

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
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Nancy L. Lancaster, Editor  
Kenneth A. Hansen, Director  
Kimberly K. Hood, Executive Director

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

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

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

Division of Administrative Rules, Salt Lake City 84114

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# EXECUTIVE DOCUMENTS

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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).

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## **Governor's Executive Order EO/01/2012: Creating the Utah Multicultural Affairs Office and Utah Multicultural Commission**

### EXECUTIVE ORDER

#### Creating the Utah Multicultural Affairs Office and Utah Multicultural Commission

**WHEREAS**, the character of Utah has been shaped by diverse ethnic nationalities who have settled within the State, both recently and several generations ago. This diversity enhances Utah's growth, prosperity and success;

**WHEREAS**, the State has a fast-growing ethnic population;

**WHEREAS**, the State has an interest in continuing to help maximize the potential of its constituents by remaining responsive to the needs of the ethnic community;

**WHEREAS**, it is in the best interest of the State to address issues of concern that impact the ethnic community by promoting inclusiveness and cultivating trust and cooperation between State government and the ethnic community; and

**WHEREAS**, the Governor and his administration support the intent to ensure Utah State government adequately meets the needs of Utah's ethnic community;

**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 hereby order the following:

1. There is created within the Utah Department of Community and Culture the Utah Multicultural Affairs Office. The Governor shall appoint a director for the Multicultural Affairs Office.

2. There is created the Utah Multicultural Commission.

a. The Multicultural Commission shall consist of members appointed by the Governor. Members will represent State agencies and leadership within the ethnic community.

b. The Governor will appoint Commission members to serve one-year, two-year or three-year terms but at all times Commission members shall serve at the pleasure of the Governor and may be removed by the Governor at any time. The Governor may adjust the length of terms to ensure that the terms of board members are staggered.

c. The Lieutenant Governor shall serve as chair of the Commission.

- d. The Multicultural Commission shall meet at least every other month.
3. The Multicultural Affairs Office will support the Multicultural Commission in its work to accomplish the following:
  - a. Partner with State agencies to assure equity and access to culturally competent programs and services; to discuss policies, practices and procedures; and to make recommendations to ensure proper delivery of State services and resources to the ethnic community.
  - b. Partner with State agencies to ensure proper outreach and response to the ethnic community about State government's programs and resources.
  - c. Develop a strategic plan to identify needs, goals, and deliverables that will directly impact the most significant needs of the ethnic community.
  - d. Report to the Governor's Office as needed about State government's responsiveness to the ethnic community of Utah and other issues impacting these constituents.
4. The Executive Director of the Department of Community and Culture shall supervise the Multicultural Affairs Office.
5. State Agency Executive Directors shall work closely with the Director of Multicultural Affairs to coordinate projects, resources and activities to better serve the ethnic community.
6. The Department of Community and Culture shall provide necessary administrative support to assist the Office in performing its duties. The Executive Director of the Department of Community and Culture shall determine the types and kind of administrative support.
7. Funding for the Multicultural Affairs Office shall be contingent upon appropriations from the Utah State Legislature.
8. Members of the Commission shall receive no compensation or benefits for their services, but may receive, subject to budget availability, per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Utah Code Sections 63A-3-106 and 63A-3-107. Members may decline to receive per diem and expenses for their service. All such per diem payments and reimbursements must be approved by the Executive Director of the Department of Community and Culture, and must be funded from the Department's existing budget.
9. This Executive Order supersedes Executive Orders 2005/0019, 2005/0020 and any other Executive Order directly referencing the State Office of Ethnic Affairs and/or State Ethnic Advisory Councils.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, this 17th day of January 2012.

(State Seal)

**Gary R. Herbert**  
Governor

**ATTEST:**

**Greg Bell**  
Lieutenant Governor

EO/01/2012



## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between January 04, 2012, 12:00 a.m., and January 17, 2012, 11:59 p.m. are included in this, the February 01, 2012 issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least March 2, 2012. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through May 31, 2012, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF a CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses and the agency must start the process over.

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

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

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

## Administrative Services, Purchasing and General Services

### R33-1

## Utah State Procurement Rules Definitions

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35664

FILED: 01/12/2012

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** H.B. 476 (2011 General Session) directs that rules be drafted governing the procurement, management, and control of any and all technology to be procured by the state.

**SUMMARY OF THE RULE OR CHANGE:** This amendment adds definitions for "Acquiring Agency," "New Technology," and "Technology."

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 63G, Chapter 6

#### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The addition of definitions does not result in cost or savings; the definitions simply provide an understanding of terms pertinent to requirements elsewhere in rule. There may be costs or savings associated with amendments to Rule R33-3 (published in the January 15, 2012, Bulletin under DAR No. 35613) and Rule R33-4, and Sections R33-6-101 and R33-3-7 (published in this issue). (DAR NOTE: The proposed amendment to Rule R33-4 is under DAR No. 35665, the proposed amendment to Section R33-6-101 is under DAR No. 35666, and the proposed amendment to Section R33-3-7 is under DAR No. 35667 in this issue, February 1, 2012, of the Bulletin.)

◆ **LOCAL GOVERNMENTS:** The addition of definitions does not result in cost or savings; the definitions simply provide an understanding of terms pertinent to requirements elsewhere in rule. There may be costs or savings associated with amendments to Rule R33-3 (published in the January 15, 2012, Bulletin under DAR No. 35613) and Rule R33-4, and Sections R33-6-101 and R33-3-7 (published in this issue).

◆ **SMALL BUSINESSES:** The addition of definitions does not result in cost or savings; the definitions simply provide an understanding of terms pertinent to requirements elsewhere in rule. There may be costs or savings associated with amendments to Rule R33-3 (published in the January 15, 2012, Bulletin under DAR No. 35613) and Rule R33-4, and Sections R33-6-101 and R33-3-7 (published in this issue).

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The addition of definitions does not result in cost or savings; the definitions simply provide an understanding of terms

pertinent to requirements elsewhere in rule. There may be costs or savings associated with amendments to Rule R33-3 (published in the January 15, 2012, Bulletin under DAR No. 35613) and Rule R33-4, and Sections R33-6-101 and R33-3-7 (published in this issue).

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The addition of definitions does not result in compliance costs; the definitions simply provide an understanding of terms pertinent to requirements elsewhere in rule. There may be costs or savings associated with amendments to Rule R33-3 (published in the January 15, 2012, Bulletin under DAR No. 35613) and Rule R33-4, and Sections R33-6-101 and R33-3-7 (published in this issue).

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** I foresee the potential for greater efficiencies in government through the ability of government entities being able to modify existing contracts for technology-related enhancements, provided the ability to modify was contained in the original solicitation, thereby reducing procurement-related costs to vendors. Potential state contractors will have the opportunity to pilot their technology and technology-related goods and services without a lengthy competitive process.

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

ADMINISTRATIVE SERVICES  
PURCHASING AND GENERAL SERVICES  
ROOM 3150 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:**

◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012**

**AUTHORIZED BY:** Kent Beers, Director

### **R33. Administrative Services, Purchasing and General Services.**

#### **R33-1. Utah State Procurement Rules Definitions.**

##### **R33-1-1. Definitions.**

A. Terms used in the procurement rules are defined in Section 63G-6-103.

B. In addition:

(1) Actual Costs means direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs.

(2) Adequate Price Competition means when competitive sealed proposals are solicited and at least two responsible offerors independently contend for a contract to be awarded to the responsible offeror submitting the lowest evaluated price by submitting priced best and final offers meeting the requirements of the request for proposals. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the procurement officer determines that there is not adequate competition.

(3) Acquiring Agency is an agency subject to Section 63F-1-205 acquiring new technology or technology as therein defined.

(~~3~~)4 Brand Name or Equal Specification means a specification which uses a brand name specification to describe the standard of quality, performance, and other characteristics being solicited, and which invites the submission of equivalent products.

(~~4~~)5 Brand Name Specification means a specification calling for one or more products by manufacturers' names or catalogue numbers.

(~~5~~)6 Chief Procurement Officer means the procurement officer for the State of Utah.

(~~6~~)7 Consultant Services means work, rendered by either individuals or firms who possess specialized knowledge, experience, and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis, or advise in formulating or implementing programs or services or improvements in programs or services, including but not limited to such areas as management, personnel, finance, accounting, planning, and data processing.

(~~7~~)8 Cost Analysis means the evaluation of cost data for the purpose of arriving at estimates of costs to be incurred, prices to be paid, cost to be reimbursed, or costs actually incurred.

(~~8~~)9 Cost Data means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(~~9~~)10 Cost Objective means a function, organizational subdivision, contract, or any other work unit for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, and similar items.

(~~10~~)11 Discussions as used in source selection means negotiation during which the seller or buyer may alter or otherwise change the terms, price or other provisions of the proposed contract. Discussion can be conducted under competitive sealed proposals, sole source, and emergency procurements; such discussion is not permissible under competitive sealed bidding except to the extent in the first phase of multi-step bidding.

(~~11~~)12 Electronic means, in reference to any solicitation process, only those specified electronic forms described in the Invitation for Bids, Request for Proposals or other solicitation document.

(~~12~~)13 Established Market Price means a current price, established in the usual and ordinary course of trade between buyers and sellers, which can be substantiated from sources independent of the manufacturer or supplier.

(~~13~~)14 Lease means a contract for the use of equipment or real property under which title does not pass to the purchasing agency.

(15) New Technology means any invention, discovery, improvement, or innovation, that was not available to the acquiring agency on the effective date of the contract, whether or not patentable, including, but not limited to, new processes, emerging technology, machines, and improvements to, or new applications of, existing processes, machines, manufactures and software. Also included are new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable and any new process, machine, including software, and improvements to, or new applications of, existing processes, machines, manufactures and software.

(~~14~~)16 Prequalification for Inclusion on Bidders Lists means determining that a prospective bidder or offeror satisfies the criteria established for receipt of solicitations when and as issued.

(~~15~~)17 Price Analysis means the evaluation of price data without analysis of the separate cost components and profit which may assist in arriving at prices to be paid or costs to be reimbursed.

(~~16~~)18 Price Data means factual information concerning prices for supplies, services, or construction substantially identical to those being procured. Prices in this definition refer to offered or proposed selling prices. The definition refers to data relevant to both prime and subcontract prices.

(~~17~~)19 Professional Services means work rendered by an independent contractor who has a professed knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, including but not limited to accounting and auditing, court reporters, X-ray technicians, legal, medical, nursing, education, engineering, actuarial, architecture, veterinarians, and research. The knowledge is founded upon prolonged and specialized intellectual training which enables a particular service to be rendered. The word "professional" implies professed attainments in special knowledge as distinguished from mere skills.

(~~18~~)20 Property means all real property, personal property, or both, owned by a purchasing agency.

(~~19~~)21 Providers means suppliers of services, which might be termed "personal services", to benefit clients or citizens of the enacting jurisdiction which services otherwise might be performed by its own employees. For example, an enacting jurisdiction might contract with a school to conduct a training program for the handicapped. Similarly, the state might contract with persons to provide foster homes for children. It will be necessary to ascertain on a case-by-case basis whether the services to be rendered will involve extended analysis and significant features of judgment.

(~~20~~)22 Qualified Products List means a list of supplies, services, or construction items described by model or catalogue numbers, which, prior to solicitation, the purchasing agency has determined will meet the applicable specification requirements.

(~~21~~)23 Solicitation means an Invitation for Bids, a Request for Proposals, or any other document, such as a request for quotations, issued by the purchasing agency for the purpose of soliciting offers to perform a contract.

(~~22~~)24 Suppliers means prospective bidders or offerors, as used in section 63G-6-414 of the Utah Procurement Code.

(25) Technology means(e) any type of technology defined in 63F-1-102(8) of the Utah Technology Governance Act.

**KEY:** government purchasing

**Date of Enactment or Last Substantive Amendment:** [February 21, 2006]2012

**Notice of Continuation:** November 23, 2007

**Authorizing, and Implemented or Interpreted Law:** 63G-6

## Administrative Services, Purchasing and General Services

### R33-3-7

#### Types of Contracts

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35667

FILED: 01/12/2012

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** H.B. 476 (2011 General Session) directs that rules be drafted governing the procurement, management, and control of any and all technology to be procured by the state.

**SUMMARY OF THE RULE OR CHANGE:** This amendment adds language providing for modification of technology contracts.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 63G, Chapter 6

#### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** It is possible that cost savings may be obtained by state agencies for not having to conduct re-procurements for new technologies and/or upgrades. This amendment allows state agencies greater flexibility in conducting pilot tests of new technology which may reduce costs for research. (DAR NOTE: There may be costs or savings associated with amendments to Rule R33-3 (published in the January 15, 2012, Bulletin under DAR No. 35613.)

◆ **LOCAL GOVERNMENTS:** It is possible that cost savings may be obtained by local governments for not having to conduct re-procurements for new technologies and/or upgrades.

◆ **SMALL BUSINESSES:** May allow small business access to state agency technology opportunities to demonstrate or pilot new technology or upgrades/enhancements to existing technologies.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Cost savings may be realized by all government entities and all those doing or interested in doing business with the state.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None-- There are no known compliance costs.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** I foresee the potential for greater efficiencies in government through the ability of government entities being able to modify existing contracts for technology-related enhancements, provided the ability to modify was contained in the original solicitation, thereby reducing procurement-related costs to vendors. Potential state contractors will have the opportunity to pilot their technology and technology-related goods and services without a lengthy competitive process.

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

ADMINISTRATIVE SERVICES  
PURCHASING AND GENERAL SERVICES  
ROOM 3150 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:**

◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON:** 03/09/2012

**AUTHORIZED BY:** Kent Beers, Director

#### **R33. Administrative Services, Purchasing and General Services.**

#### **R33-3. Source Selection and Contract Formation.**

#### **R33-3-7. Types of Contracts.**

3-701 Policy Regarding Selection of Contract Types.

(1) General. The selection of an appropriate contract type depends on factors such as the nature of the supplies, services, or construction to be procured, the uncertainties which may be involved in contract performance, and the extent to which the purchasing agency or the contractor is to assume the risk of the cost of performance of the contract. Contract types differ in the degree of responsibility assumed by the contractor for the costs of performance and the amount and kind of profit incentive offered the contractor to achieve or exceed specified standards or goals.

Among the factors to be considered in selecting any type of contract are:

(a) the type and complexity of the supply, service, or construction item being procured;

(b) the difficulty of estimating performance costs such as the inability of the purchasing agency to develop definitive specifications, to identify the risks to the contractor inherent in the nature of the work to be performed, or otherwise to establish clearly the requirements of the contract;

(c) the administrative costs to both parties;

(d) the degree to which the purchasing agency must provide technical coordination during the performance of the contract;

(e) the effect of the choice of the type of contract on the amount of competition to be expected;

(f) the stability of material or commodity market prices or wage levels;

(g) the urgency of the requirement;

(h) the length of contract performance; and

(i) federal requirements.

The purchasing agency should not contract in a manner that would place an unreasonable economic risk on the contractor, since this action would tend to jeopardize satisfactory performance on the contract.

(2) Use of Unlisted Contract Types. The provisions of this subpart list and define the principal contract types. In addition, any other type of contract, except cost-plus-a-percentage-of-cost, may be used provided the procurement officer determines in writing that this use is in the purchasing agency's best interest.

(3) Prepayments.

(a) In general, it is the policy of the state that payments to contractors and vendors cannot be made until after services are actually rendered or goods are actually received. It may be necessary or beneficial to the state in certain instances to pay for goods or services before delivery.

(b) Prepayments are allowable in any of the following circumstances when approved by the Chief Procurement Officer or Head of a Purchasing Agency, or any of their authorized designees, and the using agency has policies and procedures that ensure that prepaid goods or services are actually received in the condition as required by the contract or purchase order:

(i) When it is the customary practice for the type of goods or services involved, including insurance, rent, certain maintenance contracts, seminars, or subscriptions.

(ii) When the using agency will receive additional benefit for prepayment, including price breaks on prepaid maintenance contracts, or registrations which would not be available if the charge was paid after delivery, and other benefits which are identifiable.

(c) All prepaid expenditures must be supported by documentation, which states the goods or services to be furnished, the date of delivery, the payment terms, and remedies for non-compliance.

(d) The Chief Procurement Officer or Head of a Purchasing Agency, or any of their authorized designees, may:

(i) Authorize the use of prepayments upon receipt of a written request from the using agency. The request must acknowledge that the using agency understands the liability and risk associated with the failure of a vendor or contractor to perform the prepaid services or provide the prepaid goods.

(ii) Require a performance bond in an amount up to 100% of the prepayment amount. The performance bond must be delivered to the state prior to the time the contract is executed or a purchase order is issued. Performance bonds must be from sureties meeting the requirements of Subsection R33-5-341(b) and be on forms acceptable to the state. If a contractor or vendor fails to deliver a required performance bond, the original award may be cancelled and the award may thereafter be made in accordance with the applicable provision of Rule R33-3.

### 3-702 Fixed-Price Contracts.

(1) General. A fixed-price contract is the preferred and generally utilized type of contract. A fixed-price contract places responsibility on the contractor for the delivery of the product or the complete performance of the services or construction in accordance with the contract terms at a price that may be firm or subject to contractually specified adjustments. The fixed-price contract is appropriate for use when there is a reasonably definitive requirement, as in the case of construction or standard commercial products. The use of a fixed-price contract when risks are unknown or not readily measurable in terms of cost can result in inflated prices and inadequate competition; poor performance, disputes, and claims when performance proves difficult; or excessive profits when anticipated contingencies do not occur.

(2) Firm Fixed-Price Contract. A firm fixed-price contract provides a price that is not subject to adjustment.

(3) Fixed-Price Contract with Price Adjustment.

(a) A fixed-price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in contract price can be made shall be specified in the solicitation and the resulting contract. However, clauses providing for most-favored-customer prices for the purchasing agency, that is, the price to the purchasing agency will be lowered to the lowest priced sales to any other customer made during the contract period, shall not be used. Examples of conditions under which adjustments may be provided in fixed-price contracts are:

(i) changes in the contractor's labor contract rates;

(ii) changes due to rapid and substantial price fluctuations, which can be related to an accepted index; and

(iii) when a general price change alters the base price.

(b) If the contract permits unilateral action by the contractor to bring about the condition under which a price increase may occur, the contract shall reserve to the purchasing agency the right to reject the price increase and terminate the contract without cost or damages. Notice of the price increase shall be given by the contractor in the manner and within the time specified in the contract.

### 3-703 Cost-Reimbursement Contracts.

(1) General. The cost-reimbursement contract provides for payment to the contractor of allowable costs incurred in the performance of the contract as determined in accordance with part 7 of these rules and provided in the contract. This type of contract establishes at the outset an estimated cost for the performance of the contract and a dollar ceiling which the contractor may not exceed without prior approval of subsequent ratification by the procurement officer and, in addition, may provide for payment of a fee. The contractor agrees to perform as specified in the contract until the contract is completed or until the costs reach the specified ceiling, whichever occurs first.

This contract type is appropriate when the uncertainties involved in contract performance are of a magnitude that the cost of contract performance cannot be estimated with sufficient reasonableness to permit use of any type of fixed-price contract. In addition, a cost-reimbursement contract necessitates appropriate monitoring by purchasing agency personnel during performance so

as to give reasonable assurance that the objectives of the contract are being met. It is particularly suitable for research, development, and study-type contracts.

(2) Determination Prior to Use. A cost-reimbursement contract may be used only when the procurement officer determines in writing that:

(a) a contract is likely to be less costly to the purchasing agency than any other type or that it is impracticable to obtain otherwise, the supplies, services, or construction;

(b) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

(c) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

(3) Cost Contract. A cost contract provides that the contractor will be reimbursed for allowable costs incurred in performing the contract.

(4) Cost-Plus-Fixed-Fee Contract. This is a cost-reimbursement type contract which provides for payment to the contractor of an agreed fixed fee in addition to reimbursement of allowable, incurred costs. The fee is established at the time of contract award and does not vary whether the actual cost of contract performance is greater or less than the initial estimated cost established for the work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee is subject to adjustment only if the contract is modified to provide for an increase or decrease in the work specified in the contract.

#### 3-704 Cost Incentive Contracts.

(1) General. Cost incentive contracts provide for the sharing of cost risks between the purchasing agency and the contractor. This type of contract provides for the reimbursement to the contractor of allowable costs incurred up to a ceiling amount and establishes a formula in which the contractor is rewarded for performing at less than target cost or is penalized if it exceeds target cost. Profit or fee is dependent on how effectively the contractor controls cost in the performance of the contract.

#### (2) Fixed-Price Cost Incentive Contract.

(a) Description. In a fixed-price cost incentive contract, the parties establish at the outset a target cost, a target profit, a cost-sharing formula which provides a percentage increase or decrease of the target profit depending on whether the cost of performance is less than or exceeds the target cost, and a ceiling price. After performance of the contract, the actual cost of performance is arrived at based on the total incurred allowable cost as determined in accordance with part 7 of these rules and as provided in the contract. The final contract price is then established in accordance with the cost-sharing formula using the actual cost of performance. The final contract price may not exceed the ceiling price. The contractor is obligated to complete performance of the contract, and, if actual cost exceeds the ceiling price, the contractor suffers a loss.

(b) Objective. The fixed-price cost incentive contract serves three objectives. It permits the establishment of a firm ceiling price for performance of the contract which takes into account uncertainties and contingencies in the cost of performance. It motivates the contractor to perform the contract economically since cost is in inverse relation to profit; the lower the cost, the

higher the profit. It provides a flexible pricing mechanism for establishing a cost sharing responsibility between the purchasing agency and contractor depending on the nature of the supplies, services, or construction being procured, the length of the contract performance, and the performance risks involved.

