIZED BY: Fred Hayes, Acting Operations Deputy
Director

EFFECTIVE: 06/08/2010

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a Notice of Effective Date within 120 days from the publication of a Proposed Rule or a related Change in Proposed Rule the rule lapses and the agency must start the rulemaking process over.

Notices of Effective Date are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

Commerce

Occupational and Professional Licensing

No. 33560 (AMD): R156-15. Health Facility Administrator Act Rules

Published: 05/01/2010

Effective: 06/07/2010

Education

Administration

No. 33561 (AMD): R277-501. Educator Licensing Renewal and Timelines

Published: 05/01/2010

Effective: 06/08/2010

Environmental Quality

Air Quality

No. 33427 (AMD): R307-214. National Emission Standards for Hazardous Air Pollutants

Published: 04/01/2010

Effective: 06/03/2010

Radiation Control

No. 33267 (AMD): R313-25-8. Technical Analyses

Published: 01/01/2010

Effective: 06/02/2010

No. 33267 (CPR): R313-25-8. Technical Analyses

Published: 05/01/2010

Effective: 06/02/2010

Health

Community and Family Health Services, Children with Special Health Care Needs

No. 33559 (AMD): R398-1. Newborn Screening

Published: 05/01/2010

Effective: 06/15/2010

Health Care Financing, Coverage and Reimbursement Policy

No. 33515 (AMD): R414-3A. Outpatient Hospital Services

Published: 04/15/2010

Effective: 06/14/2010

Health Systems Improvement, Licensing

No. 33426 (AMD): R432-950-16. State Certification

Published: 04/01/2010

Effective: 06/02/2010

Pardons (Board Of)

Administration

No. 33371 (AMD): R671-303. Information Received, Maintained or Used by the Board

Published: 03/01/2010

Effective: 06/29/2010

School and Institutional Trust Lands

Administration

No. 33557 (AMD): R850-50. Range Management

Published: 05/01/2010

Effective: 06/07/2010

End of the Notices of Rule Effective Dates Section

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2010 through June 15, 2010. 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 (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive 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
ADMINISTRATIVE SERVICES					
<u>Administrative Rules</u>					
R15-4	Administrative Rulemaking Procedures	33437	NSC	03/29/2010	Not Printed
<u>Archives</u>					
R17-7-3	Archives/ Research Room/Access to Records	33320	AMD	05/17/2010	2010-3/12
<u>Facilities Construction and Management</u>					
R23-26	Dispute Resolution	33360	5YR	02/01/2010	2010-4/79
<u>Finance</u>					
R25-7-10	Reimbursement for Transportation	33302	AMD	04/21/2010	2010-3/12
<u>Records Committee</u>					
R35-1-4	Committee Minutes	33335	AMD	05/17/2010	2010-4/16
R35-1-4	Committee Minutes	33436	NSC	05/17/2010	Not Printed
R35-1a	State Records Committee/Definitions	33399	5YR	02/22/2010	2010-6/35
<u>Risk Management</u>					
R37-1	Risk Management General Rules	33390	AMD	06/01/2010	2010-5/2
R37-2	Risk Management State Workers' Compensation Insurance Administration	33392	NSC	03/10/2010	Not Printed
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	33393	AMD	06/01/2010	2010-6/6
AGRICULTURE AND FOOD					
<u>Animal Industry</u>					
R58-7	Livestock Markets, Satellite Video Livestock Auction Market, Livestock Sales, Dealers and Livestock Market Weighpersons	33326	5YR	01/14/2010	2010-3/87
R58-10	Meat and Poultry Inspection	33329	5YR	01/14/2010	2010-3/87
R58-17	Aquaculture and Aquatic Animal Health	33327	5YR	01/14/2010	2010-3/88
R58-20-5	Facilities	33217	AMD	01/27/2010	2009-24/4
R58-21	Trichomoniasis	33340	5YR	01/27/2010	2010-4/79
<u>Conservation and Resource Management</u>					
R64-1	Agriculture Resource and Development Loans (ARDL)	33305	5YR	01/07/2010	2010-3/89
<u>Plant Industry</u>					
R68-7	Utah Pesticide Control Act	33080	AMD	01/04/2010	2009-22/5
R68-12	Quarantine Pertaining to Mint Wilt	33677	5YR	05/27/2010	2010-12/69
R68-20	Utah Organic Standards	33315	5YR	01/12/2010	2010-3/89
<u>Regulatory Services</u>					
R70-101	Bedding, Upholstered Furniture and Quilted Clothing	33074	AMD	01/11/2010	2009-22/11