(3) Cost-Plus Contract with Cost Incentive Fee. In a cost-plus contract with cost incentive fee, the parties establish at the outset a target cost; a target fee; a cost-sharing formula for increase or decrease of fee depending on whether actual cost of performance is less than or exceeds the target cost, with maximum and minimum fee limitations; and a cost ceiling which represents the maximum amount which the purchasing agency is obligated to reimburse the contractor. The contractor continues performance until the work is complete or costs reach the ceiling specified in the contract, whichever first occurs. After performance is complete or costs reach the ceiling, the total incurred, allowable costs reimbursed in accordance with part 7 of these rules and as provided in the contract are applied in the cost-sharing formula to establish the incentive fee payable to the contractor. This type contract gives the contractor a stronger incentive to efficiently manage the contract than a cost-plus-fixed-fee contract provides.

(4) Determinations Required. Prior to entering into any cost incentive contract, the procurement officer shall make the written determination required by subsections 3-703(2)(b) and (c) of these rules. In addition, prior to entering any cost-plus contract with cost incentive fee, the procurement officer shall include in the written determination the determination required by subsection 3-703(2)(a) of these rules.

#### 3-705 Performance Incentive Contracts.

In a performance incentive contract, the parties establish at the outset a pricing basis for the contract, performance goals, and a formula for increasing or decreasing the compensation if the specified performance goals are exceeded or not met. For example, early completion may entitle the contractor to a bonus while late completion may entitle the purchasing agency to a price decrease.

#### 3-706 Time and Materials Contracts; Labor Hour Contracts.

(1) Time and Materials Contracts. Time and materials contracts provide for payment for materials at cost and labor performed at an hourly rate which includes overhead and profit. These contracts provide no incentives to minimize costs or effectively manage the contract work. Consequently, all such contracts shall contain a stated cost ceiling and shall be entered into only after the procurement officer determines in writing that:

(a) personnel have been assigned to closely monitor the performance of the work; and

(b) no other type of contract will suitably serve the purchasing agency's purpose.

(2) Labor Hour Contracts. A labor hour contract is the same as a time and materials contract except the contractor supplies no material. It is subject to the same considerations, and the procurement officer shall make the same determinations before it is used.

#### 3-707 Definite Quantity and Indefinite Quantity Contracts.

(1) Definite Quantity. A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of supplies or services either at specified times or when ordered.

(2) Indefinite Quantity. An indefinite quantity contract is a contract for an indefinite amount of supplies or services to be furnished as ordered that establishes unit prices of a fixed-price type. Generally an approximate quantity or the best information available is stated in the solicitation. The contract may provide a minimum quantity the purchasing agency is obligated to order and may also provide for a maximum quantity provision that limits the purchasing agency's obligation to order. The time of performance of an indefinite quantity contract may be extended upon agreement of the parties provided the extension is for 90 days or less and the procurement officer determines in writing that it is not practical to award another contract at the time of the extension.

(3) Requirements Contracts. A requirements contract is an indefinite quantity contract for supplies or services that obligates the purchasing agency to order all the actual, normal requirements of designated using agencies during a specified period of time; and for the protection of the purchasing agency and the contractor. Invitations for Bids and resulting requirements contracts shall include a provision. However, the purchasing agency may reserve in the solicitation and in the resulting contract the right to take bids separately if a particular quantity requirement arises which exceeds an amount specified in the contract. Requirements contracts shall contain an exemption from ordering under the contract when the procurement officer approves a finding that the supply or service available under the contract will not meet a nonrecurring, special need of the purchasing agency.

#### 3-708 Progressive and Multiple Awards.

(1) Progressive Award. A progressive award is an award of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity procured. A progressive award may be in the purchasing agency's best interest when awards to more than one bidder or offeror for different amounts of the same item are needed to obtain the total quantity or the time or times of delivery required.

(2) Multiple Award. A multiple award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror, and the purchasing agency is obligated to order all of its actual, normal requirements for the specified supplies or services from those contractors. A multiple award may be in the purchasing agency's best interest when award to two or more bidders or offerors for similar products is needed for adequate delivery, service, or availability, or for product compatibility. In making a multiple award, care shall be exercised to protect and promote the principles of competitive solicitation. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the requirements of the users that can be met under the contract be obtained in accordance with the contract, provided, that:

(a) the purchasing agency shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds an amount specified in the contract; or

(b) the purchasing agency shall reserve the right to take bids separately if the procurement officer approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the agency.

(3) Intent to Use. If a progressive or multiple award is anticipated prior to issuing a solicitation, the method of award shall be stated in the solicitation.

#### 3-709 Leases.

(1) Use. A lease may be entered into provided:

(a) it is in the best interest of the purchasing agency;

(b) all conditions for renewal and costs of termination are set forth in the lease; and

(c) the lease is not used to avoid a competitive procurement.

(2) Competition. Lease and lease-purchase contracts are subject to the requirements of competition which govern the procurement of supplies.

(3) Lease with Purchase Option. A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive bidding or competitive proposals, unless the requirement can be met only by the supply or facility being leased as determined in writing by the procurement officer. Before exercising this option, the procurement officer shall:

(a) investigate alternative means of procuring comparable supplies or facilities; and

(b) compare estimated costs and benefits associated with the alternative means and the exercise of the option, for example, the benefit of buying new state of the art data processing equipment compared to the estimated, initial savings associated with exercise of a purchase option.

#### 3-710 Multi-Year Contracts; Installment Payments.

(1) Use. A contract may be entered into which extends beyond the current fiscal period provided any obligation for payment in a succeeding fiscal period is subject to the availability of funds.

(2) Termination. A multi-year contract may be terminated without cost to the purchasing agency by reason of unavailability of funds for the purpose or for lack of performance by the contractor. Termination for other reason shall be as provided by the contract.

(3) Installment Payments. Supply contracts may provide for installment purchase payments, including interest charges, over a period of time. Installment payments, however, should be used judiciously in order to achieve economy and not to avoid budgetary restraints, and shall be justified in writing by the head of the using agency. Heads of using agencies shall be responsible for ensuring that statutory or other prohibitions are not violated by use of installment provisions and that all budgetary or other required prior approvals are obtained. No agreement shall be used unless provision for installment payments is included in the solicitation document.

#### 3-711 Contract Option.

(1) Provision. Any contract subject to an option for renewal, extension, or purchase, shall have had a provision to that effect included in the solicitation. When a contract is awarded by competitive sealed bidding, exercise of the option shall be at the purchasing agency's discretion only, and not subject to agreement or acceptance by the contractor.

(2) Exercise of Option. Before exercising any option for renewal, extension, or purchase, the procurement officer should attempt to ascertain whether a competitive procurement is practical, in terms of pertinent competitive and cost factors, and would be more advantageous to the purchasing agency than renewal or extension of the existing contract.

#### 3-712 Technology Modification

(1) Technology Upgrade. Any contract subject to a modification for technological upgrades shall have had a provision

to that effect included in the solicitation. Any modification to a contract for upgraded technology must be substantially within the scope of the original procurement or contract, and if both parties agree to the modification, then the contract may be modified.

2) New Technology. Any contract subject to a modification for technological upgrades shall have had a provision to that effect included in the solicitation. No contract modification for new technology requested by an acquiring agency shall be exercised without the approval required under Section 63F-1-205. The new technology modification has been subject to the review as described in R33-3-101(5) and the contracting parties agree to the modification.

(3) No contract may be extended beyond the term of the contract included in the solicitation except as provided in the Utah Procurement Code.

**KEY: government purchasing**

**Date of Enactment or Last Substantive Amendment: [July 8, 2010]2012**

**Notice of Continuation: November 23, 2007**

**Authorizing, and Implemented or Interpreted Law: 63G-6**

## Administrative Services, Purchasing and General Services **R33-4** Specifications

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 35665  
FILED: 01/12/2012

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** H.B. 476 (2011 General Session) directs that rules be drafted governing the procurement, management, and control of any and all technology to be procured by the state.

**SUMMARY OF THE RULE OR CHANGE:** This amendment adds "technology" and "new technology" (as defined in Rule R33-1, in this issue) to the list of items for which specifications must be drafted. (DAR NOTE: The proposed amendment to Rule R33-1 in under DAR No. 35664 in this issue, February 1, 2012, of the Bulletin.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 63G, Chapter 6

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Requiring that specifications be drafted prior to the acquisition of technology or new technology may result in some added costs in staff time for acquiring agencies. Estimating how much the cost may be is prohibitively difficult in the aggregate; this would require determining how many agencies currently do not draft

specifications that would now be required to do so; it would also require estimating how many technology acquisitions will occur in the future, an estimate for which there is not sufficient data. Conversely, the drafting of specifications may facilitate technology acquisition, resulting in cost savings.

◆ **LOCAL GOVERNMENTS:** Requiring that specifications be drafted prior to the acquisition of technology or new technology may result in some added costs in staff time for acquiring agencies. Estimating how much the cost may be is prohibitively difficult in the aggregate; this would require determining how many agencies currently do not draft specifications that would now be required to do so; it would also require estimating how many technology acquisitions will occur in the future, an estimate for which there is not sufficient data. Conversely, the drafting of specifications may facilitate technology acquisition, resulting in cost savings.

◆ **SMALL BUSINESSES:** Small businesses who provide technology to acquiring agencies may benefit from the specifications. The specifications should enable them to provide technology that is best-suited to the acquiring agencies' needs. Estimating the benefit is prohibitively difficult as it would require predicting, without sufficient data, agencies' future technology needs.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule deals exclusively with technology acquisition on the part of state agencies and political subdivisions subject to the Procurement Code. No other persons are affected.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Requiring that specifications be drafted prior to the acquisition of technology or new technology may result in some added costs in staff time for acquiring agencies. Estimating how much the cost may be is prohibitively difficult; this would require determining how many agencies currently do not draft specifications that would now be required to do so; it would also require estimating how many technology acquisitions will occur in the future, an estimate for which there is not sufficient data.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** I foresee the potential for greater efficiencies in government through the ability of government entities being able to modify existing contracts for technology-related enhancements, provided the ability to modify was contained in the original solicitation, thereby reducing procurement-related costs to vendors. Potential state contractors will have the opportunity to pilot their technology and technology-related goods and services without a lengthy competitive process.

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

ADMINISTRATIVE SERVICES  
PURCHASING AND GENERAL SERVICES  
ROOM 3150 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:

♦ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012

AUTHORIZED BY: Kent Beers, Director

### **R33. Administrative Services, Purchasing and General Services.**

#### **R33-4. Specifications.**

##### **R33-4-1. General Provisions.**

###### 4-101 General Purpose and Policies.

(1) Purpose. Specifications shall be drafted with the objective of clearly describing the purchasing agency's requirements and of encouraging competition. The purpose of a specification is to serve as a basis for obtaining a supply, service, or construction item, or technology adequate and suitable for the purchasing agency's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs.

(2) Use of Functional or Performance Descriptions. Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the purchasing agency. To facilitate the use of the criteria, using agencies shall endeavor to include as a part of their purchase requisitions the principal functional or performance needs to be met. It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of supplies and services. This preference is often not practicable in construction, apart from the procurement of supply-type items for a construction project.

(3) Preference for Commercially Available Products. It is the general policy that requirements be satisfied by standard commercial products whenever practicable.

###### 4-102 Availability of Documents.

Except for testing and confidential data, specifications and any written determination or other document generated or used in the development of a specification shall be available for public inspection.

###### 4-103 Emergency Authority.

In the event of an emergency, as determined by the procurement officer, the purchasing agency may procure by any reasonable means, with any available specifications, without regard to the provision of these rules.

###### 4-104 Procedures for the Development of Specifications.

###### (1) Provisions of General Application.

(a) Application of Section. This section applies to all persons who may prepare a specification.

(b) Specification of Alternates May Be Included. A specification may provide alternate descriptions of supplies, services, or construction items where two or more design,

functional, or performance criteria will satisfactorily meet the purchasing agency's requirements.

(c) Contractual Requirements Not to Be Included. To the extent feasible, a specification shall not include any solicitation or contract term or condition as a requirement for time or place of bid opening, time of delivery, payment, liquidated damages, or qualification of bidders.

(d) Use of Existing Specifications. If a specification for a common or general use item has been developed in accordance with subsection (2) (a) of this section or a qualified products list has been developed in accordance with subsection (2) (d) of this section for a particular supply, service, or construction item, or need, it shall be used unless the procurement officer makes a written determination that its use is not in the purchasing agency's best interest and that another specification shall be used.

(e) The procurement officer should provide for the periodic review of specifications to determine whether any existing specification needs revision, or a new specification is needed to reflect changes in:

(i) the state of the art;

(ii) the characteristics of the available supplies, services, or construction items, or technology; ~~[-or]~~

(iii) needs of the using agency[-];

(iv) a new technology that the acquiring agency does not currently possess; or

(v) technology that is new or subject to future advancements during the course of any contract term.

(f) The procurement officer may allow others to prepare specifications for the purchasing agency's use in making procurements when there will be no substantial conflict of interest involved and it is otherwise in the best interests of the purchasing agency as determined by the procurement officer.

###### (2) Special Additional Procedures.

###### (a) Specifications for Common or General Use Items.

(i) Preparation and Utilization. A standard specification for common or general use shall, to the extent practicable, be prepared and utilized when a supply, service, or construction item is used in common by several using agencies or used repeatedly by one using agency, and the characteristics of the supply, service, or construction item as commercially produced or provided remain relatively stable while the frequency or volume of procurements is significant, or where the purchasing agency's recurring needs require uniquely designed or specially produced items.

(ii) Final Approval. Final approval of a proposed specification for a common or general use item shall be given only by the procurement officer.

(iii) Revisions and Cancellations. All revisions to or cancellations of specifications for common or general use items may be made upon approval of the procurement officer.

###### (b) Brand Name or Equal Specification.

(i) Brand name or equal specifications may be used when the procurement officer determines that a specification is in the purchasing agency's best interest.

(ii) Designation of Several Brands. Brand name or equal specification shall seek to designate as many different brands as are practicable as "or equal" references and shall state that products substantially equivalent to those designated will be considered for award.

(iii) Required Characteristics. Unless the procurement officer authorized to finally approve specifications determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design and functional or performance characteristics which are required.

(iv) Nonrestrictive Use of Brand Name or Equal Specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of designating the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

(c) Brand Name Specification.

(i) Use. Since use of a brand name specification is restrictive, a specification may be used when the procurement officer or designee makes a written determination. The determination may be in any form deemed acceptable to the chief procurement officer, as a purchase evaluation, or a statement of single source justification. The written statement must state specific reasons for use of the brand name specification.

(ii) Competition. The procurement officer shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 63G-6-410 of the Utah Procurement Code.

(d) Qualified Products List.

(i) Use. A qualified products list may be developed with the approval of the Chief Procurement Officer, or the head of a purchasing or using agency authorized to develop qualified products lists, when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary in order to satisfy purchasing agency requirements.

(ii) Solicitation. When developing a qualified products list, a representative group of potential suppliers shall be solicited to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer products for consideration in accordance with any schedule or procedure established for this purpose.

(iii) Testing and Confidential Data. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with prior established requirements. Except as otherwise provided by law, trade secrets, test data, and similar information provided by the supplier will be kept confidential when requested in writing by the supplier. However, qualified products lists' test results shall be made public, but in a manner so as to protect the confidentiality of the identity of the competitors by, for example, using numerical designations.

**KEY: government purchasing**

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

**Notice of Continuation: November 23, 2007**

**Authorizing, and Implemented or Interpreted Law: 63G-6**

## Administrative Services, Purchasing and General Services **R33-6-101** Revisions to Contract Clauses

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35666

FILED: 01/12/2012

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** H.B. 476 (2011 General Session) directs that rules be drafted governing the procurement, management, and control of any and all technology to be procured by the state.

**SUMMARY OF THE RULE OR CHANGE:** This amendment adds language that allows for modification of existing contracts when the modification is in the best interest of the acquiring agency. This pertains to contracts for supplies, services, construction, and new technology or advancements or upgrades in technology.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 63G, Chapter 6

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** It is possible that cost savings may be obtained by state agencies for not having to conduct re-procurements for new technologies and/or upgrades. This amendment allows state agencies greater flexibility in conducting pilot tests of new technology which may reduce costs for research.

◆ **LOCAL GOVERNMENTS:** It is possible that cost savings may be obtained by local governments for not having to conduct re-procurements for new technologies and/or upgrades.

◆ **SMALL BUSINESSES:** May allow small business access to state agency technology opportunities to demonstrate or pilot new technology or upgrades/enhancements to existing technologies.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Cost savings may be realized by all government entities and all those doing or interested in doing business with the state.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None-- There are no known compliance costs.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** I foresee the potential for greater efficiencies in government through the ability of government entities being able to modify existing contracts for technology-related enhancements,

provided the ability to modify was contained in the original solicitation, thereby reducing procurement-related costs to vendors. Potential state contractors will have the opportunity to pilot their technology and technology-related goods and services without a lengthy competitive process.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ADMINISTRATIVE SERVICES  
 PURCHASING AND GENERAL SERVICES  
 ROOM 3150 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:

♦ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012

AUTHORIZED BY: Kent Beers, Director

**R33. Administrative Services, Purchasing and General Services.**

**R33-6. Modification and Termination of Contracts for Supplies, ~~and~~ Services, Construction, and Technology.**

**R33-6-101. ~~[Revisions to Contract Clauses]~~ Contract Modifications.**

~~[The clauses set forth in this rule may be varied for use in a particular contract at the discretion of the procurement officer.]~~ (1) Contracts may be modified when it is determined in writing by the Chief Procurement Officer or head of a purchasing agency that the modification is in the best interest of the acquiring agency. Contract modifications must be in compliance with the Utah Procurement Code.

(2) Modifications to existing contracts for supplies, services, construction and new technology or advancements or upgrades in technology are allowed subject to the provisions of R33-3-101(5) provided:

(a) The initial solicitation indicated that the procurement was for an entire system, project service or technology;

(b) The initial solicitation indicated that the entire system, project, service or technology included: all future modules, components, programs, upgrades and technological advancements related to the system, project, service or technology;

(c) The modification is substantially within the scope of the original procurement or contract;

(d) An acquiring agency has complied with Section 63F-1-205 for contracts involving technology; and

(e) All parties agree to the modification.

(3) If the modification is not allowed under subsection (2) of this rule, the acquiring agency may keep the original contract while procuring the additional contract, or may terminate the

original contract, whichever is in the best interest of the acquiring agency. If the contract is terminated, then the vendor shall be paid for the services or work properly performed up to the date of termination; all in accordance with the contract provisions.

**KEY: government purchasing**

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

**Notice of Continuation: January 29, 2009**

**Authorizing, and Implemented or Interpreted Law: 63G-6**

**Capitol Preservation Board (State),  
 Administration  
 R131-9  
 State Capitol Preservation Board Art  
 Program and Policy**

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)

DAR FILE NO.: 35686

FILED: 01/17/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Pursuant to Sections 63C-9-401, 63C-9-402, 63C-9-702, and 63C-9-703, Utah Code, this rule defines the role of the Capitol Preservation Board (CPB), Executive Director of the CPB and the Capitol Art Placement Subcommittee in regard to art and exhibits on the Capitol Hill complex including Capitol Hill Facilities and Capitol Hill Grounds. The reason for the repeal and reenactment of this rule is that the rule has been reorganized and simplified for easier use by the public. Also, the roles of the Executive Director, Arts Placement Subcommittee (Subcommittee) and the CPB have been clarified. In particular: 1) a display of art or an exhibit for more than six months is referred to as a "Long Term Event (Display)" and is considered an action regarding content placement, removal, or relocation under Section 63C-9-703 which requires action by the CPB after reviews by the Executive Director and the Subcommittee; and 2) an event involving art or an exhibit that is for more than 45 days but not longer than six months is referred to as a "Mid Term Event," and due to the short time period is not considered as a Section 63C-9-703 matter requiring CPB approval. Such Mid Term Events are processed and determined by the Executive Director and the Subcommittee. The CPB shall be advised of such decisions; and 3) an event involving art or an exhibit that is for 45 days or less is referred to as a "Short Term Event," and due to the short time period is not considered as a Section 63C-9-703 matter requiring Board or Subcommittee approval or recommendation, and shall be processed and determined by the Executive Director. All these recommendations and determinations shall be in accordance with the requirements of this rule.

**SUMMARY OF THE RULE OR CHANGE:** Pursuant to Sections 63C-9-401, 63C-9-402, 63C-9-702, and 63C-9-703, Utah Code, this rule defines the role of the CPB, Executive Director of the CPB and the Subcommittee in regard to art and exhibits on the Capitol Hill complex including Capitol Hill Facilities and Capitol Hill Grounds. The reason for the repeal and reenactment of this rule is that the rule has been reorganized and simplified for easier use by the public. Also, the roles of the Executive Director, Subcommittee, and the CPB have been clarified. In particular: 1) a display of art or an exhibit for more than six months is referred to as a "Long Term Event (Display)" and is considered an action regarding content placement, removal, or relocation under Section 63C-9-703 which requires action by the CPB after reviews by the Executive Director and the Subcommittee; 2) an event involving art or an exhibit that is for more than 45 days but not longer than six months is referred to as a "Mid Term Event," and due to the short time period is not considered as a Section 63C-9-703 matter requiring Board approval. Such Mid Term Events are processed and determined by the Executive Director and the Subcommittee. The CPB shall be advised of such decisions; and 3) an event involving art or an exhibit that is for 45 days or less is referred to as a "Short Term Event," and due to the short time period is not considered as a Section 63C-9-703 matter requiring Board or Subcommittee approval or recommendation, and shall be processed and determined by the Executive Director. All these recommendations and determinations shall be in accordance with the requirements of this rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63C-9-701 and Section 63C-9-702 and Section 63C-9-703 and Subsection 63C-9-301(3)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This rule will not affect the state budget. The reason for the repeal and reenactment of this rule is that the rule has been reorganized and simplified for easier use by the public. Also, the roles of the Executive Director, Subcommittee, and the CPB have been clarified. There will be no additional costs to the state budget, but due to the streamlining of the rule and processes, there may be cost savings.

◆ **LOCAL GOVERNMENTS:** This rule does not apply to local governments and does not impact local governments.

◆ **SMALL BUSINESSES:** The reason for the repeal and reenactment of this rule is that the rule has been reorganized and simplified for easier use by the public. Also, the roles of the Executive Director, Subcommittee, and the CPB have been clarified. There will be no additional costs to small businesses, but due to the streamlining of the rule and processes, there may be cost savings for small businesses that interact with the state under this rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The reason for the repeal and reenactment of this rule is that the rule has been reorganized and simplified for easier use by the public. Also, the roles of the Executive Director,

Subcommittee, and the CPB have been clarified. There will be no additional costs to any person, but due to the streamlining of the rule and processes, there may be cost savings to a person that interacts with the state under this rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will not be any additional compliance costs to persons as a result of this repeal and reenactment. The reason for the repeal and reenactment of this rule is that the rule has been reorganized and simplified for easier use by the public. Also, the roles of the Executive Director, Subcommittee, and the CPB have been clarified. Due to the streamlining of the rule and processes, there may be cost savings to a person that interacts with the state under this rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is no fiscal impact of this repeal and reenactment on businesses. Due to the streamlining of the rule and processes, there may be cost savings to businesses that interact with the state under this rule.

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

CAPITOL PRESERVATION BOARD (STATE)  
ADMINISTRATION  
ROOM E110 EAST BUILDING  
420 N STATE ST  
SALT LAKE CITY, UT 84114-2110  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov  
◆ Allyson Gamble by phone at 801-537-9156, by FAX at 801-538-3221, or by Internet E-mail at agamble@utah.gov  
◆ Chiarina Glead by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cglead@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012**

**AUTHORIZED BY: Allyson Gamble, Executive Director**

**R131. Capitol Preservation Board (State), Administration.**

~~**[R131-9. State Capitol Preservation Board Art Program and Policy.**~~

~~**R131-9-1. Purpose.**~~

~~Pursuant to Section 63C-9-402, Utah Code, this rule defines the authority and scope of the Capitol Preservation Board's Executive Director to develop plans, programs and policies for the placement and care of objects under the care of the Board in Capitol Hill facilities and on Capitol Hill grounds.~~

**R131-9-2. Authority.**

This rule is authorized by Subsection 63C-9-301(3), Utah Code, directing the Board to make rules to govern, administer and regulate the Capitol Hill facilities and grounds.

**R131-9-3. Definitions.**

(a) "Capitol Collection" means all antiquities, works of art, and objects of historical significance that are identified by and under the care and custody of the Capitol Preservation Board (Board); including not only paintings and sculptures but also objects of art and architecture both in and out of the state art collection, also referred to as the "Alice Art Collection," which are under the custody and control of the Board.

(b) "Capitol Registrar and Curator" means the person responsible for the development, organization and care of the Capitol Collection. Pursuant to Section 63C-9-402(15) and (16), Utah Code, this person shall be a staff employee or contract consultant to the Director.

(c) "Decorative Painting" means wall painting that adds detail and design to the ceiling and walls of a room. Decorative painting shall be considered art.

(d) "Giclee prints" means digitally mastered reproductions of a high quality that are approved by the Board for particular circumstances.

(e) "Original Works of Art" means painted or drawn art, sculpture, tapestries, photographs, mosaics, furniture, and other objects or furnishings of historical significance which are one of a kind, unique and specifically created for the Capitol Complex and governmental agencies. This does not include mechanically reproduced prints, giclee prints, and copies of the work or other similar reproductions.

(f) "Private area" means space assigned to state officials or staff as part of the offices or work-space of a government agency. Such space is not considered a "public area(s)" as defined in Section 63C-9-701(4).

(h) "Semi-public area" means rooms or space which is not generally available to the public, but is most often accessible by invitation; including conference rooms, board rooms, waiting areas, foyers, etc.

(i) "Conservation Plan or Plan" means the plan developed under R131-9-6.

**R131-9-4. Collection Management and Development.**

Pursuant to Sections 63C-9-601 and 63C-9-702, Utah Code, the Board establishes the following methodology to acquire, control and exercise custody of art and furnishings:

(a) The Capitol Collection shall be organized by the Capitol Registrar/Curator and shall consist of five basic collections as follows:

Collection A: -- Site-Specific Paintings, Sculpture and Artifacts including the Original Works of Art attached to the building, which have historical significance, or were at one time included in the Capitol Collection. The Original Works of Art within this collection include items on permanent loan from the Alice Art Collection and items in a Capitol Collection separate from the Alice Art Collection. Among these are:

A1 -- Original Paintings such as oil, fresco, water-color, etc.,

A2 -- Sculpture for indoor and outdoor applications;

A3 -- Fiber and mixed media, and

A4 -- Plaques and commemorative works.

Collection B: -- Two and Three Dimensional Art and Artifacts including the Original Works of Art on temporary loan from various owners collections (including but not limited to the Utah State Senate, House of Representatives and Governors collections), such as:

B1 -- Original Paintings such as oil, fresco, water-color, etc.,

B2 -- Sculpture for indoor and outdoor applications

B3 -- Fiber and mixed media, and

B4 -- Plaques and commemorative works.

Collection C: -- Furniture, Fixtures and Equipment of a Historic or Decorative Nature that are intrinsic to the overall composition and architectural value of the building or buildings; most typically consisting of:

C1 -- Historic, Legacy and Replicated Objects

C2 -- Traditional and System Objects, and

C3 -- Historic and New Decorative Lighting (indoor and outdoor) and Hardware.

Collection D: -- Miscellaneous items including Rugs, Mirrors, Artifacts and other non-classifiable items; which are generally included in the following categories:

D1 -- Carpets, Drapes and Rugs;

D2 -- Mirrors, Clocks, Artifacts, and

D3 -- Non-Classifiable items.

Collection E: -- Traveling Exhibitions and Displays which includes temporary and permanently displayed objects depending on the exhibit or display. The most typical collections would include:

E1 -- Capitol display cases, and

E2 -- Traveling exhibits.

(a) The Capitol Preservation Board and the Capitol Registrar and Curator shall research and determine what elements of Original Works of Art, both within the state's control, or out of the state's control, shall be included in the Capitol Collection. Such research shall use the most reliable documentation as the foundation for determining which Original Works of Art shall be part of the Capitol Collection.

(b) The Capitol Registrar and Curator shall design and implement appropriate forms for loan agreements, release of objects and registration and condition reports.

(c) The Capitol Preservation Board shall cooperate with the Utah Arts Council to draft and update a Memorandum of Understanding between the two agencies governing the development of the Capitol Collection of Original Works Art to be placed in the Capitol or other locations on Capitol Hill. The Memorandum of Understanding shall provide that the Utah Arts Council shall continue to list the Capitol Collection as part of the Alice Art Collection, but shall designate it as being on a permanent loan status.

**R131-9-5. Records and Data Management.**

Pursuant to Sections 63C-9-301 and 63C-9-402, Utah Code:

(a) Under direction of the Board's Executive Director, the Capitol Registrar and Curator shall define, identify, design, and implement a record of all art, sculpture, artifacts and artistic objects referenced in the collection as noted in R131-9-4, including:

- ~~(i) Object numbering;~~
- ~~(ii) Photographic documentation;~~
- ~~(iii) Computer data referencing;~~
- ~~(iv) Catalog carding;~~
- ~~(v) Inventory carding;~~
- ~~(vi) Accessioning and object filing;~~
- ~~(vii) Drafting copyright and reproduction agreements;~~
- ~~(viii) Bibliographic and historical record preparation, and provenance carding (origin and source);~~
- ~~(ix) Preparation of object condition reports, and~~
- ~~(b) The Capitol Registrar and Curator will design methodologies to itemize and keep the above data in a current, timely, and purposeful manner for review by the Arts Placement Subcommittee and the Capitol Preservation Board.~~

**R131-9-6. Conservation and Maintenance.**

~~Pursuant to Section 63C-9-301, Utah Code, the Capitol Registrar and Curator, under direction of the Executive Director, shall develop a short and long-term Conservation Plan (plan) for the conservation and maintenance of all original works of art and artifacts. The Conservation plan shall include:~~

- ~~(a) That conservator(s) shall only in-paint with reversible materials which are accepted as appropriate in nationally certified conservation practice for master works; that the process shall not conceal or damage original artist work; and that "overpainting" is unacceptable and shall not be performed on objects covered by the Conservation Plan;~~
- ~~(b) That a maintenance schedule shall be incorporated into the Conservation Plan for each identified Original Work of Art;~~
- ~~(c) That budget recommendations for the maintenance and care of Original Works of Art shall be developed and submitted to the Board annually for approval and incorporation into the Board's budget, and~~
- ~~(d) That the Arts Placement Subcommittee shall cooperate with the Capitol Registrar and Curator to develop the Conservation Plan, for recommendation to the Board for approval and implementation.~~

**R131-9-7. Art Display.**

~~(a) The Capitol Preservation Board and Capitol Art Placement Subcommittee shall coordinate efforts by the Capitol Registrar/Curator to identify locations for original works of art in public areas within the Capitol and other Capitol Hill facilities. The Capitol Registrar and Curator shall contact heads of individual offices, agencies to facilitate the hanging of Original Works of Art from the Alice Art Collection or other collections, within Capitol Hill facility public lobbies and semi-public spaces. The Capitol Registrar and Curator will only assist with placements of art within state employee office areas, when requested.~~

~~(b) All Original Works of Art may be hung only by the Capitol Registrar and Curator in public and state employee office spaces. When placed in state staff offices, such art shall be monitored and recorded by the Capitol Registrar and Curator. When placement of art is requested by state employees, and the Capitol Registrar and Curator is contacted by for that purpose, he will record and monitor those as well. However, if works of art are hung in state employee offices without the knowledge of the Capitol Registrar and Curator, they will not be monitored and will not be~~

~~considered part of the Capitol Collection and the Board will not have any responsibility for those artworks.~~

~~(c) Organizations such as the Utah Arts Council, Salt Lake County arts organizations, the Springville Museum of Art or similar groups, which have received requests from a state employee or elected official to provide art from their organization for placement in the Capitol, shall be required to first contact the Board prior to hanging such art. The Capitol Registrar and Curator shall record and monitor the art object while it remains on loan to such an office. If the borrowing organization fails to notify the Board of the loan, the Board will not be responsible for, nor shall the Office of Risk Management assume liability under any state risk-managed insurance policy for such artwork.~~

~~(d) The use or display of art objects in Capitol Hill facilities and Capitol Grounds shall be conducted according to the following protocols:~~

~~(i) Capitol Building -- Only Original Works of Art shall be hung or displayed in the Capitol Building public areas and within ceremonial rooms such as Governor's Public Office and Reception Room, House Chambers and House Reception Room, Senate Chambers and Senate Reception Room, Supreme Court Chambers, State Room, Committee Rooms, Board Rooms, and Auxiliary Corridors.~~

~~(ii) Senate and House Buildings -- Original Works of Art shall be displayed, hung or attached to the walls in the main public lobbies. Original Works of Art and giclee prints may be hung in other public areas in the buildings including the House and Senate Public Lobbies, the Committee Rooms and the main entries to the various offices in the buildings.~~

~~(iii) State Office Buildings -- Original Works of Art shall be displayed, hung or attached to the walls in the main public lobbies. Original Works of Art and giclee prints may be hung in other public areas in the buildings.~~

~~When considering a placement of artwork, the Capitol Registrar and Curator shall consider the following needs for, and circumstances incidental to, prior to giving approval to hang or otherwise place the artwork:~~

- ~~(A) lighting and other environmental controls;~~
- ~~(B) security devices and related equipment;~~
- ~~(C) communication devices, and~~
- ~~(D) any other device or object needed for appropriate building functions.~~

**R131-9-8. Commissioning of New Art.**

~~Pursuant to Section 63C-9-703, Utah Code:~~

~~(1) The Capitol Registrar and Curator shall coordinate efforts with the Capitol Arts Placement Sub-Committee to facilitate the commissioning of new art as follows:~~

~~(a) Determine the location, subject matter and medium for the desired work and present information to the Capitol Preservation Board for approval;~~

~~(b) Issue a Request for Qualifications to artists who have demonstrated expertise in the type or medium of artistic projects being considered, or specified; and~~

~~(2) The Executive Director shall appoint a selection committee, consisting of members from the Capitol Arts Placement Sub-Committee, the Capitol Preservation Board, and staff of the Executive Director and Capitol Architect.~~

~~\_\_\_\_\_ (3) The Selection Committee shall review artist qualifications and expertise, and shall develop a short list of at least three and no more than six qualified artists to compete for the commission.~~

~~\_\_\_\_\_ (4) The short-listed artists shall be provided a stipend consistent with the assignment to submit a mockup or model which demonstrates the proposed work using the specified medium and subject matter, plus suggested modifications.~~

~~\_\_\_\_\_ (5) The Selection Committee will review the submitted:~~

- ~~\_\_\_\_\_ (i) mockups or models;~~
- ~~\_\_\_\_\_ (ii) written explanations; and~~
- ~~\_\_\_\_\_ (iii) fees for the work as installed in the location specified.~~

~~\_\_\_\_\_ (6) Following the decision by the Selection Committee the Capitol Registrar and Curator shall inform the Capitol Arts Placement Sub-Committee and convey their recommendations to the Board. The Board shall review the recommended submittal(s). If approved by the Board, the Executive Director shall enter into a contractual arrangement with the selected artist.~~

~~\_\_\_\_\_ (7) After the work is delivered and installed to the specified location, the ownership of the Original Work of Art shall be the property of the Capitol Preservation Board and shall be part of the permanent Capitol Collection. The Board may relocate the Original Art Work at any time.~~

#### **R131-9-10. Decorative Painting and Historic Fabric.**

~~\_\_\_\_\_ (1) Decorative Painting and Historic Wall Fabric in the Capitol which has been recreated or restored to its original design, or close to its original design and detail, is considered a valuable component of the State Capitol. Colors, designs and locations shall be carefully researched and documentation shall be provided to the Executive Director. Given the sensitive nature and the expense for restoring painted historic fabric and decorative painting, the following protocols shall apply:~~

~~\_\_\_\_\_ (a) in all space public and semi-public space, the decorative painting and Historic Fabric material shall be considered as artwork. It shall not be covered up, changed or painted over except by consent and direction of the Capitol Preservation Board, after review and recommendation by the Art Placement Subcommittee.~~

~~\_\_\_\_\_ (b) The Capitol Preservation Board shall not control the use, organization or management of assigned private office spaces of Elected Officials and staff in the House of Representatives, and State Senate or Governors offices. However, the walls and the historic fabric and decorative paint in such semi-private/semi-public areas are considered to be a historical part of the Capitol, and shall not be decorated, marked, painted over or changed without approval by the Executive Director. Pursuant to Section 63C-9-301(1)(b), the Board shall preserve, maintain and restore the Capitol Hill facilities, grounds and their contents, including all attached and building art work. Accordingly, such spaces shall not be covered up, changed or painted over except by consent and direction of the Capitol Preservation Board.~~

~~\_\_\_\_\_ (c) The placement or hanging of paintings or other artwork on the walls in these spaces shall be the prerogative of the organization assigned to use the space, but the Capitol Preservation Board shall provide for and supervise the installation of hanging devices for artwork to avoid damage to the walls. This same policy~~

~~shall also apply to all such private offices or spaces where decorative painting or Historic Fabric exists.~~

#### **R131-9-11. Artwork, Plaques and Exhibits in Public Space.**

~~\_\_\_\_\_ (1) Public Space within the Capitol and other building on Capitol Hill is defined as any space not assigned to the Executive Branch offices, Legislative Offices or Chambers or Judicial Offices or Chambers, or for maintenance. It shall include auxiliary and public circulation corridors in the basement, on the first, second, third and fourth levels. It does not include private (non-public) circulation corridors or secure circulation corridors which provide for internal or secure circulation. Public Space shall be open to the general public during the hours of operation which the capitol is open. This space is under the direction of the Board. The Board shall be responsible for the establishment of rules for the hanging of art as described in this rule.~~

~~\_\_\_\_\_ (2) Semi-Public Space within the Capitol and other buildings on Capitol Hill shall be defined as the Lobby or other space which the public may freely enter with in the Executive Branch offices, Legislative Offices or Judicial Offices. These spaces are under the control of the state entity to which the space has been assigned. Only original art shall be hung in these spaces and the Executive Director's office shall be contacted to approve, and to assist the state entity with such tasks.~~

~~\_\_\_\_\_ (3) Artwork and Plaques shall not be hung or mounted on the Second floor of the State Capitol Building.~~

~~\_\_\_\_\_ (4) The hanging of Artwork, Plaques and Notice Boards on the third floor of the State Capitol Building shall be in designated spaces only. No other artwork, plaque or information device shall be hung on the walls on this floor.~~

~~\_\_\_\_\_ (5) The first and fourth floor of the State Capitol Building shall be reserved for artwork of various types, but shall be under the direction of the Capitol Registrar and Curator and the Executive Director to provide permanent and temporary shows and exhibitions after approval of the Board.~~

~~\_\_\_\_\_ (6) The State Capitol shall not be used to promote or market a product, name or sponsor any particular company, item or industry.~~

~~\_\_\_\_\_ (7) Memorial and Commemorative plaques shall be located on the Memorial walk which has been specifically design to honor and respect those who have contributed in remarkable ways to the success of and reputation of the State. Organizations that have ceremonies that are part of there commemorative process will be given permission to use the Rotunda, Grand Stairs, and Grounds for the ceremonies as needed without fee. ]~~

#### **R131-9. Art and Exhibits.**

##### **R131-9-1. Purpose.**

Pursuant to Sections 63C-9-401, 63C-9-402, 63C-9-702 and 63C-9-703, Utah Code, this rule defines the role of the Capitol Preservation Board, Executive Director of the Capitol Preservation Board and the Capitol Art Placement Subcommittee in regard to art and exhibits on the Capitol Hill Complex including Capitol Hill Facilities and Capitol Hill Grounds.

##### **R131-9-2. Authority.**

This rule is authorized by Subsection 63C-9-301(3), Utah Code, directing the Board to make rules to govern, administer and regulate the Capitol Hill Complex including Capitol Hill Facilities and Capitol Hill Grounds.

**R131-9-3. Legislative and Governor's Areas of Jurisdiction.**

(1) The Board recognizes the Legislature has jurisdiction in the legislative area as described in Section 36-5-1, Utah Code, with certain exceptions described in Section 36-5-1.

(2) The Board recognizes the Governor has jurisdiction in regard to those areas reserved for the Governor in Section 67-1-16, Utah Code, with certain exceptions described in Section 67-1-16.

(3) To the extent permitted by law, the Executive Director may enter into agreements with the Legislative Management Committee in regard to the legislative area under legislative jurisdiction and with the Office of the Governor in regard to the area reserved for the Governor under the Governor's jurisdiction.

**R131-9-4. Definitions.**

(1) "Board" means the Capitol Preservation Board created under Section 63C-9-201, Utah Code.

(2) "Subcommittee" means Capitol Art Placement Subcommittee to the Capitol Preservation Board as created under Section 63C-9-702, Utah Code.

(3) "Short Term Event" means, for the purpose of this Rule R131-9, the providing of art or an exhibit in any public area on the Capitol Hill Complex, including Capitol Hill Facilities and Capitol Hill Grounds, that is for forty-five (45) days or less.

(4) "Mid Term Event" means, for the purpose of this Rule R131-9, the providing of art or an exhibit in any public area on the Capitol Hill Complex, including Capitol Hill Facilities and Capitol Hill Grounds, that is for more than forty-five (45) days but not longer than six (6) months.

(5) "Long Term Event (Display)" means, for the purpose of this Rule R131-9, a display of art or an exhibit in any public area on the Capitol Hill Complex, including Capitol Hill Facilities and Capitol Hill Grounds that is for more than six (6) months.

**R131-9-5. Procurement of Art and Exhibits.**

(1) The Executive Director may procure art or exhibits in accordance with applicable laws and rules.

(2) The Executive Director, Subcommittee, or any Board member may make recommendations to the Board regarding any of the procurements under this rule.

**R131-9-6. Application Process For Event/Display of Art or an Exhibit.**

(1) A request for a Short Term Event, Mid Term Event, or Long Term Event (Display), including a request to place new art or a new exhibit may be initiated by the Board, the Subcommittee, the Executive Director, or any person.

(2) The Application for Art and Exhibits at the Utah State Capitol Complex, developed by the Executive Director and approved by the Capitol Art Placement Subcommittee, must be completed by the applicant and submitted to the Capitol Preservation Board Office for evaluation, regardless of event length. The Application includes requests for the following information:

(a) The name and contact information of the applicant;

(b) A description of the subject matter and type of event (Short Term, Mid Term, or Long Term); and

(c) A description of how the request complies with the applicable Facility Use Rules, including Utah Administrative Code Rules R131-2 and R131-10, and all criteria in Rule R131-9-7.