R70-101	Bedding, Upholstered Furniture and Quilted Clothing	33542	5YR	04/07/2010	2010-9/41
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ALCOHOLIC BEVERAGE CONTROL

Administration

R81-1-11	Multiple-Licensed Facility Storage and Service	33153	AMD	01/26/2010	2009-24/5
R81-1-26	Criminal History Background Checks	33154	AMD	01/26/2010	2009-24/6
R81-3-13	Operational Restrictions	33152	AMD	01/26/2010	2009-24/8
R81-4D-1	Licensing	33155	AMD	01/26/2010	2009-24/10
R81-4D-14	Reporting Requirement	33156	AMD	01/26/2010	2009-24/11
R81-4E	Resort Licenses	33157	NEW	01/26/2010	2009-24/12
R81-4E-4	Insurance	33339	NSC	02/11/2010	Not Printed
R81-7-1	Application Guidelines	33469	AMD	05/26/2010	2010-8/6
R81-10B-1	Application Guidelines	33504	AMD	05/26/2010	2010-8/7

CAPITOL PRESERVATION BOARD (STATE)

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R131-1	Procurement of Architectural and Engineering Services	33544	5YR	04/07/2010	2010-9/41
R131-1	Procurement of Architectural and Engineering Services	33543	NSC	04/26/2010	Not Printed
R131-2	Capitol Hill Complex Facility Use	33364	EXT	02/08/2010	2010-5/73
R131-2	Capitol Hill Complex Facility Use	33545	5YR	04/07/2010	2010-9/42
R131-2-11	Fees and Charges During Legislative Session	33151	AMD	01/07/2010	2009-23/6
R131-7	State Capitol Preservation Board Master Planning Policy	33365	EXT	02/08/2010	2010-5/74
R131-7	State Capitol Preservation Board Master Planning Policy	33547	5YR	04/07/2010	2010-9/43
R131-7	State Capitol Preservation Board Master Planning Policy	33546	NSC	04/26/2010	Not Printed
R131-8	CPB Facilities and Grounds: Maintenance of Aesthetics	33405	EXT	02/24/2010	2010-6/43
R131-8	CPB Facilities and Grounds: Maintenance of Aesthetics	33549	5YR	04/07/2010	2010-9/43
R131-8	CPB Facilities and Grounds: Maintenance of Aesthetics	33548	NSC	04/26/2010	Not Printed
R131-9	State Capitol Preservation Board Art Program and Policy	33406	EXT	02/24/2010	2010-6/43
R131-9	State Capitol Preservation Board Art Program and Policy	33551	5YR	04/07/2010	2010-9/44
R131-9	State Capitol Preservation Board Art Program and Policy	33550	NSC	04/26/2010	Not Printed
R131-14	Parking on Capitol Hill	33298	NEW	02/22/2010	2010-2/4

COMMERCE

R151-1	Department of Commerce General Provisions	33336	5YR	01/25/2010	2010-4/80
R151-46b	Department of Commerce Administrative Procedures Act Rules	33150	AMD	01/07/2010	2009-23/7
R151-46b-5	General Provisions	33149	AMD	01/07/2010	2009-23/11

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R152-1	Utah Division of Consumer Protection: "Buyer Beware List"	33583	5YR	04/28/2010	2010-10/165
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R152-11-1	Purposes, Rules of Construction	33169	AMD	01/21/2010	2009-24/17
R152-11-1	Purposes, Rules of Construction	33238	AMD	02/08/2010	2010-1/6
R152-11-5	Repairs and Services	33239	AMD	02/08/2010	2010-1/7
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R156-1	General Rule of the Division of Occupational and Professional Licensing	33227	AMD	03/25/2010	2009-24/18
R156-15	Health Facility Administrator Act Rules	33560	AMD	06/07/2010	2010-9/4
R156-17b	Pharmacy Practice Act Rule	33402	5YR	02/23/2010	2010-6/35
R156-31b-701a	Delegation of Nursing Tasks in a School Setting	33266	AMD	03/29/2010	2010-1/9

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R156-38a	Residence Lien Restriction and Lien Recovery Fund Rule	33307	5YR	01/07/2010	2010-3/90
R156-38b	State Construction Registry Rules	33366	5YR	02/08/2010	2010-5/69
R156-47b	Massage Therapy Practice Act Rule	33293	AMD	02/22/2010	2010-2/6
R156-47b-102	Definitions	33400	NSC	03/10/2010	Not Printed
R156-55d	Utah Construction Trades Licensing Act Burglar Alarm Licensing Rule	33409	5YR	02/25/2010	2010-6/36
R156-60c	Professional Counselor Licensing Act Rule	33306	5YR	01/07/2010	2010-3/90
R156-77-102	Definitions	33263	AMD	02/08/2010	2010-1/12
R156-78B-4	General Provisions	33175	AMD	01/21/2010	2009-24/28
R156-79	Hunting Guides and Outfitters Licensing Act Rule	33265	AMD	02/08/2010	2010-1/14