(3) For Mid Term Events or Long Term Events (Display), the Capitol Preservation Board Office will invite the applicant to attend the next Capitol Art Placement Subcommittee meeting to present their request.

(4) Application is at the applicant's own risk, including costs and expenses for applying.

**R131-9-7. Capitol Master Plan and Event/Display Criteria.**

All recommendations and determinations under this Rule R131-9 must comply with all of the following:

(1) The Capitol Master Plan. The most recent Capitol Master Plan adopted by the Board shall be met. Any reference in the Master Plan to "Curator" shall be deemed to refer to the appropriate reviewing authority.

(2) State Interest. The request must benefit the interests of the State of Utah.

(3) Preservation or Enhancement. The request must explain how the aesthetics, historical significance, art and architecture of the Capitol Hill Complex will be preserved or enhanced if such request is approved.

(4) Community Standards. The Executive Director, Subcommittee, or Board shall make recommendations or decisions based on community standards of morality. No request shall be approved where the content violates community standards or is obscene or proscribed by Title 76, Chapter 10, Section 1203 of the Utah State Criminal Code. If applicable, the Utah Attorney General's Office shall be consulted prior to any such determination.

(5) Preferences. Only a limited amount of Short Term Events, Mid Term Events, or Long Term Events (Displays) can be allowed pursuant to this Rule R131-9. The longer the duration of the Event/Display on the Capitol Hill Complex, the stricter the standard of approval will be applied. Documentation establishing compelling reasons for such Event/Display is required with the Application. Preference will be provided to those applications that encompass the following:

(a) The history of Utah, including being associated with events, persons or cultures of historical significance, both while as a State and prior periods;

(b) The history of the Capitol;

(c) The essential natural beauty of the State of Utah;

(d) The industry of the State of Utah;

(e) Government and civics and/or;

(f) Art, artifacts and fabric relating to the Capitol.

(6) Other Criteria. Other criteria may be added to those listed in this R131-9-7 as determined by the Board, Subcommittee or Executive Director.

**R131-9-8. Roles of the Executive Director, the Subcommittee, and the Board.**

(1) The Executive Director, Subcommittee, or Board reserves the right in their discretion to decide whether the request should be approved, approved with conditions, or denied. No applicant has any right to have a Short Term Event, Mid Term Event, or Long Term Event (Display) at the Capitol Hill Complex.

(2) Short Term Event applications shall be processed and determined by the Executive Director, in accordance with the requirements of this Rule R131-9.

(3) Mid Term Events shall be processed and determined by the Executive Director and the Subcommittee in accordance with



requirements of this Rule R131-9. The Board shall be advised periodically of any decision of such Mid Term Events.

(4) Long Term Events (Displays) shall be processed and determined by the Executive Director and the Board, after receiving a recommendation from the Subcommittee, in accordance with this Rule R131-9.

(5) The final determination must comply with the Capitol Master Plan and applicable Facility Use Rules, including Utah Administrative Code Rules R131-2 and R131-10.

**R131-9-9. Contract and Insurance.**

(1) Any request that is approved or approved with conditions pursuant to this Rule R131-9 shall require a contract. The contract shall be approved by the Attorney General's Office and executed by the applicant and the Executive Director.

(2) Any breach of contract by the applicant or anyone under the control of the applicant, shall be grounds by the Board for removal of the Short Term Event, Mid Term Event, or Long Term Event (Display), from the Capitol Hill Complex. The Executive Director shall provide the applicant a minimum of five business days written or electronic notice of such breach of contract to cure the breach, with the exception of immediate removal if public safety is at risk or there is interference with the operation of the Capitol Hill Complex.

(3) The applicant will be responsible for providing insurance.

**R131-9-10. Inventory and Review of Long Term Events (Displays) and Specific Criteria and Causes for Removal.**

(1) On an annual basis, the Executive Director shall make available to the Subcommittee and the Board, an inventory of the Long Term Events (Displays) that remain on the Capitol Hill Complex.

(2) Long Term Events (Displays) that exceed a period of five years in length may be reviewed by the Board every five years. These Events (Displays) are subject to a new determination to either be approved to continue, be approved with conditions, or be denied approval to continue. If the five year review results in an approval with conditions that is unacceptable to the applicant, or a denial, then the Long Term Event (Display) shall be removed in accordance with the applicable contract and Facility Use Rules, including Utah Administrative Code Rules R131-2 and R131-10.

(3) The Short Term, Mid Term, or Long Term Event (Display) may be ordered removed at any time if any of the following exists:

- (a) It requires excessive or unreasonable maintenance;
- (b) It is damaged to an extent that repair is unreasonable or impracticable;
- (c) It presents a threat to public safety;
- (d) There are significant changes in the use, character or actual design of the site requiring re-evaluation of the relationship of the Event (Display) to the site;
- (e) The Board wishes to replace it with another item of greater significance; and/or
- (f) Donated items may be considered for relocation when it is more appropriately grouped with other items sharing a common theme.

**R131-9-11. Items on Loan.**

(1) Requests by anyone for art, exhibits or displays in public areas on the Capitol Hill Complex from a loaning person, entity, or institution, must be made by contacting the Capitol Preservation Board Office. The loaned item must be approved by the appropriate authority with the applicable criteria based on whether it is a Short Term Event, Mid Term Event or Long Term Event (Display). If the request for loaned artwork is approved, the Capitol Preservation Board Office will coordinate the loan, movement, and hanging of the artwork.

(2) If the loaned artwork is no longer wanted for display by the provider or the State, the Capitol Preservation Board Office will coordinate the movement or return of the artwork.

**R131-9-12. Removing or Relocating.**

(1) A request to remove or relocate any approved item may be initiated by the Board, the Subcommittee, the Executive Director, or any person.

(2) The request for removal or relocation shall be determined by the original approving authority.

(3) Removal or relocation of the item is to only be handled by the Capitol Preservation Board Office or as arranged by the Capitol Preservation Board Office.

**KEY: CPB, art, policy, program**

**Date of Enactment or Last Substantive Amendment: [~~March 3, 2005~~2012]**

**Notice of Continuation: April 7, 2010**

**Authorizing, and Implemented or Interpreted Law: 63C-9-301; 63C-9-701; 63C-9-702; 63C-9-703**

Education, Administration  
**R277-107**  
Educational Services Outside of  
Educator's Regular Employment

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 35674

FILED: 01/17/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to provide provide a new section specific to ethics and update terminology throughout the rule.

**SUMMARY OF THE RULE OR CHANGE:** The changes include adding a new section on ethics for public education employees and updating terminology throughout the rule.

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

## ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. Although there may be legal and administrative implications to public education employees for ethics violations, the new section provides more specific language under current state law. Public education employees continue to be subject to state law. There is no cost or savings associated with terminology changes.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. Although there may be legal and administrative implications to public education employees for ethics violations, the new section provides more specific language under current state law. Public education employees continue to be subject to state law. There is no cost or savings associated with terminology changes.

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

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. Although there may be legal and administrative implications to public education employees for ethics violations, the new section provides more specific language under current state law. Public education employees continue to be subject to state law. There is no cost or savings associated with terminology changes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. Although there may be legal and administrative implications to public education employees for ethics violations, the new section provides more specific language under current state law. Public education employees continue to be subject to state law. There is no compliance costs associated with these terminology changes.

**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 03/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012

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

**R277. Education, Administration.****R277-107. Educational Services Outside of Educator's Regular Employment.****R277-107-1. Definitions.**

A. "Activity sponsor" means a private or public individual or entity that employs an employee in any program in which public school students participate.

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

C. "Extracurricular activities" means those activities for students recognized or sanctioned by an educational institution which may supplement or compliment, but are not part of, its required program or regular curriculum.

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

~~[D]E.~~ "Public education employee (employee)" means a person who is employed on a full-time, part-time, or contract basis by any ~~[public school, public school district or entity]~~ LEA.

~~[E]E.~~ "Private, but public education-related activity" means any type of activity ~~[by an employee in which the principal clients are current or prospective students of the employee and for which the employee receives compensation]~~ for which the employee receives compensation and the principle clients are students at the school where the employee works. Such activities include:

- (1) tutoring;
- (2) lessons;
- (3) clinics;
- (4) camps; or
- (5) travel opportunit[~~y~~]ies.

**R277-107-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402.5 which directs the Board to make rules that establish basic ethical conduct standards for employees who provide public education-related services or activities outside of their regular employment, and 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 direction and parameters for employees who provide or participate in public education-related services or activities outside of their regular public education employment.

C. The Board recognizes that public school educators have expertise and training in various subjects and skills and should have the opportunity to enrich the community with their skills and expertise while still respecting the unique public trust that public educators have.

**R277-107-3. ~~[Local School Board]~~LEA Responsibility.**

An ~~[school or district]~~LEA may have policies providing for sponsorship or specific non-sponsorship of extracurricular

activities or opportunities for students consistent with the provisions of this rule and the law.

**R277-107-4. ~~[School or District]~~LEA Relationship to Activities Involving Educators.**

A. An ~~[school or district]~~LEA may sponsor extracurricular activities or opportunities for students. Extracurricular activities are subject to Utah's school fee laws and rules, fee waivers, procurement and all other applicable laws and rules.

B. An employee that participates in a private, but public education-related activity, is subject to the following:

(1) the employee's participation in the activity shall be separate and distinguishable from the employee's public employment as required by this rule;

(2) the employee may not, in promoting the activity:

(a) contact students at the public schools except as permitted by this rule; or

(b) use education records or information obtained through ~~their~~his public employment unless the records or information are readily available to the general public.

(3) the employee may not use school time to discuss, promote, or prepare for any private activity;

(4) the employee may:

(a) offer public education-related services, programs or activities to students provided that they are not advertised or promoted by the employee during school time.

(b) discuss the private but public education-related activity with students or parents outside of the classroom and the regular school day;

(c) use student directories or online resources which are available to the general public; and

(d) use student or school publications in which commercial advertising is allowed, to advertise and promote the activity.

C. Credit and participation in a public school program or activity may not be conditioned on a student's participation in such activities as clinics, camps, private programs, or travel activities not equally and freely available to all students.

D. No employee may state or imply to any person that participation in a regular school activity or program is conditioned on participation in a private activity.

E. No provision of this rule shall preclude a student from requesting or petitioning a teacher or school for approval of credit based on an extracurricular educational experience consistent with ~~[school/district]~~LEA policy.

**R277-107-5. Advertising.**

A. An employee may purchase advertising space to advertise an activity or service in a publication, whether or not sponsored by the public schools, that accepts paid or community advertising.

B. The advertisement may identify the activity participants and leaders or service providers by name, provide non-school ~~[telephone numbers]~~contact information, and provide details of the employee's employment experience and qualification.

C. Posters or brochures may be posted or distributed in the same manner as could be done by a member of the general public, advertising an employee's services, consistent with ~~[school and district]~~LEA policy.

D. Unless an activity is sponsored by the ~~[school or district]~~LEA, the advertisement shall state clearly and distinctly that the activity is NOT sponsored by the ~~[school or district]~~LEA.

E. The name of ~~[schools or districts]~~an LEA shall not be ~~[named]~~used in the advertisement except as ~~[they]~~the LEA's name may relate to the employee's employment history or if school facilities have been rented for the activity.

F. If the name of the employee offering the service or participating in the activity is stated in any advertisement sent to the employee's students, or is posted, distributed, or otherwise made available in the employee's school, the advertisement shall state that the activity is not school sponsored.

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

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

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

C. Consistent with Section 63G-6-1001 and Title 67, Chapter 14, public education employees shall not solicit or accept gifts, incentives, honoraria, or stipends from private sources:

(1) for their personal or family use unless the gift is of nominal value and is for birthdays, holidays or teacher appreciation occasions consistent with school or LEA policies and the Utah Public Employees Ethics Act;

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

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

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

**R277-107-~~[6]~~7. Public Education Employee/Sponsor Agreements or Contracts.**

A. An agreement between an employee and an activity sponsor shall be signed by the employee and include a statement that reads substantially: I understand that this activity is not sponsored by any ~~[school or school district]~~LEA, that my responsibilities to the activity sponsor are outside the scope of and unrelated to any public duties or responsibilities I may have as a public education employee, and I agree to comply with laws and rules of the state and policies regarding my advertising and participation.

B. The employee shall provide the ~~[district]~~LEA business administrator, ~~[or]~~superintendent, or charter school director with a signed copy of all contracts between the employee and a private activity sponsor. The ~~[school district]~~LEA shall maintain a copy in the employee's personnel file.

**KEY: school personnel**

**Date of Enactment or Last Substantive Amendment:**  
~~[September 1, 2000]~~2012

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

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

Education, Administration  
**R277-476**  
 Incentives for Elementary Reading  
 Program

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 35675

FILED: 01/17/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is repealed because the Incentives for Elementary Reading Program is no longer funded.

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

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

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. Funding for the Incentives for Elementary Reading Program was discontinued making the rule unnecessary.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. Funding for the Incentives for Elementary Reading Program was discontinued making the rule unnecessary.

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

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. Funding for the Incentives for Elementary Reading Program was discontinued making the rule unnecessary.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. Funding for the Incentives for Elementary Reading Program was discontinued making the rule unnecessary.

**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 03/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012

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

**R277. Education, Administration.**

~~[R277-476. Incentives for Elementary Reading Program.~~

~~**R277-476-1. Definitions.**~~

- ~~\_\_\_\_\_ A. "Board" means the Utah State Board of Education.~~  
~~\_\_\_\_\_ B. "Documentation of reading endorsement classes shall be the applicant teacher's responsibility.~~  
~~\_\_\_\_\_ C. "Reading endorsement" means a basic or advanced reading endorsement/reading specialist as determined by:~~  
~~\_\_\_\_\_ (1) a major or minor from a USOE approved college/university program; or~~  
~~\_\_\_\_\_ (2) satisfaction of requirements identified in the USOE Checklist for reading endorsements available from the USOE Educator Licensure Section.~~  
~~\_\_\_\_\_ D. "Scholarship" means a Reading Performance Improvement Scholarship entitling full time teachers currently teaching in the Utah public school system to receive up to \$500 in reimbursements towards reading endorsement class costs incurred during the 2000-2001 school year.~~  
~~\_\_\_\_\_ E. "USOE" means the Utah State Office of Education.~~

~~**R277-476-2. Authority and Purpose.**~~

- ~~\_\_\_\_\_ A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, by Section 53A-3-402.11(4) which directs the Board to provide a rule for the application procedures for the Scholarship and to identify what constitutes a reading endorsement at the elementary school (K-6) level, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.~~  
~~\_\_\_\_\_ B. The purpose of this rule is to specify standards and procedures for applicants for the Reading Performance Improvement Scholarship.~~

**R277-476-3. Application Process and Distribution of Funds.**

- ~~A. Funds shall be distributed to school districts to reimburse individual teachers for class costs incurred in courses taken towards reading endorsements in the 2000-2001 school year.~~
- ~~B. Teachers shall make application for Scholarships using grant applications provided by the USOE.~~
- ~~C. In the application, a teacher shall document any previous or current courses completed towards satisfaction of reading endorsements.~~
- ~~D. Applications shall be collected at the district office and signed by the teacher, the teacher's school principal, and district staff with reading supervision responsibility.~~
- ~~E. Applications shall be forwarded to the USOE by the district.~~
- ~~F. Applications shall be reviewed by the USOE staff to ensure that application requirements have been met and priority for Scholarships shall be given to teachers:
 
  - ~~(1) within K-3 grade levels;~~
  - ~~(2) in rural areas of the state; and~~
  - ~~(3) who are designated by their schools or seeking USOE reading endorsements.~~~~
- ~~G. The USOE shall select Scholarship recipients, to the extent of funds available.~~
- ~~H. Recipients and recipients' school districts shall be notified of their selection by November 17, 2000.~~
- ~~I. Recipients shall submit documentation of course completion with satisfactory grades to the district before May 31, 2001.~~
- ~~J. Districts shall request payment from the USOE for Scholarship funds paid to Scholarship recipients.~~
- ~~K. The USOE may require documentation of Scholarship reimbursements made by districts or may conduct random audits of documentation provided to districts by Scholarship recipients.~~

**KEY:** ~~teachers, reading, scholarship~~

**Date of Enactment or Last Substantive Amendment:** ~~September 1, 2000~~

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

**Authorizing, and Implemented or Interpreted Law:** ~~Art X-See 3; 53A-13-101.6; 53A-1-401(3)]~~

**Education, Administration**  
**R277-484-3**  
**Deadlines for Data Submission**

**NOTICE OF PROPOSED RULE**  
 (Amendment)

DAR FILE NO.: 35676  
 FILED: 01/17/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R277-484-3 is amended to change the date from July 15 to December 15 for the Bus Driver

Credentials report to be submitted to the Utah State Office of Education (USOE). December 15 is a more suitable date because new bus drivers will have been trained and completed fall professional development training.

SUMMARY OF THE RULE OR CHANGE: The date for submission of the Bus Driver Credentials report to the USOE is changed from July 15 to December 15.

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 date change affects local education agencies in submitting an accurate report to the USOE.
- ◆ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The date change better accommodates local education agencies in submitting an accurate report to the USOE.
- ◆ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. This rule applies to public education and does not affect businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The date change affects local education agencies and does not affect individuals.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The date change better accommodates local education agencies in submitting an accurate report to the USOE.

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 03/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012

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

**R277. Education, Administration.**

**R277-484. Data Standards.**

**R277-484-3. Deadlines for Data Submission.**

For the purpose of submission of student level data, each Utah LEA shall participate in UTREx as of July 1, 2011. LEAs shall submit data to the USOE through the following reports by 5:00 p.m. MST on the date and in the format specified by the USOE:

A. February 28 - Community Development and Renewal Agency and/or Redevelopment Agency Taxing Entity Committee Representative List - Business Services.

B. June 15

(1) Immunization Status Report (to Utah Department of Health) - final;

(2) Safe School Incidents Report - for current year.

C. June 29 - CACTUS - final update for current year.

D. July 7

(1) Data Clearinghouse File - final comprehensive update for prior year - Data, Assessment, and Accountability - effective until July 1, 2011;

(2) UTREx - final comprehensive update for prior year - Data, Assessment, and Accountability - effective on July 1, 2011.

E. July 15

(1) Adult Education - final report for prior year;

~~(2) Bus Driver Credentials Report - for current year - Business Services;~~

(3) Classified Personnel Report - for prior year - Business Services;

(4) Driver Education Report - for prior year - Educator Quality;

(5) ESEA Choice and Supplemental Services Report - for prior year;

(6) Fee Waivers Report - for prior year;

(7) Fire Drill Compliance Statement - for prior year;

(8) Home Schooled Students Report - for prior year;

(9) Teacher Benefits Report - for prior year;

(10) Pupil Transportation Statistics - for prior year:

(a) Bus Inventory Report;

(b) Year End Pupil Transportation Statistics Reports.

F. September 15

(1) Membership Audit Report - for prior year;

(2) Adult Education - Financial Audit for prior year.

G. October 1

(1) Annual Financial Report (AFR) - for prior year;

(2) Annual Program Report (APR) - for prior year.

H. October 15

(1) Data Clearinghouse File - update as of October 1 for current year - effective until July 1, 2011;

(2) UTREx - update as of October 1 for current year - effective on July 1, 2011;

(3) YICSIS - update as of October 1 for current year.

I. November 1

(1) Enrollment and Transfer Student Documentation Audit Report - for current year;

(2) Immunization Status Report - for current year;

(3) Pupil Transportation Statistics for state funding:

(a) Schedule A1 (Miles, Minutes, Students Report) - projected for current year;

(b) Schedule B (Miscellaneous Expenditure Report) - for prior year;

(4) Negotiations report - for current year.

J. November 15

(1) CACTUS - update for current year; and

(2) Free and Reduced Price Lunch Enrollment Survey - as of October 31 for current year.

K. November 30 - Financial Audit Report - for prior year.

L. December 15[~~-~~]

(1) Data Clearinghouse File - update as of December 1 for current year - effective until July 1, 2011[~~-~~];

~~(2) Bus Driver Credentials Report - for current year - Business Services.~~

M. December 15 - UTREx - update as of December 1 for current year - effective on July 1, 2011.

**KEY: data standards, reports, deadlines, research data requests**

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

**Notice of Continuation: June 2, 2008**

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

Education, Administration  
**R277-503**  
Licensing Routes

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 35677

FILED: 01/17/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to provide a new provision specific to licensing of online instructors. The amendments also include minor terminology changes and remove outdated language.

**SUMMARY OF THE RULE OR CHANGE:** New language regarding licensing specific to online instructors is added in Section R277-503-4 of this rule. Minor terminology and outdated language issues are addressed throughout the rule.

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

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. New substantive language in the rule applies specifically to online educators.

♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. New language in the rule applies specifically to online educators.

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

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no compliance costs for affected persons. New language in the rule provides criteria specific to online educators but does not involve any cost or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The new substantive language provides criteria specific to online educators but does not have any compliance costs.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012

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

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

### **R277-503. Licensing Routes.**

#### **R277-503-1. Definitions.**

A. "Alternative Routes to Licensure (ARL) advisors" mean a USOE specialist with specific professional development and educator licensing expertise, and a USOE-designated curriculum specialist.

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

C. "Competency-based" means a teacher training approach structured for an individual to master and demonstrate content and teaching skills and knowledge at the individual's own pace and sometimes in alternative settings.

D. "Educational Testing Service (ETS)" is a worldwide educational testing and measurement organization.

E. "Endorsement" means a qualification based on content area mastery obtained through a higher education major or minor or through a state-approved endorsement program.

F. "Letter of authorization" means a formal approval given to an individual such as an out-of-state candidate or a first year ARL candidate who is employed by a school district/charter school in a position requiring a professional educator license who has not completed the requirements for an ARL license or a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements.

G. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to applicants who have also met all ancillary requirements established by law or rule.

H. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license and:

(1) requirements established by law or rule;

(2) three years of successful education experience within a five-year period; and

(3) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public or accredited private school.

I. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received National Board Certification or a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school, or holds a Speech-Language Pathology area of concentration and has obtained American Speech-Language Hearing Association (ASHA) certification.

J. "National Association of State Directors of Teacher Education and Certification (NASDTEC)" is an educator information clearinghouse that maintains an interstate reciprocity agreement and database for its members regarding educators whose licenses have been suspended or revoked.

K. "National Council for Accreditation of Teacher Education (NCATE)" is a nationally recognized organization which accredits the education units providing baccalaureate and graduate degree programs for the preparation of teachers and other professional personnel for elementary and secondary schools.

L. "NCLB core academic subject" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

M. "Pedagogical knowledge" means practices and strategies of teaching, classroom management, preparation and planning that ~~go beyond~~ are in addition to an educator's content knowledge of an academic discipline.

N. "Regional accreditation" means formal approval of a school that has met standards considered to be essential for the operation of a quality school program by the following organizations:

(1) Middle States Commission on Higher Education;

(2) New England Association of Schools and Colleges;

(3) North Central Association Commission on Accreditation and School Improvement;

(4) Northwest Accreditation Commission;

(5) Southern Association of Colleges and Schools; and

(6) Western Association of Schools and colleges: Senior College Commission.

O. "Restricted endorsement" means a qualification based on content area knowledge obtained through a USOE-approved program of study or test and shall be available only to teachers in necessarily existent small school settings.

P. "State-approved Endorsement Plan (SAEP)" means a plan in place developed between the USOE and a licensed educator to direct the completion of endorsement requirements by the educator.

Q. "Teacher Education Accreditation Council (TEAC)" is a nationally recognized organization which provides accreditation of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of K-12 teachers.

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

#### **R277-503-2. 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)(a) which directs the Board to establish rules and minimum standards for the qualification and licensing of educators and ancillary personnel who provide direct student services, 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 minimum eligibility requirements for applicants for teacher licenses and to provide explanation and criteria of various teacher licensing routes. The rule also provides criteria and procedures for licensed teachers to earn endorsements and the requirement for all applicants for licenses to have and pass criminal background checks.

#### **R277-503-3. USOE Licensing Eligibility.**

A. Traditional college/university license - A license applicant shall:

- (1) have completed an approved college/university teacher preparation program,
- (2) have been recommended for licensing, and
- (3) have satisfied all other requirements for educator licensing required by law; or

B. Alternative Licensing Route

- (1) A license applicant shall have a bachelors degree or higher from an accredited higher education institution in an area related to the position he seeks; and
- (2) A license applicant shall have skills, talents or abilities, as evaluated by the employing entity, making the applicant appropriate for a licensed teaching position and eligible to participate in an ARL program.

(3) While beginning an alternative licensing program, an applicant shall be approved for employment under a letter of authorization for a maximum of one school year and may be employed under an ARL license for an additional two years. An ARL program may not exceed three school years.

C. All license applicants seeking a Level 1 Utah educator license or an area of concentration or an endorsement in an NCLB core academic subject area[~~after March 3, 2007~~] shall submit passing score(s) on a rigorous Board-designated content test, where

tests are available, prior to the issuance of a renewable license or endorsement.

D. For each endorsement in an NCLB core academic area to be posted on the license, secondary teachers are required to submit passing scores on a rigorous Board-designated content test(s), where test(s) are available.

E. An applicant shall submit electronic or original documentation of passing score(s) on a rigorous Board-designated content test to the USOE.

F. A licensure candidate that has completed a Utah university/college teacher preparation program prior to January 1, 2011 who submits a score below the final Utah state passing score on the test designated in R277-503-3C shall be issued a nonrenewable conditional Level 1 license. If the educator fails to submit a passing score on a rigorous Board-designated content test during the three-year duration of the conditional Level 1 license, the educator's license or endorsement shall lapse on the educator's designated renewal date.

G. Any licensure candidate, except those described in R277-503-3F, recommended for a Utah Level 1 license[~~after January 1, 2011~~] who does not submit a passing score on the test designated in R277-503-3C shall not be eligible for licensure until achieving a passing score.

#### **R277-503-4. Licensing Routes.**

Applicants who seek Utah educator licenses shall successfully complete accredited programs or legislatively mandated programs consistent with this rule.

A. Institution of higher education teacher preparation programs shall be:

(1) Nationally accredited by:

- (a) NCATE; or
- (b) TEAC; and

(2) As of January 1, 2012, approved by USOE to recommend for licensure in the license area or endorsements or both in designated areas.

B. An applicant that meets the eligibility requirements in R277-503-3B and is assigned to teach exclusively in an online setting shall be eligible to begin the ARL program but upon completion of the ARL program shall earn a license area of concentration that is restricted to providing instruction in an online setting.

[~~B~~]C. USOE Alternative Routes to Licensure (ARL)

(1) To be eligible to begin the ARL program, an applicant for an elementary or early childhood school position shall have a bachelors degree and at least 27 semester hours of applicable content courses distributed among elementary curriculum areas. Elementary curriculum areas are provided under R277-700-4. To proceed from temporary license status, an ARL applicant shall submit a score on a Board-designated content test to be used as a diagnostic tool and as part of the development of a professional plan and the issuance of the ARL license.

(2) To be eligible to begin the ARL program, applicants for secondary school positions shall hold a degree major or major equivalent directly related to the assignment. To proceed from temporary license status, an ARL license applicant shall submit a score on a Board-designated content test, where available, to be used as a diagnostic tool and as part of the development of a professional plan and the issuance of the ARL license.



## (3) Licensing by Agreement

(a) An individual employed by a school district shall satisfy the minimum requirements of R277-503-3 as a teacher with appropriate skills, training or ability for an identified licensed teaching position in the district.

(b) An applicant shall obtain an ARL application for licensing from the USOE or USOE web site.

(c) After evaluation of candidate transcript(s) and rigorous Board-designated content test score, the USOE ARL advisors and the candidate shall determine the specific content knowledge and pedagogical knowledge required of the license applicant to satisfy the requirements for licensing.

(d) The USOE ARL advisors may identify institution of higher education courses, district sponsored coursework, Board-approved professional development, or Board-approved competency tests to prepare or indicate content, content-specific, and developmentally-appropriate pedagogical knowledge required for licensing.

(e) An applicant who has been employed as a full-time instructional paraeducator may offer that experience in lieu of one or more pedagogy courses as follows:

(i) The applicant has had at least three years of paraeducator experience;

(ii) The applicant's experience has been successful based on documentation from the school/school district; and

(iii) The USOE has approved the applicant's experience in lieu of pedagogy course(s).

(f) The employing school district shall assign a trained mentor to work with the applicant for licensing by agreement.

(g) The school district shall supervise and assess the license applicant's classroom performance during a minimum one school year full-time employment experience. The district may request assistance from an institution of higher education or the USOE in the monitoring and assessment.

(h) The school district shall assess the license applicant's disposition as a teacher following a minimum one school year full-time teaching experience. The district may request assistance in this assessment; and

(i) The USOE ARL advisors shall annually review and evaluate the license applicant following training, assessments or course work, and the full-time teaching experience and evaluation by the school district.

(j) Consistent with evidence and documentation received, the USOE ARL advisor may recommend the license applicant to the Board for a Level 1 educator license.

## (4) USOE Licensing by Competency

(a) A school district/charter school employs an individual as a teacher with appropriate skills, training or ability for an identified licensed teaching position in the district who satisfies the minimum requirements of R277-503-3.

(b) An employing school district/charter school, in consultation with the applicant and the USOE, shall identify Board-approved content knowledge and pedagogical knowledge examinations. The applicant shall pass designated examinations demonstrating the applicant's adequate preparation and readiness for licensing.

(c) The employing school district/charter school shall assign a trained mentor to work with the applicant for licensing by competency.

(d) The school district/charter school shall monitor and assess the license applicant's classroom performance during a minimum one-year full-time teaching experience.

(e) The school district/charter school shall assess the license applicant's disposition for teaching following a minimum one-year full-time teaching experience.

(f) The school district/charter school may request assistance in the monitoring or assessment of a license applicant's classroom performance or disposition for teaching.

(g) Following the one-year training period, the school district and USOE shall verify all aspects of preparation (content knowledge, pedagogical knowledge, classroom performance skills, and disposition for teaching) to the USOE.

(h) If all evidence/documentation is complete, the USOE shall recommend the applicant for a Level 1 educator license.

(5) USOE ARL candidates under R277-503-4B(3) and (4) may teach under a letter of authorization for a maximum of one year. The letter of authorization shall expire after the first year on June 30 when the ARL candidate submits documentation of progress in the program, and the candidate shall be issued an ARL license.

(6) The ARL license may be extended annually for two subsequent school years with documentation of progress in the ARL program.

(7) Documentation shall include, specifically, a copy of the supervisor's successful end-of-year evaluation, copies of transcripts and test results or both showing completion of required coursework, verification of working with a trained mentor, and satisfaction of the full-time full year experience.

[E]D. School district/charter school specific competency-based licenses:

(1) A local board/charter school board may apply to the Board for a school district/charter school specific license to fill a position in the school district/charter school. The application shall demonstrate that other licensing routes for the applicant are untenable or unreasonable.

(2) The employing school district/charter school shall request a school district/charter school specific license no later than 60 days after the date of the individual's first day of employment.

(3) The application for the school district/charter school specific license from the local board/charter school board for an individual to teach one or more core academic subjects shall provide documentation of:

(a) the individual's bachelors degree; and

(b) for a K-6 grade teacher, the satisfactory results of the rigorous state test including subject knowledge and teaching skills in the required core academic subjects under Section 53A-6-104.5(3)(ii) as approved by the Board; or

(c) for the teacher in grades 7-12, demonstration of a high level of competency in each of the core academic subjects in which the teacher teaches by completion of an academic major, a graduate degree, course work equivalent to an undergraduate academic major, advanced certification or credentialing, or results or scores of a rigorous state core academic subject test, similar to the test required under R277-503-3E, in each of the core academic subjects in which the teacher teaches.

(4) The application for the school district/charter school specific license from the local board/charter school board for non-core teachers in grades K-12 shall provide documentation of:

(a) a bachelors degree, associates degree or skill certification; and

(b) skills, talents or abilities specific to the teaching assignment, as determined by the local board/charter school board.

(5) Following receipt of documentation and consistent with Section 53A-6-104.5(2), the USOE shall approve a district/charter school specific competency-based license.

(6) If an individual with a district/charter school specific competency-based license leaves the district before the end of the employment period, the district shall notify the USOE Licensing Section regarding the end-of-employment date.

(7) The individual's district/charter school specific competency-based license shall be valid only in the district/charter school that originally requested the letter of authorization and for the individual originally employed under the letter of authorization or district/charter school specific competency-based license.

(8) The written copy of the district/charter school specific competency-based license shall prominently state the name of the school district/charter school followed by DISTRICT/CHARTER SCHOOL SPECIFIC COMPETENCY-BASED LICENSE.

(9) A school district/charter school may change the assignment of a school district/charter school specific competency-based license holder but notice to USOE shall be required and additional competency-based documentation may be required for the teacher to remain qualified.

~~[(10) School district/charter school specific competency-based license holders are at-will employees consistent with Section 53A-8-106(5).]~~

(10) If an individual holds a Utah license, the application shall be subject to additional USOE review based upon the following criteria:

(a) license level;

(b) current license status;

(c) area of concentration and endorsements on Utah license; and

(d) circumstances justifying the school district/charter school specific license.

(11) If the application is not approved based on a USOE review of the criteria provided in R277-503-4C(11), appropriate licensure procedures shall be recommended to the requesting district/charter school. The applicant may be required to renew an expired license, apply for an endorsement, pass appropriate Board approved tests consistent with R277-503-3C, obtain an additional area of concentration, apply to Alternative Route to Licensure, or satisfy other reasonable standards.

#### **R277-503-5. Endorsement Routes.**

A. An applicant shall successfully complete one of the following for endorsement:

(1) a USOE-approved institution of higher education educator preparation program with endorsement(s); or

(2) assessment, approval and recommendation by a designated and subject-appropriate USOE specialist. The USOE shall be responsible for final recommendation and approval; or

(3) a USOE-approved Utah institution of higher education or Utah school district-sponsored endorsement program which includes content knowledge and content-specific pedagogical knowledge approved by the USOE.

(a) The university or school district shall be responsible for final review and recommendation.

(b) The USOE shall be responsible for final approval.

B. A restricted endorsement shall be available and limited to teachers in necessarily existent small schools as determined under R277-445. Teacher qualifications shall include at least nine semester hours of USOE-approved university-level courses in each course taught by the teacher holding a restricted endorsement.

C. All provisions that directly affect the health and safety of students required for endorsements, such as prerequisites for drivers education teachers or coaches, shall apply to applicants seeking endorsements through all routes under this rule.

D. Prior to an individual taking courses, exams or seeking a recommendation in the ARL licensing program, the individual shall have school district/charter school and USOE authorization.

#### **R277-503-6. Additional Provisions.**

A. All programs or assessments used in applicant preparation shall meet national professional educator standards such as those developed by NCATE and TEAC.

B. All educators licensed under this rule shall also:

(1) complete the background check required under Section 53A-6-401;

(2) satisfy the professional development requirements of R277-502; and

(3) be subject to all Utah licensing requirements and professional standards.

C. An applicant may satisfy the student teaching/clinical experience requirement for licensing through successful completion of either the licensing by agreement or by competency route.

#### **KEY: teachers, alternative licensing**

**Date of Enactment or Last Substantive Amendment:**  
~~[November 8, 2010]~~ 2012

**Notice of Continuation:** March 29, 2007

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

## Education, Administration **R277-511** Highly Qualified Teacher Grants

### NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 35678

FILED: 01/17/2012

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is repealed because the Highly Qualified Teacher Grants Program is no longer funded.

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

**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. Funding for the Highly Qualified Teacher Grants Program has been discontinued making the rule unnecessary.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. Funding for the Highly Qualified Teacher Grants Program has been discontinued making the rule unnecessary.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This rule applies to public education and does not affect businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. Funding for the Highly Qualified Teacher Grants Program has been discontinued making the rule unnecessary.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. Funding for the Highly Qualified Teacher Grants Program has been discontinued making the rule unnecessary.

**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 03/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON:** 03/09/2012

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

**R277. Education, Administration.**  
~~[R277-511. Highly Qualified Teacher Grants.~~  
**R277-511-1. Definitions.**

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

~~B. "National Board Certification" means a current certificate issued by the National Board for Professional Teaching Standards.~~

~~C. "Test" means those tests required under R277-510 or others specifically identified that satisfy the highly qualified teacher standards of the No Child Left Behind Act (NCLB), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11).~~

~~D. "USOE" means the Utah State Office of Education.~~

**R277-511-2. 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 and Section 53A-6-112(7) which directs the Board to adopt rules to administer this program.~~

~~B. The purpose of this rule is to provide consistent definitions, to establish a grant program in which school districts and charter schools may choose to participate, and to establish a formula and timelines for distribution of funds to grant recipients.~~

**R277-511-3. Responsibilities of Grant Recipients.**

~~A. A school district or charter school that applies to participate in the Highly Qualified Teacher Grant Program shall agree to match all grant funds with equal school district or charter school funds.~~

~~B. Funds received in this program may be used only consistent with the following:~~

- ~~(1) Reimbursement to teachers for the cost of taking tests to meet federal NCLB highly qualified teacher standards;~~
- ~~(2) Reimbursement to teachers for testing fees and travel expenses specific to taking tests; and~~
- ~~(3) Reimbursement to teachers for out-of-pocket expenses incurred in obtaining National Board Certification including:~~

~~(a) expenses for materials, required textbooks or consumables, computer programs or technology, travel, tuition costs, fees, special enrollment/program fees, and~~

~~(b) other expenses approved by the USOE and necessary to complete the National Board Certification process.~~

~~C. Test preparation courses and other similar planning or preparatory expenses are not reimbursable.~~

**R277-511-4. Distribution of Funds.**

~~A. Funds shall be available to school districts and charter schools that complete an application and apply for funds based on the following formula:~~

~~(1) School districts shall be eligible for \$5000 base awards;~~

~~(2) Charter schools shall be eligible for \$2000 base awards;~~

~~(3) Funds remaining after school district/charter school base awards are allocated, shall be distributed to all approved applicants based on proportionate enrollment.~~

~~(4) All funds shall be expended no later than June 30, 2009.~~

~~B. Grant applications, provided by the USOE, shall be available to school districts and charter schools by December 1, 2006.~~

~~C. Completed grant applications shall be submitted to the USOE by January 15, 2007.~~

~~D. School districts and charter schools shall be notified of funding by February 15, 2007.~~

~~E. Grant recipients shall satisfy all requirements for funding under Section 53A-6-112 and R277-511-3.~~

~~F. Grant applications shall include an evaluation component which shall be provided to the USOE no later than September 1, 2009 or within 30 days of an earlier termination of the grant program.~~

~~G. Grant recipients shall report annually by August 1 for the previous school year the following:~~

~~(1) names of teacher participants;~~

~~(2) increased number of highly qualified teachers in the district or charter school; and~~

~~(3) increased number of teachers with National Board Certification.~~

**KEY: highly qualified, teacher, grants**

**Date of Enactment or Last Substantive Amendment: January 23, 2007**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-112(7)**

Education, Administration  
**R277-513**  
 Dual Certification

**NOTICE OF PROPOSED RULE**  
 (Repeal)  
 DAR FILE NO.: 35679  
 FILED: 01/17/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is repealed because much of the language and processes in the rule are outdated. Language and provisions that continue to be necessary have been incorporated into other rules as appropriate.

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

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

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. This rule is repealed because much of the language and processes in the rule are outdated.

◆ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. This rule is repealed because much of the language and processes in the rule are outdated.

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

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. This rule is repealed because much of the language and processes in the rule are outdated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. This rule is repealed because much of the language and processes in the rule are outdated.

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

**R277. Education, Administration.**

**[R277-513. Dual Certification.**

**R277-513-1. Definitions.**

~~A. "Basic Certificate" means the initial certificate issued by the Board permitting the holder to be employed as an educator in the public schools.~~

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

~~C. "Core Curriculum" means minimum academic standards as established by the Utah State Board of Education which shall be mastered by all students K-12 as a requisite for graduation from Utah's secondary schools.~~

~~D. "Endorsement" means a specialty field or area listed on a certificate which indicates specific qualification of the holder.~~

~~E. "ESL" means English as a Second Language an instructional method whereby an instructor teaches students of limited English-speaking ability how to use standard English in order to become functional in the world of work or in their daily activities.~~

\_\_\_\_\_ F. "Standard Certificate" means a certificate issued by the Board after a holder has demonstrated teaching competency under the Basic Certificate.

**R277-513-2. Authority and Purpose.**

\_\_\_\_\_ A. This rule is authorized under Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board, Sections 53A-6-101(1) and (2), U.C.A. 1953, which permit the Board to issue certificates for educators, and Section 53A-1-401(3), U.C.A. 1953, which allows the Board to adopt rules in accordance with its responsibilities.

\_\_\_\_\_ B. The purpose of this rule is to specify the procedure whereby a teacher who holds one level of teaching certificate may qualify for a certificate on another level or whereby a teacher may be certified in a specific subject area.

**R277-513-3. Dual Certification Levels.**

\_\_\_\_\_ A. This section applies to all of the following certification levels:

- \_\_\_\_\_ (1) elementary to secondary;
- \_\_\_\_\_ (2) secondary to elementary;
- \_\_\_\_\_ (3) elementary to special education;
- \_\_\_\_\_ (4) special education to elementary.

\_\_\_\_\_ B. A teacher who holds a Basic or Standard Certificate on the Early Childhood, Elementary, Secondary or Special Education level, may qualify for a certificate on another level by completing an approved program at the new level. Specific certification requirements for that level included in the Standards for Early Childhood, Elementary, Secondary, Preschool Special Education, Special Education and Communications Disorders Certificates must be met.

\_\_\_\_\_ C. Competencies developed as a result of completion of an approved program on one level of training which are also relevant and substantially equivalent to the competencies required on the other level shall be evaluated for the purpose of waiving comparable course and experience requirements.

\_\_\_\_\_ D. Applications for dual certification from out-of-state candidates shall be evaluated according to the requirements of the minimum approved program of a Utah teacher education institution. Recommendation for certification from an institution in Utah is not required unless the applicant needs additional preparation and completes that training at a Utah institution.

\_\_\_\_\_ E. Two years of successful teaching experience may be accepted in lieu of all or any part of the student teaching requirement.

\_\_\_\_\_ F. Applicants for a Basic Elementary Certificate with a Basic Early Childhood Education Certificate must either have appropriate course work and laboratory experience or demonstrate the competencies prescribed for prospective intermediate grade teachers that provide greater depth in academic subjects to be taught.