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R162-2-2	Licensing Procedure	33526	AMD	05/25/2010	2010-8/8
R162-2c	Utah Residential Mortgage Practices and Licensing Rules	33372	NEW	04/12/2010	2010-5/7
R162-2c-203	Utah-Specific Education Certification	33506	NSC	04/14/2010	Not Printed
R162-2c-204	License Renewal	33470	NSC	04/14/2010	Not Printed
R162-2c-301	Unprofessional Conduct	33471	NSC	04/14/2010	Not Printed
R162-2c-401	Administrative Proceedings	33507	NSC	04/14/2010	Not Printed
R162-101	Authority and Definitions	33158	AMD	01/27/2010	2009-24/29
R162-102	Application Procedures	33180	AMD	01/27/2010	2009-24/30
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R162-105	Scope of Authority	33225	AMD	01/27/2010	2009-24/39
R162-106-1	Uniform Standards	33226	AMD	02/03/2010	2009-24/42
R162-106-7	Sales and Listing History	33398	AMD	04/28/2010	2010-6/7
R162-110	Trainee Registration	33148	NEW	01/07/2010	2009-23/13
R162-110-1	Trainee Registration	33303	NSC	01/28/2010	Not Printed
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R162-202	Initial Application	33374	REP	04/12/2010	2010-5/21
R162-203	Changes to Residential Mortgage Licensure Statement	33375	REP	04/12/2010	2010-5/24
R162-204	Residential Mortgage Record Keeping Requirements	33376	REP	04/12/2010	2010-5/26
R162-205	Residential Mortgage Unprofessional Conduct	33377	REP	04/12/2010	2010-5/27
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R162-208	Continuing Education	33379	REP	04/12/2010	2010-5/31
R162-209	Administrative Proceedings	33380	REP	04/12/2010	2010-5/35
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R162-211	Adjusted License Terms	33382	REP	04/12/2010	2010-5/41

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R164-4-9	Exemptions From Licensing Requirements for Certain Investment Advisers	33006	AMD	01/06/2010	2009-20/12
R164-4-9	Exemptions from Licensing Requirements for Certain Investment Advisers	33316	AMD	03/11/2010	2010-3/14
R164-9	Registration by Coordination	33010	AMD	02/02/2010	2009-20/14
R164-10-2	Registration Statements	33011	AMD	02/02/2010	2009-20/16
R164-11-1	General Registration Provisions	33012	AMD	02/02/2010	2009-20/18
R164-12-1f	Commissions on Sales of Securities	33013	AMD	02/02/2010	2009-20/19
R164-13	Definitions	33014	REP	02/02/2010	2009-20/22
R164-18-6	Procedures for Administrative Actions	33016	AMD	02/02/2010	2009-20/23

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R212-11	Historic Preservation Tax Credit	33448	5YR	03/10/2010	2010-7/51
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(QEFAF)

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R277-114 Corrective Action and Withdrawal or Reduction of Program Funds 33440 NEW 05/12/2010 2010-7/2
R277-419-3 Minimum School Days, LEA Records, and Audits 33441 AMD 05/12/2010 2010-7/3
R277-470 Charter Schools 33442 AMD 05/12/2010 2010-7/5
R277-473 Testing Procedures 33588 5YR 04/29/2010 2010-10/166
R277-484 Data Standards 33443 AMD 05/12/2010 2010-7/8
R277-501 Educator Licensing Renewal and Timelines 33397 5YR 02/18/2010 2010-6/37
R277-501 Educator Licensing Renewal and Timelines 33561 AMD 06/08/2010 2010-9/11
R277-613-1 Definitions 33253 NSC 01/04/2010 Not Printed
R277-711-4 Fiscal Standards 33234 NSC 01/04/2010 Not Printed
R277-800 Utah Schools for the Deaf and the Blind 33254 NSC 01/04/2010 Not Printed