**R277-513-4. Dual Certification of Secondary Music Teachers.**

\_\_\_\_\_ A. Teachers holding or eligible to hold Basic or Standard secondary certification with a music endorsement may qualify to teach vocal or instrumental music in the elementary schools of the state by demonstrating the competency to:

- \_\_\_\_\_ (1) express a basic philosophy regarding appreciation and understanding of music at the elementary school level;

\_\_\_\_\_ (2) identify the physical traits, mental traits, social-emotional traits, and needs relative to the growth and development of elementary school children;

\_\_\_\_\_ (3) describe the characteristics of the child's voice at the kindergarten, primary, and intermediate levels relative to tone production and range;

\_\_\_\_\_ (4) identify the physical characteristics which will influence the child's ability to play various musical instruments;

\_\_\_\_\_ (5) identify and interpret the concepts of rhythm, melody, harmony, form, and expression as they appear in musical notation at the elementary school level;

\_\_\_\_\_ (6) perform basic movement exercises and demonstrate coordination skills as they relate to rhythm, form, and melody;

\_\_\_\_\_ (7) perform on basic classroom musical instruments such as the autoharp, recorder, tone bells, and ukulele;

\_\_\_\_\_ (8) select and perform a repertoire of music literature appropriate to children at primary and intermediate grade levels including songs, recordings of master works, and orchestra and band music appropriate for the elementary school.

\_\_\_\_\_ B. Applicants shall complete a successful elementary school clinical experience that demonstrates:

- \_\_\_\_\_ (1) management techniques, including scheduling;
- \_\_\_\_\_ (2) teaching techniques;
- \_\_\_\_\_ (3) grading procedures;
- \_\_\_\_\_ (4) curriculum planning;
- \_\_\_\_\_ (5) extra curricular activity planning; and
- \_\_\_\_\_ (6) lesson planning.

**R277-513-5. Dual Certification of Secondary Physical Education Teachers.**

\_\_\_\_\_ Teachers holding secondary certification with a physical education endorsement may qualify to teach physical education in the elementary schools of the state by demonstrating the competency to:

\_\_\_\_\_ A. Perform fundamental skills and body movements in games, gymnastics, and dance that would be encountered in an elementary school physical education curriculum.

\_\_\_\_\_ B. Analyze skills and correct movement errors.

\_\_\_\_\_ C. Actively participate in developmental skills pertinent to the education of elementary school-age children.

\_\_\_\_\_ D. Articulate the importance of physical fitness for children and the activities that contribute to fitness.

\_\_\_\_\_ E. Implement correct principles of teaching physical education to children.

\_\_\_\_\_ F. Plan lessons, units, and program sequences for young children.

\_\_\_\_\_ G. Select teaching methods appropriate for the teacher-learner activities and learning environment.

\_\_\_\_\_ H. Organize a class for most effective learning.

\_\_\_\_\_ I. Identify the growth and sequential development of movement patterns in children.

\_\_\_\_\_ J. Adapt physical education activities for atypical children.

\_\_\_\_\_ K. Design and implement a program of physical fitness for children.

\_\_\_\_\_ L. Express a philosophy of physical education for children.

\_\_\_\_\_ M. Recognize potentially hazardous situations and propose preventative measures;

~~N. Report the status and progress of skill development.~~

**R277-513-6. Dual Certification of Secondary Art Teachers.**

~~A. Teachers holding or eligible to hold secondary certification with an art endorsement may qualify to teach art in the elementary schools of the state by demonstrating the competency to:~~

- ~~(1) express a philosophy of appropriate visual arts instruction at the elementary school level;~~
- ~~(2) identify the physical, mental, and social-emotional traits and needs of elementary school children;~~
- ~~(3) use art media appropriate for elementary schools;~~
- ~~(4) implement the State core required for the visual arts, in grades kindergarten through six in an appropriate sequence;~~
- ~~(5) integrate the arts, including art, music, dance, and drama, as well as the visual arts, into other areas of the curriculum;~~
- ~~(6) use art prints and other visual resources at all grade level to assist elementary students in understanding and implementing basic art concepts;~~
- ~~(7) appropriately display and critique elementary student art work;~~
- ~~(8) use good classroom management techniques for media and materials used in elementary art activities;~~
- ~~(9) assist other elementary teachers to understand and implement basic art concepts.~~

~~B. Applicants shall complete a successful elementary school clinical experience that demonstrates competency in:~~

- ~~(1) management techniques;~~
- ~~(2) teaching techniques;~~
- ~~(3) lesson planning and scheduling;~~
- ~~(4) grading procedures;~~
- ~~(5) curriculum planning;~~
- ~~(6) extra-curricular activity planning.~~

**R277-513-7. Dual Certification of ESL Teachers.**

~~A. Teachers holding or eligible to hold Basic or Standard secondary certification with an ESL endorsement may qualify to teach ESL in the elementary schools of the state by demonstrating the competency to:~~

- ~~(1) express a philosophy of appropriate ESL instruction at the elementary school level;~~
- ~~(2) identify the physical, mental, and social-emotional traits and needs of elementary school children;~~
- ~~(3) select and use ESL media and procedures appropriate for elementary schools;~~
- ~~(4) implement the State Core required for language arts (grades K-6) in an appropriate sequence for limited English-proficient students;~~
- ~~(5) integrate ESL into other areas of the curriculum; and~~
- ~~(6) assist other elementary teachers to understand and implement appropriate procedures for mainstreaming limited English-proficient students into other areas of the curriculum.~~

~~B. Candidates shall complete a successful elementary school clinical experience that demonstrates competency in:~~

- ~~(1) management techniques;~~
- ~~(2) teaching techniques;~~
- ~~(3) lesson planning (including scheduling);~~
- ~~(4) grading procedures;~~

~~(5) curriculum planning; and~~

~~(6) extracurricular activity planning.~~

~~KEY: professional competency, school personnel, teacher certification~~

~~Date of Enactment or Last Substantive Amendment: 1991~~

~~Notice of Continuation: March 30, 2011~~

~~Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-101(1) and (2); 53A-1-401(3)]~~

Education, Administration  
**R277-520**  
Appropriate Licensing and Assignment  
of Teachers

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35680

FILED: 01/17/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to incorporate necessary language from Rule R277-513 which is being repealed. (DAR NOTE: The proposed repeal of Rule R277-513 is under DAR No. 35679 in this issue, February 1, 2012, of the Bulletin.)

**SUMMARY OF THE RULE OR CHANGE:** The amendments include adding a definition and adding new language in Section R277-520-4.

**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 language in the rule incorporates necessary language from a rule that is mostly outdated and is being repealed.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The new language in the rule incorporates necessary language from a rule that is mostly outdated and is being repealed.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to the state budget. This rule applies to public education and does not affect businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The new language in the rule incorporates necessary language from a rule that is mostly outdated and is being repealed.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. The new language in the rule incorporates necessary language from a rule that is mostly outdated and is being repealed.

**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 03/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012**

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

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**R277. Education, Administration.**

**R277-520. Appropriate Licensing and Assignment of Teachers.**

**R277-520-1. Definitions.**

A. "At will employment" means employment that may be terminated for any reason or no reason with minimum notice to the employee consistent with the employer's designated payroll cycle.

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

C. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes information 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.

D. "Composite major" means credits earned in two or more related subjects, as determined by an accredited higher education institution.

E. "Content specialist" means a licensed educator who provides instruction or specialized support for students and teachers in a school setting.

[E]E. "Core academic subjects or areas" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography

under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11).

[F]G. "Demonstrated competency" means that a teacher shall demonstrate current expertise to teach a specific class or course through the use of lines of evidence which may include completed USOE-approved course work, content test(s), or years of successful experience including evidence of student performance.

[G]H. "Eminence" means distinguished ability in rank, in attainment of superior knowledge and skill in comparison with the generally accepted standards and achievements in the area in which the authorization is sought as provided in R277-520-6.

[H]I. "Highly qualified" means a teacher has met the specific requirements of ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23).

[I]J. J-1 Visa means a visa issued by the U.S. Department of State to an international exchange visitor who has qualified by training and experience to work in U.S. schools for a period not to exceed three years. Such international exchange visitors may qualify for "highly qualified" status under NCLB only if assigned within their subject matter competency.

[J]K. "LEA" means a school district or charter school.

[K]L. "Letter of authorization" means a designation given to an individual for one year, such as an out-of-state candidate or individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements and who is employed by a school district. A teacher working under a letter of authorization who is not an alternative routes to licensing (ARL) candidate, cannot be designated highly qualified under R277-520-1[H]L.

[L]M. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to candidates who have also met all ancillary requirements established by law or rule.

[M]N. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license as well as completion of Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers, as provided in R277-522, a minimum of three years of successful teaching in a public or accredited private school, and completion of all NCLB requirements at the time the applicant is licensed.

[N]O. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received, in the educator's field of practice, National Board certification or a doctorate in education or in a field related to a content area under R277-501-1M from an accredited institution.

[O]P. "License areas of concentration" are obtained by completing an approved preparation program or an alternative preparation program in a specific area of educational studies such as Early Childhood (K-3), Elementary 1-8, Middle (5-9), Secondary (6-12), Administrative/Supervisory, Applied Technology Education, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders.

[P]Q. "License endorsement (endorsement)" means a specialty field or area earned through course work equivalent to at least an academic minor (with pedagogy) or through demonstrated competency; the endorsement shall be listed on the Professional Educator License indicating the specific qualification(s) of the holder.

[Q]R. "Major equivalency" means 30 semester hours of USOE and local board-approved postsecondary education credit or CACTUS-recorded professional development in NCLB core academic subjects as appropriate to satisfy NCLB highly qualified status.

[R]S. "No Child Left Behind Act (NCLB)" means the federal Elementary and Secondary Education Act, P.L. 107-110, Title IX, Part A, Section 9101(11).

[S]T. "Professional staff cost program funds" means funding provided to school districts based on the percentage of a district's professional staff that is appropriately licensed in the areas in which staff members teach.

[F]U. "State qualified" means that an individual has met the Board-approved requirements to teach core or non-core courses in Utah public schools.

[H]V. "SAEP" means State Approved Endorsement Program. This identifies an educator working on a professional development plan to obtain an endorsement.

[X]W. "USOE" means the Utah State Office of Education.

#### **R277-520-2. 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 gives the Board authority to adopt rules in accordance with its responsibilities, and Section 53A-6-104(2)(a) which authorizes the Board to rank, endorse, or classify licenses. This rule is also necessary in response to ESEA NCLB.

B. The purpose of this rule is to provide criteria for local boards to employ educators in appropriate assignments, for the Board to provide state funding to local school boards for appropriately qualified and assigned staff, and for the Board and local boards to satisfy the requirements of ESEA in order for local boards to receive federal funds.

#### **R277-520-3. Required Licensing.**

A. All teachers in public schools shall hold a Utah educator license along with appropriate areas of concentration and endorsements.

B. LEAs shall receive assistance from the USOE to the extent of resources available to have all teachers fully licensed.

C. LEAs are expected to hire teachers who are licensed or in the process of becoming fully licensed and endorsed. Failure to ensure that an educator has appropriate licensure consistent with timelines provided in R277-501 may result in the USOE withholding all LEA funds related to salary supplements under Section 53A-17a-153 and R277-110 and educator quality under Section 53A-17a-107(2) and R277-486 until teachers are appropriately licensed.

#### **R277-520-4. Appropriate Licenses with Areas of Concentration and Endorsements.**

A. An early childhood teacher (kindergarten through 3) shall hold a Level 1, 2, or 3 license with an early childhood license area of concentration.

B. An elementary teacher (one through 8) shall hold a Level 1, 2, or 3 license with an elementary license area of concentration.

C. An elementary content specialist in Fine Arts or Physical Education shall hold a Level 1, 2, or 3 license with an elementary license area of concentration or a secondary license area of concentration with the appropriate K-12 subject/content endorsement.

D. An elementary content specialist in reading or English as a Second Language shall hold a Level 1, 2, or 3 license with an elementary license area of concentration with the appropriate subject/content endorsement or a secondary license area of concentration with the appropriate subject/content endorsement. Placing a content specialist in a setting out of the specialist's license area of concentration shall be based on exceptional circumstances and in consultation with the USOE.

[E]E. A secondary teacher (grades 6-12) including high school, middle-level, intermediate, and junior high schools, shall hold a Level 1, 2, or 3 license with a secondary license area of concentration with endorsements in all teaching assignment(s).

[D]E. A teacher with a subject-specific assignment in grades 6, 7 or 8 shall hold a secondary license area of concentration with endorsement(s) for the specific teaching assignment(s) or an elementary license area of concentration with the appropriate subject/content endorsement(s).

[E]G. An elementary (grades 7-8), a secondary or middle-level teacher may be assigned temporarily in a core or non-core academic area for which the teacher is not endorsed if the local board requests and receives a letter of authorization from the Board and the teacher is placed on an approved SAEP.

[F]H. Secondary educators with special education areas of concentration may add content endorsement(s) to their educator licenses consistent with R277-520-11 (SAEP).

[G]I. Educators who have qualified for a J-1 Visa as an international visitor and have provided documentation of holding the equivalent of a bachelors degree, subject content mastery, and appropriate work/graduate training may qualify for a Utah Level 1 license. Such temporary visitors may be exempted, at the employer's discretion, from subject content testing, license renewal requirements, and EYE requirements for the duration of their visa eligibility.

#### **R277-520-5. Routes to Utah Educator Licensing.**

A. In order to receive a license, an educator shall have completed a bachelors degree at an approved higher education institution and:

(1) completed an approved institution of higher education teacher preparation program in the desired area of concentration; or

(2) completed an approved alternative preparation for licensing program, under alternative routes to licensing, consistent with R277-503.



B. An individual may receive a Utah license with an applied technology area of concentration following successful completion of a USOE-approved professional development program for teacher preparation in applied technology education.

C. An individual may receive a district-specific, competency-based license under Section 53A-6-104.5 and R277-520-9.

**R277-520-6. Eminence.**

A. The purpose of an eminence authorization is to allow individuals with exceptional training or expertise, consistent with R277-520-1[F]G, to teach or work in the public schools on a limited basis. Documentation of the exceptional training, skill(s) or expertise may be required by the USOE prior to the approval of the eminence authorization.

B. Teachers with an eminence authorization may teach no more than 37 percent of the regular instructional load.

C. Teachers working under an eminence authorization shall never be considered highly qualified.

D. Local boards shall require an individual teaching with an eminence authorization to have a criminal background check consistent with Section 53A-3-410(1) prior to employment by the local board.

E. The local board of education that employs the teacher with an eminence authorization shall determine the amount and type of professional development required of the teacher.

F. A local board of education that employs teachers with eminence authorizations shall apply for renewal of the authorization(s) annually.

G. Eminence authorizations may apply to individuals without teaching licenses or to unusual and infrequent teacher situations where a license-holder is needed to teach in a subject area for which he is not endorsed, but in which he may be eminently qualified.

**R277-520-7. State Qualified Teachers.**

A. A teacher has a Utah Level 1, 2 or 3 license or a district-specific competency-based license.

B. A teacher has an appropriate area of concentration.

C. A teacher in grades 6-12 has the required endorsement for the course(s) the teacher is teaching by means of:

(1) an academic teaching major from an accredited postsecondary institution, or a passing score on content test(s) and pedagogy test(s), if available, or USOE-approved pedagogy courses; or

(2) an academic major or minor from an accredited postsecondary institution; or

(3) completion of a personal development plan under an SAEP in the appropriate subject area(s) as explained under R277-520-11 with approval from the USOE specialist(s) in the endorsement subject areas.

D. On an annual basis, local boards/charter school boards shall request letters of authorization for teachers who are teaching classes for which they are not endorsed.

**R277-520-8. Highly Qualified Teachers.**

A. A secondary teacher (7-12) is considered highly qualified if the teacher meets the requirements of R277-501-4.

B. An elementary/early childhood teacher (grades K-8) is considered highly qualified if the teacher meets the requirements of R277-501-5.

**R277-520-9. School District/Charter School Specific Competency-based Licensed Teachers.**

A. The following procedures and timelines apply to the employment of educators who have not completed the traditional licensing process under R277-520-[6]5A, B, or C:

(1) A local board/charter school board may apply to the Board for a school district/charter school specific competency-based license to fill a position in the district.

(2) The employing school district shall request a school district/charter school specific competency-based license no later than 60 days after the date of the individual's first day of employment.

(3) The application for the school district/charter school specific competency-based license for an individual to teach one or more core academic subjects shall provide documentation of:

(a) the individual's bachelors degree; and

(b) for a K-6 grade teacher, the satisfactory results of the rigorous state test including subject knowledge and teaching skills in the required core academic subjects under Section 53A-6-104.5(3)(ii) as approved by the Board; or

(c) for the teacher in grades 7-12, demonstration of a high Level of competency in each of the core academic subjects in which the teacher teaches by completion of an academic major, a graduate degree, course work equivalent to an undergraduate academic major, advanced certification or credentialing, results or scores of a rigorous state core academic subject test in each of the core academic subjects in which the teacher teaches.

(4) The application for the school district/charter school specific competency-based license for non-core teachers in grades K-12 shall provide documentation of:

(a) a bachelors degree, associates degree or skill certification; and

(b) skills, talents or abilities specific to the teaching assignment, as determined by the local board/charter school board.

(5) Following receipt of documentation, the USOE shall approve a district/charter school specific competency-based license.

(6) If an individual employed under a school district/charter school specific competency-based license leaves the district before the end of the employment period, the district shall notify the USOE Licensing Section regarding the end-of-employment date.

(7) The school district/charter school specific competency-based license for an individual's district/charter school specific competency-based license shall be valid only in the district/charter school that originally requested the school district/charter school specific competency-based license and for the individual originally employed under the school district/charter school specific competency-based license.

B. The written copy of the state-issued district-specific competency-based license shall prominently state the name of the school district/charter school followed by DISTRICT/CHARTER SCHOOL-SPECIFIC COMPETENCY-BASED LICENSE.

C. A school district/charter school may change the assignment of a school district/charter school-specific competency-based license holder but notice to USOE shall be required and

additional competency-based documentation may be required for the teacher to remain qualified or highly qualified.

D. School district/charter school specific competency-based license holders are at-will employees consistent with Section 53A-8-106(5).

**R277-520-10. Routes to Appropriate Endorsements for Teachers.**

Teachers shall be appropriately endorsed for their teaching assignment(s). To be highly qualified:

A. teachers may obtain the required endorsement(s) with a major or composite major or major equivalency consistent with their teaching assignment(s), including appropriate pedagogical competencies; or

B. teachers who have satisfactorily completed a minimum of nine semester hours of USOE-approved university level courses may complete a professional development plan under an SAEP in the appropriate subject area(s) with approval from USOE Curriculum specialists; or

C. teachers may demonstrate competency in the subject area(s) of their teaching assignment(s). In order to be endorsed through demonstrated competency, the educator shall pass designated Board-approved content knowledge and pedagogical knowledge assessments as they become available.

D. individuals shall be properly endorsed consistent with R277-520-4 or have USOE-approved SAEPs. Otherwise, the Board may withhold professional staff cost program funds.

**R277-520-11. Board-Approved Endorsement Program (SAEP).**

A. Teachers in any educational program who are assigned to teach out of their area(s) of endorsement and who have at least nine hours of USOE-approved university level courses shall participate in an SAEP and make satisfactory progress within the period of the SAEP as determined by USOE specialists.

B. The employing school district shall identify teachers who do not meet the state qualified definition and provide a written justification to the USOE.

C. Individuals participating in SAEPs shall demonstrate progress toward completion of the required endorsement(s) annually, as determined jointly by the school district/charter school and the USOE.

D. An SAEP may be granted for one two-year period and may be renewed by the USOE, upon written justification from the school district, for one additional two-year period.

**R277-520-12. Background Check Requirement and Withholding of State Funds for Non-Compliance.**

A. Educators qualified under any provision of this rule shall also satisfy the criminal background requirement of Section 53A-3-410 prior to unsupervised access to students.

B. If LEAs do not appropriately employ and assign teachers consistent with this rule, they may have state appropriated professional staff cost program funds withheld pursuant to R277-486, Professional Staff Cost Formula.

C. Local boards/charter school boards shall report highly qualified educators in core academic subjects and educators who do not meet the requirements of highly qualified educators in core academic subjects beginning July 1, 2003.

**KEY: educators, licenses, assignments**

**Date of Enactment or Last Substantive Amendment: [February 22, 2011] 2012**

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

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-6-104(2)(a)**

**Education, Administration**  
**R277-714**  
**Dissemination of Information About**  
**Juvenile Offenders**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35681

FILED: 01/17/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to update terminology based on a meeting with the Utah Coordinating Council of Youth in Custody and Utah State Office of Education staff.

**SUMMARY OF THE RULE OR CHANGE:** Terminology is updated throughout the rule.

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

**ANTICIPATED COST OR SAVINGS TO:**

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

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

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

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The changes are updated terminology only which do not result in a cost or savings.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. The changes are updated terminology only which do not result in compliance costs.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012

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

**R277. Education, Administration.**

**R277-714. Dissemination of Information About Juvenile Offenders.**

**R277-714-1. Definitions.**

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

B. "FERPA" means the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, a federal law designed to protect the privacy of students' education records. The law is hereby incorporated by reference.

C. "GRAMA" means the Government Records Access and Management Act, Title 63G, Chapter 2, a Utah law designed to govern access to and control of government records.

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

[D]E. "Superintendent" means the State Superintendent of Public Instruction.

**R277-714-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision over public schools in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-11-1003 which directs the Board to adopt rules governing the dissemination of information about ~~violent~~ juvenile offenders in the public schools.

B. The purpose of this rule is to provide procedures for ~~school districts~~ LEAs to follow in notifying school personnel of ~~violent~~ offenders in their schools and for protecting the confidentiality of the information.

**R277-714-3. Dissemination of Information.**

A. The dissemination of any information about students ~~between~~ among agencies and ~~among district superintendents and schools~~ LEAs shall be consistent with FERPA and GRAMA,

including applicable time periods and protection of ~~private~~ confidential information.

B. Each ~~school district~~ LEA shall establish by written policy which staff members have authority to receive ~~private~~ confidential information about students, depending upon the offense and the circumstances. This policy shall be approved by the ~~local board of education~~ LEA and available to parents and students upon request.

C. A dispute regarding the dissemination of information shall be decided in favor of a student's rights to privacy, except in the event of apparent imminent danger to persons or property.

**KEY: public education, dissemination of information, juvenile offenders**

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

**Notice of Continuation: September 3, 2009**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-11-1003**

Education, Administration  
**R277-718**  
Utah Career Teaching Scholarship Program

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 35682

FILED: 01/17/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is repealed because funding for the Utah Career Teaching Scholarship Program has been discontinued.

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

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

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The Utah Career Teaching Scholarship Program funding has been discontinued making the rule unnecessary.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The Utah Career Teaching Scholarship Program funding has been discontinued making the rule unnecessary.

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

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The Utah Career Teaching Scholarship Program funding has been discontinued making the rule unnecessary.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The Utah Career Teaching Scholarship Program funding has been discontinued making the rule unnecessary.

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 03/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012

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

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

#### **~~[R277-718. Utah Career Teaching Scholarship Program.~~**

#### **~~R277-718-1. Definitions.~~**

~~A. "Premier Scholarship" means a scholarship which includes \$3,000, \$1,000 per quarter for three quarters, in addition to tuition and fees.~~

~~B. "Certification requirements" means essential conditions which qualify an individual for a Utah teaching credential.~~

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

#### **R277-718-2. 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, Sections 53B-10-101 which permits the Board and State Board of Regents to establish criteria, policies, and procedures for administration of the Utah Career Teaching Scholarship and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.~~

~~B. The purpose of this rule is to specify standards and procedures for administration of the scholarship program.~~

#### **R277-718-3. Scholarships.**

~~A. The State Superintendent of Public Instruction awards the number of scholarships available for allocation to graduating high school seniors. Alternate recipients are designated in the event that a primary recipient declines the scholarship before the next academic year begins at the college or university.~~

~~B. Scholarships awarded to graduating high school seniors are for a period of years corresponding to the length of the course the student elects to pursue, up to a maximum of 12 semesters. Except for Premier Scholarships, the scholarship is equal to tuition and fees of the institution.~~

~~C. Scholarship recipients must meet institutional requirements for admission and must declare their intention to complete the prescribed work of normal instruction for a degree, diploma, and teaching certificate. After completion of such work, they must teach in the schools of this state for a period of years equal to that for which the scholarship was received.~~

~~D. Scholarship recipients are required to either teach in Utah schools within two years after graduation and certification or to repay the amount of scholarship assistance received. Credit for teaching is counted on a year for year basis in satisfying this repayment obligation: one year teaching equals forgiveness of one year of scholarship assistance. Recipients who teach in small schools in remote areas of the state as designated by the State Board of Regents shall receive two years of repayment credit for each year of teaching.~~

~~E. Recipients who fail to complete Utah teacher certification requirements are required to repay all scholarship assistance received with interest, consistent with "Utah State Board of Regents Policies and Procedures," March 14, 1986, published by the Utah State Board of Regents. This publication is available from the Utah State Board of Regents Office and the Certification Section and School Law Section at the Utah State Office of Education.~~

#### **R277-718-4. Award Procedures.**

~~A. The total number of scholarships authorized by the State Legislature to be maintained in any given year is 365. The number of scholarships available for award to graduating seniors is provided by the Office of the State Board of Regents. The number is in the ratio of 200 to 165.~~

~~B. By January 31st of each year, the State Superintendent of Public Instruction announces the availability of Utah Career Teaching Scholarships to be awarded to qualified candidates who will be graduating from Utah high schools in the spring of that same year. The announcement and official application forms are sent to all school district superintendents and high school principals or counselors, or both. A news release regarding the scholarships is sent to daily and weekly newspapers and other news media.~~

~~C. The Utah State Office of Education surveys Utah school districts and college and university placement centers and reviews other information available on a national, regional, and state basis to determine teaching areas that are in short supply. It conveys its findings to school district officials for use in evaluating their candidates for the scholarship.~~

~~D. Completed applications and an evaluation of the applicant by the counselor, principal, district superintendent, or all of them, is forwarded to the State Superintendent before March 16 of the application year. A list of applicants is included, arranged in descending order of total points awarded in relation to the established criteria.~~

~~E. By April 30, recipients of scholarships and alternates are notified by mail of the award of a scholarship or of their alternate status. A list of those students to whom scholarships have been awarded and of the alternates is forwarded to the Office of the State Board of Regents together with a copy of the application form received from each awardee and alternate.~~

~~F. Candidates who have been recommended for premier scholarships are notified and are advised as to the schedule for interviews for final selection. Premier scholarship recipients are notified by May 31.~~

~~G. If a student declines a scholarship that has been awarded, the scholarship is reallocated to the next alternate on the list up to December 31 of that same year. Any scholarships awarded through the Board that are vacated in excess of the number of alternates are reallocated to the Board before the ratio of 200 to 165 is applied to the total number of scholarships available for award for the following year.~~

~~**KEY: student financial aid, career education, education**  
**Date of Enactment or Last Substantive Amendment: 1987**  
**Notice of Continuation: January 8, 2008**  
**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53B-10-101]**~~

**Education, Administration  
R277-915**

**Work-based Learning Programs for Interns**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 35683  
 FILED: 01/17/2012

**RULE ANALYSIS**

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

**SUMMARY OF THE RULE OR CHANGE:** Updates terminology throughout the rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53A-29-102 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 changes only provide updated terminology which do not result in a cost or savings.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The changes only provide updated terminology which do not result in a cost or savings.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This rule applies to public education and do not affect businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The changes only provide updated terminology which do not result in a cost or savings.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. The changes only provide updated terminology which do not result in a cost or savings.

**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 03/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012**

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

**R277. Education, Administration.**  
**R277-915. Work-based Learning Programs for Interns.**  
**R277-915-1. Definitions.**  
 A. "Board" means Utah State Board of Education.

B. "Intern" means a student enrolled in a school-sponsored work experience and career exploration program under Section 53A-29-102 involving both classroom instruction and work experience with a cooperating employer, for which the student receives no compensation.

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

~~[E]~~D. "School-based enterprise" means businesses set up and run by supervised students learning to apply "practical" skills in the production of goods or services for sale or use by others.

~~[E]~~E. "Work site" or "workplace" means the actual location where employment occurs for particular occupation(s), or an environment that simulates all aspects/elements of that employment, for instance school-based enterprises.

~~[D]~~F. "Work-based learning" means activities that involve actual work experience or connect classroom learning to work.

#### **R277-915-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board; by Section 53A-29-102 which provides that the Board shall provide rules to schools wishing to offer and operate internships in connection with work experience and career exploration programs; and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide direction to ~~[school districts]~~LEAs as they provide work-based learning programs and to establish criteria to be included in those policies.

#### **R277-915-3. Mandatory ~~[District]~~LEA Policy.**

A. Each ~~[school district]~~LEA that has work-based learning programs that include assigning students to act as interns at off-campus sites or on-campus simulations shall establish a policy which provides procedures and criteria for at least the following issues:

(1) training for student interns, student intern supervisors, and cooperating employers regarding health hazards and safety procedures in the workplace;

(2) standards and procedures for approval of off-campus work sites;

(3) transportation options for students to and from the work site;

(4) appropriate supervision by employers at the work site;

(5) adequate insurance coverage provided and identified either by the student, the program or the ~~[school district]~~LEA;

(6) appropriate supervision and evaluation of the student by the ~~[local education agency]~~LEA; and

(7) appropriate involvement and approval by the student's parents in the work-based intern program.

#### **R277-915-4. Consistency with Law and State and ~~[Local]~~LEA Board Rules and Policies.**

A. The work-based intern experience shall be consistent with the provisions of the Fair Labor Standards Act, Part 570, Subpart E, 29 C.F.R. [~~pages 89-16 et seq., June 1995 and Administrative Letter Rulings: Department of Labor, Wage and Hour Division, pages 226 and 228, July 1996. These materials are contained within the Fair Labor Standards Handbook, are available~~

~~in the School Law Section at the Utah State Office of Education and are hereby incorporated by reference.]~~

B. Work-based intern programs shall operate consistently with Board rules and ~~[district]~~LEA policies including student transportation, credit toward graduation, attendance, and fee waivers.

**KEY: public schools, intern program**

**Date of Enactment or Last Substantive Amendment: [~~March 10, 1997]~~2012**

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

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-29-102; 53A-1-401(3)**

## Environmental Quality, Air Quality **R307-101-3** Version of Code of Federal Regulations Incorporated by Reference

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 35615

FILED: 01/04/2012

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R307-101-3 incorporates by reference the version of the Code of Federal Regulations (CFR) used in a majority of rules adopted by the Air Quality Board. This allows rules that reference Section R307-101-3 to update the incorporation date with only one rule amendment. The most current version of the CFR for environmental regulations has been updated from 07/01/2010 to 07/01/2011; therefore, it is necessary to amend Section R307-101-3.

SUMMARY OF THE RULE OR CHANGE: The following is a list of changes to 40 CFR from 07/01/2009 to 07/01/2011 that affect rules which reference Section R307-101-3: Vol. 75, No. 64, Pg. 17254-79. The EPA revised its regulations relating to the Clean Air Act (CAA) requirement that Federal actions conform to the appropriate state, tribal or federal implementation plan (SIP, TIP, or FIP) for attaining clean air ("General Conformity"). The EPA and other federal agencies have gained experience with the implementation of the existing regulations, which were promulgated in 1993 (and underwent minor revisions in 2006), and have identified several issues with their implementation. In addition, in 2004, EPA issued regulations to implement the revised ozone national ambient air quality standards (NAAQS) and in 2007 issued regulations to implement the new fine particulate matter standard. State and other air quality agencies are in the process of developing revised plans to attain the new standards and the revisions to the General Conformity Regulations will be helpful to the state, tribe, and local agencies in developing, and Federal agencies in

commenting, on the proposed SIPs revisions. This rule revision also facilitates Federal agency compliance to conform its activities to the SIPs, thereby preventing violations of the NAAQS. This rule revision provides for a timely and effective process for federal agencies and states and tribes to ensure Federal activities are incorporated in these SIPs. Where that is not possible, it provides an efficient and effective process for Federal agencies to ensure their actions do not cause or contribute to a violation of the NAAQS or interfere with the purpose of a SIP, TIP, or FIP to attain or maintain the NAAQS. Vol. 74, No. 192, Pg. 51367-51415. On 09/15/1997, EPA adopted new source performance standards (NSPS) and emissions guidelines (EG) for hospital/medical/ infectious waste incinerators (HMIWI). The NSPS and EG were established under Sections 111 and 129 of the Clean Air Act (CAA or Act). In a response to a suit filed by the Sierra Club and the Natural Resources Defense Council (Sierra Club), the U.S. Court of Appeals for the District of Columbia Circuit (the Court) remanded the HMIWI regulations on 03/02/1999, for further explanation of EPA's reasoning in determining the minimum regulatory "floors" for new and existing HMIWI. The HMIWI regulations were not vacated and were fully implemented by September 2002. On 02/06/2007, the agency (DAQ) published our proposed response to the Court's remand. Following recent court decisions and receipt of public comments regarding the proposal, DAQ re-assessed our response to the remand, and on 12/01/2008, DAQ published another proposed response and solicited public comments. This action promulgates our response to the Court's remand and also satisfies the CAA Section 129(a)(5) requirement to conduct a review of the standards every five years. Vol. 76, No. 64, Pg. 18407-18415. On 10/06/2009, EPA promulgated its response to the remand of the new source performance standards and emissions guidelines for hospital/medical/ infectious waste incinerators by the U.S. Court of Appeals for the District of Columbia Circuit and satisfied the Clean Air Act section 129(a)(5) requirement to conduct a review of the standards every five years. This action promulgated amendments to the new source performance standards and emissions guidelines, correcting inadvertent drafting errors in the nitrogen oxides and sulfur dioxide emissions limits for large hospital/medical/infectious waste incinerators in the new source performance standards, which did not correspond to our description of our standard-setting process, correcting erroneous cross-references in the reporting and recordkeeping requirements in the new source performance standards, clarifying that compliance with the emission guidelines must be expeditious if a compliance extension is granted, correcting the inadvertent omission of delegation of authority provisions in the emission guidelines, correcting errors in the units' description for several emissions limits in the emission guidelines and new source performance standards, and removing extraneous text from the hydrogen chloride emissions limit for large hospital/medical/infectious waste incinerators in the emission guidelines. Vol. 75, No. 56, Pg. 14260-14285. Transportation Conformity Rule PM2.5 and PM10 Amendments. In this action, EPA amended the transportation conformity rule to finalize provisions that were

proposed on 05/15/2009. These amendments primarily affect conformity's implementation in PM2.5 and PM10 nonattainment and maintenance areas. EPA updated the transportation conformity regulation in light of an 10/17/2006 final rule that strengthened the 24-hour PM2.5 national ambient air quality standard (NAAQS) and revoked the annual PM10 NAAQS. In addition, EPA clarified the regulations concerning hot-spot analyses to address a December 2007 remand from the Court of Appeals for the District of Columbia Circuit. This portion of the final rule applies to PM2.5 and PM10 nonattainment and maintenance areas as well as carbon monoxide nonattainment and maintenance areas. The Clean Air Act (CAA) requires federally supported transportation plans, transportation improvement programs, and projects to be consistent with ("conform to") the purpose of the state air quality implementation plan. The U.S. Department of Transportation (DOT) is EPA's federal partner in implementing the transportation conformity regulation. EPA has consulted with DOT, and they concur with this final rule. Section 93.101 was amended as follows: By removing the definitions for "1-hour ozone NAAQS" and "8-hour ozone NAAQS"; and by revising the definition of "National ambient air quality standards (NAAQS)" to say: National ambient air quality standards (NAAQS) are those standards established pursuant to section 109 of the CAA. (1) 1-hour ozone NAAQS means the 1-hour ozone national ambient air quality standard codified at 40 CFR 50.9. (2) 8-hour ozone NAAQS means the 8-hour ozone national ambient air quality standard codified at 40 CFR 50.10. (3) 24-hour PM10 NAAQS means the 24-hour PM10 national ambient air quality standard codified at 40 CFR 50.6. (4) 1997 PM2.5 NAAQS means the PM2.5 national ambient air quality standards codified at 40 CFR 50.7. (5) 2006 PM2.5 NAAQS means the 24-hour PM2.5 national ambient air quality standard codified at 40 CFR 50.13. (6) Annual PM10 NAAQS means the annual PM10 national ambient air quality standard that EPA revoked on 12/18/2006. Vol. 76, No. 59, Pg 17288-17325. EPA finalized rule revisions that modified existing requirements for sources affected by the federally administered emission trading programs including the NOX Budget Trading Program, the Acid Rain Program, and the Clean Air Interstate Rule. EPA amended its Protocol Gas Verification Program (PGVP) and the minimum competency requirements for air emission testing (formerly air emission testing body requirements) to improve the accuracy of emissions data. EPA also amended other sections of the Acid Rain Program continuous emission monitoring system regulations by adding and clarifying certain record keeping and reporting requirements, removing the provisions pertaining to mercury monitoring and reporting, removing certain requirements associated with a class-approved alternative monitoring system, disallowing the use of a particular quality assurance option in EPA Reference Method 7E, adding two incorporation by references that were inadvertently left out of the 01/24/2008 final rule, adding two new definitions, revising certain compliance dates, and clarifying the language and applicability of certain provisions. Vol. 75, No. 230, Pg 75060-75089. EPA amended the authority citation for part 72 to read "Authority: 42 U.S.C.

7401, 8410, 7411, 7426, 7601, et seq." It also amended section 72.2 by revising the definition for "interested person" to read "Interested person means, with regard to a decision of the Administrator, any person who submitted comments or testified at a public hearing pursuant to an opportunity for comment provided by the Administrator as part of the process of making such decision, who submitted objections pursuant to an opportunity for objections provided by the Administrator as part of the process of making such decision, or who submitted (to the Administrator and in a format specified by the Administrator) his or her name to be placed on a list of persons interested in such decision. The Administrator may update the list of interested persons from time to time by requesting additional written indication of continued interest from the persons listed and may delete from the list the name of any person failing to respond as requested." Vol. 76, No. 64, Pg 18415. In Title 40 of the Code of Federal Regulations, Parts 72 to 80, revised as of 07/01/2010, on page 219, in Sec. 75.11, paragraph (f) was added to read as follows: Sec. 75.11 Specific provisions for monitoring SO2 emissions. (f) Other units. The owner or operator of an affected unit that combusts wood, refuse, or other material in addition to oil or gas shall comply with the monitoring provisions for coal-fired units specified in paragraph (a) of this section, except where the owner or operator has an approved petition to use the provisions of paragraph (e)(1).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(a)

**MATERIALS INCORPORATED BY REFERENCES:**

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

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** Because the revisions do not create new requirements, no change in costs or savings is expected for the state budget.
- ◆ **LOCAL GOVERNMENTS:** Because this revision does not create new requirements, no change in costs or savings is expected for local governments.
- ◆ **SMALL BUSINESSES:** Because this revision does not create new requirements, no change in costs or savings is expected for small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because this revision does not create new requirements, no change in costs or savings is expected for other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Because this revision does not create new requirements, no change in costs is expected for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This amendment does not create new requirements. Therefore, no additional costs are to businesses is expected.

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/05/2012

AUTHORIZED BY: Bryce Bird, Director

**R307. Environmental Quality, Air Quality.**

**R307-101. General Requirements.**

**R307-101-3. Version of Code of Federal Regulations Incorporated by Reference.**

Except as specifically identified in an individual rule, the version of the Code of Federal Regulations (CFR) incorporated throughout R307 is dated July 1, 20[09]11.

**KEY: air pollution, definitions**

**Date of Enactment or Last Substantive Amendment:** [~~March 4, 2010~~]April 5, 2012

**Notice of Continuation:** July 2, 2009

**Authorizing, and Implemented or Interpreted Law:** 19-2-104(1)(a)

**Environmental Quality, Environmental Response and Remediation**

**R311-200**

**Underground Storage Tanks: Definitions**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35668

FILED: 01/13/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This amendment adds a definition of "Third-party Class B Operator" to clarify recent changes to the Class B operator requirements in Subsections R311-201-12(e) and (f);



and modifies the definition of "UST inspector" to refer directly to the statutory authority given to the Executive Secretary (UST) to perform compliance inspections. These changes allow for third-party individuals to conduct the monthly operator inspections required by Subsection R311-201-12(h) without being certified as UST inspectors.

**SUMMARY OF THE RULE OR CHANGE:** The changes add a definition of "Third-party Class B Operator" and modify the definition of "UST inspector".

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-6-105 and Section 19-6-403

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** No anticipated costs or savings. The rule clarifies the definition of a UST Inspector by referencing the statutory authority given to the Executive Secretary (UST), and defines a Third-party Class B Operator. There are no costs or savings associated with these changes.
- ◆ **LOCAL GOVERNMENTS:** No anticipated costs or savings for local government. The rule clarifies the definition of a UST Inspector by referencing the statutory authority given to the Executive Secretary (UST), and defines a Third-party Class B Operator. There are no costs or savings associated with these changes.
- ◆ **SMALL BUSINESSES:** No anticipated costs or savings for small businesses. The rule clarifies the definition of a UST Inspector by referencing the statutory authority given to the Executive Secretary (UST), and defines a Third-party Class B Operator. There are no costs or savings associated with these changes.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No anticipated costs or savings. The rule clarifies the definition of a UST Inspector by referencing the statutory authority given to the Executive Secretary (UST), and defines a Third-party Class B Operator. There are no costs or savings associated with these changes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No costs are associated with the proposed changes. The changes only provide definitions to implement recent changes made elsewhere in the rules.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No fiscal impacts on businesses are anticipated. The proposed changes provide definitions to implement recent changes made to R311-201 regarding third-party Class B operators.

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

ENVIRONMENTAL QUALITY  
 ENVIRONMENTAL RESPONSE AND  
 REMEDIATION  
 FIRST FLOOR  
 195 N 1950 W

SALT LAKE CITY, UT 84116-3085  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at gastin@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012**

**AUTHORIZED BY:** Brent Everett, Director

**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-200. Underground Storage Tanks: Definitions.**

**R311-200-1. Definitions.**

- (a) Refer to Section 19-6-402 for definitions not found in this rule.
- (b) For purposes of underground storage tank rules:
  - (1) "Actively participated" for the purpose of the certification programs means that the individual applying for certification must have had operative experience for the entire project from start to finish, whether it be an installation or a removal.
  - (2) "Alternative Fuel" means a petroleum-based fuel containing:
    - (A) more than ten percent ethanol, or
    - (B) more than twenty percent biodiesel.
  - (3) "As-built drawing" for purpose of notification means a drawing to scale of newly constructed USTs. The USTs shall be referenced to buildings, streets and limits of the excavation. The drawing shall show the locations of tanks, product lines, dispensers, vent lines, cathodic protection systems, and monitoring wells. Drawing size shall be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17".
  - (4) "Automatic line leak detector test" means a test that simulates a leak, and causes the leak detector to restrict or shut off the flow of regulated substance through the piping or trigger an audible or visual alarm.
  - (5) "Backfill" means any foreign material, usually pea gravel or sand, which usually differs from the native soil and is used to support or cover the underground storage tank system.
  - (6) "Biodiesel" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100.
  - (7) "Burden" means the addition of the percentage of indirect costs which are added to raw labor costs.
  - (8) "Certificate" means a document that evidences certification.
  - (9) "Certification" means approval by the Executive Secretary or the Board to engage in the activity applied for by the individual.
  - (10) "Certified Environmental Laboratory" means a laboratory certified by the Utah Department of Health as outlined in

Rule R444-14 to perform analyses according to the laboratory methods identified for UST sampling in Subsection R311-205-2(d).