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R307-103 Administrative Procedures 33428 5YR 03/04/2010 2010-7/51
R307-201 Emission Standards: General Emission Standards 33429 5YR 03/04/2010 2010-7/52
R307-202 Emission Standards: General Burning 33430 5YR 03/04/2010 2010-7/52
R307-203 Emission Standards: Sulfur Content of Fuels 33431 5YR 03/04/2010 2010-7/53
R307-204 Emission Standards: Smoke Management 33432 5YR 03/04/2010 2010-7/53
R307-205 Emission Standards: Fugitive Emissions and Fugitive Dust 33433 5YR 03/04/2010 2010-7/54
R307-206 Emission Standards: Abrasive Blasting 33434 5YR 03/04/2010 2010-7/55
R307-207 Emission Standards: Residential Fireplaces and Stoves 33435 5YR 03/04/2010 2010-7/55
R307-214 National Emission Standards for Hazardous Air Pollutants 33427 AMD 06/03/2010 2010-7/11
R307-302 Davis, Salt Lake, Utah, Weber Counties: Residential Fireplaces and Stoves. 33698 5YR 06/02/2010 Not Printed
R307-305 Nonattainment and Maintenance Areas for PM10: Emission Standards 33703 5YR 06/02/2010 Not Printed
R307-306 PM10 Nonattainment and Maintenance Areas: Abrasive Blasting 33699 5YR 06/02/2010 Not Printed
R307-307 Davis, Salt Lake, and Utah Counties: Road Salting and Sanding 33700 5YR 06/02/2010 Not Printed
R307-309 Nonattainment and Maintenance Areas for PM10: Fugitive Emissions and Fugitive Dust 33701 5YR 06/02/2010 Not Printed
R307-310 Salt Lake County: Trading of Emission Budgets for Transportation Conformity 33702 5YR 06/02/2010 Not Printed
R307-840 Lead-Based Paint Accreditation, Certification and Work Practice Standards 33308 R&R 04/08/2010 2010-3/17
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R307-842 Lead-Based Paint Activities 33310 NEW 04/08/2010 2010-3/32

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R309-105	Administration: General Responsibilities of Public Water Systems	33473	5YR	03/22/2010	2010-8/41
R309-110	Administration: Definitions	33474	5YR	03/22/2010	2010-8/42
R309-115	Administrative Procedures	33475	5YR	03/22/2010	2010-8/42
R309-200	Monitoring and Water Quality: Drinking Water Standards	33476	5YR	03/22/2010	2010-8/43
R309-200-2	Authority	33457	NSC	03/29/2010	Not Printed
R309-205	Monitoring and Water Quality: Source Monitoring Requirements	33477	5YR	03/22/2010	2010-8/43
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R309-210	Monitoring and Water Quality: Distribution System Monitoring Requirements	33478	5YR	03/22/2010	2010-8/44
R309-210-6	Lead and Copper Monitoring	33459	NSC	03/29/2010	Not Printed
R309-215	Monitoring and Water Quality: Treatment Plant Monitoring Requirements	33479	5YR	03/22/2010	2010-8/45
R309-220	Monitoring and Water Quality: Public Notification Requirements	33480	5YR	03/22/2010	2010-8/45
R309-220-5	Tier 1 Public Notice -- Form, Manner and Frequency of Notice	33458	NSC	03/29/2010	Not Printed
R309-225	Monitoring and Water Quality: Consumer Confidence Reports	33481	5YR	03/22/2010	2010-8/46
R309-300	Certification Rules for Water Supply Operators	33484	5YR	03/22/2010	2010-8/46
R309-305	Certification Rules for Backflow Technicians	33485	5YR	03/22/2010	2010-8/47
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R309-500	Facility Design and Operation: Plan Review, Operation and Maintenance Requirements	33486	5YR	03/22/2010	2010-8/49
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R309-515	Facility Design and Operation: Source Development	33489	5YR	03/22/2010	2010-8/51
R309-515-6	Ground Water - Wells	33462	AMD	05/13/2010	2010-7/18
R309-520	Facility Design and Operation: Disinfection	33490	5YR	03/22/2010	2010-8/51
R309-525	Facility Design and Operation: Conventional Surface Water Treatment	33491	5YR	03/22/2010	2010-8/52
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R309-535	Facility Design and Operation: Miscellaneous Treatment Methods	33493	5YR	03/22/2010	2010-8/53
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R315-1-1	Definitions	32966	AMD	01/15/2010	2009-19/92
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R315-2	General Requirements - Identification and Listing of Hazardous Waste	32967	CPR	01/15/2010	2009-23/32
R315-5	Hazardous Waste Generator Requirements	32968	AMD	01/15/2010	2009-19/96
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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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Environmental Quality, Drinking Water	33483	R309-405	5YR	03/22/2010	2010-8/49	
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