(11) "Change-in-service" means the continued use of an UST to store a non-regulated substance.

(12) "Community Water System" means a public water system that serves at least fifteen service connections used by year-round residents or regularly serves at least 25 year-round residents.

(13) "Confirmation sample" means an environmental sample taken, excluding closure samples as outlined in Section R311-205-2, during soil overexcavation or any other remedial or investigation activities conducted for the purpose of determining the extent and degree of contamination.

(14) "Consultant" is a person who is a certified underground storage tank consultant according to Subsection 19-6-402(6).

(15) "Customary, reasonable and legitimate expenses" means costs incurred during the investigation, abatement and corrective actions that address a release which are normally charged according to accepted industry standards, and which must be justified in an audit as an appropriate cost. The costs must be directly related to the tasks performed.

(16) "Customary, reasonable and legitimate work" means work for investigation, abatement and corrective action that is required to reduce contamination at a site to levels that are protective of human health and the environment. Acceptable levels may be established by risk-based analysis and taking into account current or probable land use as determined by the Executive Secretary following the criteria in R311-211.

(17) "Department" means the Utah Department of Environmental Quality.

(18) "Eligible exempt underground storage tank" for the purpose of eligibility for the Utah Petroleum Storage Tank Trust Fund means a tank specified in 19-6-415(1).

(19) "Environmental sample" is a groundwater, surface water, air, or soil sample collected, using appropriate methods, for the purpose of evaluating environmental contamination.

(20) "EPA" means the United States Environmental Protection Agency.

(21) "Expediently disposed of" means disposed of as soon as practical so as not to become a potential threat to human health or safety or the environment, whether foreseen or unforeseen as determined by the Executive Secretary.

(22) "Fiscal year" means a period beginning July 1 and ending June 30 of the following year.

(23) "Full installation" for the purposes of 19-6-411(2) means the installation of an underground storage tank.

(24) "Groundwater sample" is a sample of water from below the surface of the ground collected according to protocol established in Rule R311-205.

(25) "Groundwater and soil sampler" is the person who performs environmental sampling for compliance with Utah underground storage tank rules.

(26) "Injury or Damages from a Release" means, for the purposes of Subsection 19-6-409(2)(e), any petroleum contamination that has migrated from the release onto or under a third party's property at concentrations exceeding Initial Screening Levels specified in R311-211-6(a).

(27) "In use" means that an operational, inactive or abandoned underground storage tank contains a regulated

substance, sludge, dissolved fractions, or vapor which may pose a threat to human health, safety or the environment as determined by the Executive Secretary.

(28) "Lapse" in reference to the Certificate of Compliance and coverage under the Petroleum Storage Tank Trust Fund, means to terminate automatically.

(29) "Native soil" means any soil that is not backfill material, which is naturally occurring and is most representative of the localized subsurface lithology and geology.

(30) "No Further Action determination" means that the Executive Secretary has evaluated information provided by responsible parties or others about the site and determined detectable petroleum contamination from a particular release does not present an unacceptable risk to public health or the environment based upon Board established criteria in R311. If future evidence indicates contamination from that release may cause a threat, further corrective action may be required.

(31) "Notice of agency action" means any enforcement notice, notice of violation, notice of non-compliance, order, or letter issued to an individual for the purpose of obtaining compliance with underground storage tank rules and regulations.

(32) "Occurrence" in reference to Subsection R311-208-4 means a separate petroleum fuel delivery to a single tank.

(33) "Owners and operators" means either an owner or operator, or both owner and operator.

(34) "Overexcavation" means any soil removed in an effort to investigate or remediate in addition to the minimum amount required to remove the UST or take environmental samples during UST closure activities as outlined in Section R311-205-2.

(35) "Permanently closed" means underground storage tanks that are removed from service following guidelines in 40 CFR Part 280 Subpart G adopted by Section R311-202.

(36) "Petroleum storage tank" means a storage tank that contains petroleum as defined by Section 19-6-402(20).

(37) "Petroleum storage tank fee" means the fee which capitalizes the Petroleum Storage Tank Trust Fund as established in Section 19-6-409.

(38) "Petroleum storage tank trust fund" means the fund created by Section 19-6-409.

(39) "Potable Drinking Water Well" means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater which supplies water for a non-community public water system, or otherwise supplies water for household use (consisting of drinking, bathing, and cooking, or other similar uses). Such well may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.

(40) "Public Water System" means a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. It includes any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system; and, any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

(41) "Registration fee" means underground storage tank registration fee.

(42) "Regulated substance" means any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act "CERCLA" of 1980, but not including any substance regulated as a hazardous waste under subtitle C, and petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure, 60 degrees Fahrenheit and 14.7 pounds per square inch absolute. The term "regulated substance" includes petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, and includes motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(43) "Secondary Containment" means a release prevention and detection system for a tank or piping that has an inner and outer barrier with an interstitial space between them for monitoring. The monitoring of the interstitial space shall meet the requirements of 40 CFR 280.43(g).

(44) "Site assessment" or "site check" is an evaluation of the level of contamination at a site which contains or has contained an UST.

(45) "Site assessment report" is a summary of relevant information describing the surface and subsurface conditions at a facility following any abatement, investigation or assessment, monitoring, remediation or corrective action activities as outlined in Rule R311-202, Subparts E and F.

(46) "Site investigation" is work performed by the owner or operator, or his designee, when gathering information for reports required for Utah underground storage tank rules.

(47) "Site plat" for purpose of notification, or reporting, refers to a drawing to scale of USTs in reference to the facility. The scale should be dimensioned appropriately. Drawing size shall be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17". The site plat should include the following: property boundaries; streets and orientation; buildings or adjacent structures surrounding the facility; present or former UST(s); extent of any excavation(s) and known contamination and location and volume of any stockpiled soil; locations and depths of all environmental samples collected; locations and total depths of monitoring wells, soil borings or other measurement or data points; type of ground-cover; utility conduits; local land use; surface water drainage; and other relevant features.

(48) "Site under control" means that the site of a release has been actively addressed by the owner or operator who has taken the following measures:

(A) Fire and explosion hazards have been abated.

(B) Free flow of the product out of the tank has been stopped.

(C) Free product is being removed from the soil, groundwater or surface water according to a work plan or corrective action plan approved by the Executive Secretary.

(D) Alternative water supplies have been provided to affected parties whose original water supply has been contaminated by the release.

(E) A soil or groundwater management plan or both have been submitted for approval by the Executive Secretary.

(49) "Soil sample" is a sample collected following the protocol established in Rule R311-205.

(50) "Surface water sample" is a sample of water, other than a groundwater sample, collected according to protocol established in Rule R311-205.

(51) "Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials, such as concrete, steel, or plastic, that provide structural support.

(52) "Third-party Class B operator" is any individual who is not the facility owner/operator or an employee of the owner/operator and who, by contract, provides the services outlined in R311-201-12(e).

(5[2]3) "UAPA-exempt orders" are orders that are exempt from requirements of the Utah Administrative Procedures Act under Section 63G-4-102(2)(k), Utah Code Annot.

(5[3]4) "Under-Dispenser Containment" means containment underneath a dispenser that will prevent leaks from the dispenser or transitional components that connect the piping to the dispenser (check valves, shear valves, unburied risers or flex connectors, or other components that are beneath the dispenser) from reaching soil or groundwater.

(5[4]5) "Underground storage tank" or "UST" means any one or combination of tanks, including underground pipes connected thereto and any underground ancillary equipment and containment system, that is used to contain an accumulation of regulated substances, and the volume of which, including the volume of underground pipes connected thereto, is ten percent or more beneath the surface of the ground, regulated under Subtitle I, Resource Conservation and Recovery Act, 42 U.S.C., Section 6991c et seq.

(5[5]6) "Underground storage tank registration fee" means the fee assessed by Section 19-6-408 on tanks located in Utah.

(5[6]7) "UST inspection" is the inspection required by state and federal underground storage tank rules and regulations during the installation, testing, repairing, operation or maintenance, and removal of regulated underground storage tank.

(5[7]8) "UST inspector" is an individual who performs underground storage tank inspections for compliance with state and federal rules and regulations as authorized in Subsection 19-6-404(2)(c).

(5[8]9) "UST installation" means the installation of an underground storage tank, including construction, placing into operation, building or assembling an underground storage tank in the field. It includes any operation that is critical to the integrity of the system and to the protection of the environment, which includes:

(A) pre-installation tank testing, tank site preparation including anchoring, tank placement, and backfilling;

(B) vent and product piping assembly;

(C) cathodic protection installation, service, and repair;

(D) internal lining;

(E) secondary containment construction; and

(F) UST repair and service.

(5[9]60) "UST installation permit fee" means the fee established by Section 19-6-411(2)(a)(ii).

(6[0]1) "UST installer" means an individual who engages in underground storage tank installation.

(6[4]2) "UST removal" means the removal of an underground storage tank system, including permanently closing and taking out of service all or part of an underground storage tank.

(6[2]3) "UST remover" means an individual who engages in underground storage tank removal.

(6[3]4) "UST tester" means an individual who engages in UST testing.

(6[4]5) "UST testing" means a testing method which can detect leaks in an underground storage tank system, or testing for compliance with corrosion protection requirements. Testing methods must meet applicable performance standards of 40 CFR 280.40(a)(3), 280.43(c), and 280.44(b) for tank and product piping tightness testing, 280.44(a) for automatic line leak detector testing, and 280.31(b) for cathodic protection testing.

**KEY: petroleum, underground storage tanks**

**Date of Enactment or Last Substantive Amendment:** ~~February 14, 2011~~ **2012**

**Notice of Continuation:** April 18, 2007

**Authorizing, and Implemented or Interpreted Law:** 19-6-105; 19-6-403

**Financial Institutions, Administration  
R331-7  
Rule Governing Leasing Transactions  
by Depository Institutions Subject to the  
Jurisdiction of the Department of  
Financial Institutions**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35684

FILED: 01/17/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Subsection R331-7-4(1)(b) is being amended to give the Commissioner the authority to grant an exception to the 30% residual dependency restrictions found in this section of the rule. This subsection, as currently written, does not specifically provide for an exception.

**SUMMARY OF THE RULE OR CHANGE:** Subsection R331-7-4(1)(b) is being amended to give the Commissioner the authority to grant an exception to the 30% residual dependency restrictions found in this section of the rule. This subsection, as currently written, does not specifically provide for an exception.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 7-1-501 and Subsection 7-1-301(4) and Subsection 7-1-301(8)(a)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** The amended provision of Rule R331-7 will give the Commissioner the authority to grant an exception to the 30% residual dependency restrictions found in this section of the rule and will not require additional appropriations.

♦ **LOCAL GOVERNMENTS:** Local governments are not involved in regulating depository institutions and are therefore not subject to this rule.

♦ **SMALL BUSINESSES:** Depository institutions, under the jurisdiction of the Department, are currently required to comply with the 30% residual dependency restrictions found in this section of the rule and the granting of an exception to the rule should have minimal budgetary impact.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Depository institutions, under the jurisdiction of the Department, are currently required to comply with the 30% residual dependency restrictions found in this section of the rule and the granting of an exception to the rule should have minimal budgetary impact.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:**

Depository institutions, under the jurisdiction of the Department, are currently required to comply with the 30% residual dependency restrictions found in this section of the rule and the granting of an exception to the rule should have minimal budgetary impact.

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

Depository institutions, under the jurisdiction of the Department, are currently required to comply with the 30% residual dependency restrictions found in this section of the rule and the granting of an exception to the rule should have minimal budgetary impact.

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

FINANCIAL INSTITUTIONS  
ADMINISTRATION  
ROOM 201  
324 S STATE ST  
SALT LAKE CITY, UT 84111-2393  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at [pallred@utah.gov](mailto:pallred@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012**

**AUTHORIZED BY: Edward Leary, Commissioner**

**R331. Financial Institutions, Administration.****R331-7. Rule Governing Leasing Transactions by Depository Institutions Subject to the Jurisdiction of the Department of Financial Institutions.****R331-7-1. Authority, Scope and Purpose.**

(1) This rule is issued pursuant to Sections 7-1-301(15), and 7-1-501.

(2) This rule applies to all depository institutions and their subsidiaries subject to the jurisdiction of the Department of Financial Institutions.

(3) The purpose of this rule is to clarify acceptable employment of deposits and other funds involved in leasing or leasing related transactions.

**R331-7-2. Definitions.**

(1) "Affiliate" means any company under common control with the depository institution excluding any subsidiary.

(2) "Assigned lease" means a lease having all of the following characteristics:

(a) Residual dependence greater than 5% of original equipment cost;

(b) Originated by a lessor - assignor who subsequently assigned its rights or sold a participation in the lease, payments, or ownership rights to the depository institution - assignee;

(c) The assigned lease is either a tax or non-tax lease;

(d) The depository institution may or may not have recourse to the assignor in addition to lessee recourse;

(e) The assigned lease is accounted for in accordance with R331-7-9.

(3) "Bargain call purchase option" means a written call purchase option which is a lessee option to purchase the asset as contrasted with a put purchase option which is a lessor right to force the lessee to purchase the asset. An option is considered a bargain if at the inception of the lease the purchase option exercise price is considered to be significantly less than the expected future fair market value of the property at the time the option becomes exercisable.

(4) "Capital lease vs. operating lease" means if at its inception a lease meets one or more of the (a) through (d) criteria and both of the (e) and (f) criteria, the lease shall be classified as a sales-type capital lease or a direct-financing capital lease, whichever is appropriate, by the lessor. Otherwise, it shall be classified as an operating lease.

(a) The lease automatically transfers ownership of the property to the lessee during or by the end of the lease term.

(b) The lease contains a bargain call purchase option.

(c) The lease term is equal to 75% or more of the estimated economic life of the leased property. However, if the beginning of the lease term falls within the last 25% of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used for purposes of classifying the lease.

(d) The present value at the beginning of the lease term of the minimum lease payments, excluding that portion of the payments representing executory costs to be paid by the lessor, including any profit thereon, equals or exceeds 90% of the excess of the fair value of the leased property to the lessor at the inception of the lease over any related investment tax credit retained by the lessor and expected to be realized by him.

(i) However, if the beginning of the lease terms falls within the last 25% of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used to classify the lease.

(ii) A lessor shall compute the present value of the minimum lease payments using the interest rate implicit in the lease.

(e) The collectability of the minimum lease payments shall be reasonably predictable. A lessor shall not be precluded from classifying a lease as a sales-type lease or as a direct financing lease simply because the receivable is subject to an estimate of uncollectability based on experience with groups of similar receivables.

(f) No important uncertainties surround the amount of unreimbursable costs yet to be incurred by the lessor under the lease. Important uncertainties might include commitments by the lessor to guarantee performance of the leased property in a manner more extensive than the typical product warranty or to effectively protect the lessee from obsolescence of the leased property. However, the necessity of estimating executory costs to be paid by the lessor shall not by itself constitute an important uncertainty as referred to herein.

(5) "Company" means a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any form of business entity.

(6) "Control" means control as defined in Section 7-1-103.

(7) "Department" means the Department of Financial Institutions.

(8) "Depository institution" means depository institution as defined in Section 7-1-103, and any subsidiary.

(9) "Direct financing lease" means a capital lease other than a leveraged lease that does not give rise to a dealer's profit or loss to the lessor but that meets one or more of the first four criteria and both criteria (e) and (f) in Subsection (4) above. In a direct financing lease, the cost and fair market value of the leased property is the same at the inception of the lease.

(10) "FASB 13" means the Financial Accounting Standards Board (FASB) Statement of Financial Accounting Standards No. 13, Accounting for Leases, as amended, which outlines the required accounting procedures for accounting for leases by a lessor and is incorporated by reference. Other statements by the FASB, which are incorporated by reference, concerning leasing shall similarly be referred to by number such as "FASB 17" which defines initial direct costs of a lessor.

(11) "Gross investment in the lease" means the aggregate of the total minimum lease payments receivable and the unguaranteed residual in the lease.

(12) "Implicit interest rate" means the discount interest rate in a lease which when applied to the minimum lease payments, excluding that portion of the payments representing executory costs to be paid by the lessor, together with any profit thereon, and the unguaranteed residual value accruing to the benefit of the lessor, causes the aggregate present value at the beginning of the lease term to be equal to the fair value of the leased property to the lessor at the inception of the lease, minus any investment tax credit retained by the lessor and expected to be realized by him. This definition does not necessarily purport to include all factors that a lessor might recognize in determining his rate of return.

(13) "Leveraged lease" means a lease having all of the following characteristics:

(a) The lease involves at least three parties: a lessee, a long-term non-recourse creditor, and a lessor, commonly called the equity participant. A depository institution could be either the long-term non-recourse creditor or the equity participant;

(b) The financing provided by the long-term non-recourse creditor is non-recourse as to the general credit of the lessor although the creditor may have recourse to the specific property leased and the unremitted rentals relating to it. The amount of the non-recourse financing is sufficient to provide the lessor with substantial "leverage" in the transaction;

(c) Except for the exclusion of leveraged leases from the definition of a direct financing lease as set forth in R331-7-2(9), the lease otherwise meets the direct financing lease definition. A participation in a net, limited residual dependent lease purchased by a depository institution and a lease that meets the definition of a sales-type lease set forth in R331-7-2(4) shall not be considered a leveraged lease.

(14) "Limited residual dependent" means a lease from which the lessor can reasonably expect to realize a return of its investment in the leased property, plus the estimated cost of financing the property over the term of the lease, plus a reasonable profit, all of which are derived from:

(a) Lease rental payments;

(b) Estimated tax benefits; and

(c) The limited in amount estimated residual value of the property at the expiration of the initial non-cancelable term of the lease. The degree to which a depository institution may depend upon residual value to derive a profit from a lease transaction is subject to certain residual dependence restrictions set forth at Rule R331-7-4(1).

(15) "Minimum lease payments" means the minimum payments received on a lease which include any or all of the following:

(a) Guaranteed residual value by lessee or related party whether or not title transfers;

(b) Basic rentals during the non-cancelable lease term;

(c) Renewal rentals preceding a bargain call purchase option;

(d) Bargain call purchase options;

(e) Purchase option puts whether bargain or not;

(f) Third party residual guarantee, excluded by lessee as a criterion;

(g) Non-renewal penalties; and

(h) Unguaranteed residuals, including non-bargain purchase options, are excluded from minimum lease payments.

(16) "Net investment in the lease" means the gross investment less the unearned income.

(17) "Net lease" means a lease under which the depository institution will not directly provide or be obligated to provide for:

(a) The servicing, repair, or maintenance of the leased property during the lease term; however, the depository institution shall not be precluded from offering these same "full-service" benefits indirectly by subcontracting such service, repair, or maintenance to independent sub-contracting firms provided that such firms have the resources to meet the terms of the service contract;

(b) The purchasing of parts and accessories for the leased property, provided however, that improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the net, limited residual dependence requirements;

(c) The loan of replacement or substitute property while the leased property is being serviced or repaired unless such loan or substitution of property is provided by an independent firm whose loan or replacement services have been subcontracted;

(d) The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance;

(e) The renewal of any license or registration for the property unless such action by the depository institution is necessary to protect its interest as an owner or financier of the property.

(18) "Non-tax lease" means a lease wherein the depository institution as a lessor does not receive the tax benefits of ownership of the leased property, and the residual dependence of the lessor is greater than 5% of the cost of the property.

(19) "Purchase option put" means a lessor right to force the lessee to purchase the asset.

(20) "Residual" means a residual payment or residual value in a lease which is represented by any of the following:

(a) A fixed purchase option fixed either as a dollar amount or as a percentage of cost of the leased property;

(b) A guaranteed residual where the residual value is guaranteed by the lessee, a third party, or the manufacturer or vendor;

(c) A fair market value purchase option where the option price is determined at the end of the lease based on the prevailing appraised market value;

(d) An unguaranteed residual such as in a closed end lease where the property reverts back to the lessor at the end of the lease term at which time the lessor has no guarantee as to the value of the property upon resale or release of the property. Fixed call purchase options that are not considered "bargain" will also be referred to as unguaranteed residuals.

(21) "Residual dependence" means depending upon residual value, including rentals and tax benefits, in a lease transaction in order to earn a required profit, recoup original capital investment, and cover financing costs. Full payout leases do not depend upon residual for profit whereas residual dependent leases do.

(22) "Sales-type lease" means a capital lease that gives rise to dealer's profit or loss to the lessor, in other words, the fair value of the leased property at the inception of the lease is greater or less than its cost, and that meets one or more of the criteria (a) through (d) and both criteria (e) and (f) in R331-7-2(4).

(a) Normally, a sales-type lease will arise when the depository institution acts as a dealer using leasing as a means of improving profit margins. Leases involving lessors that are primarily engaged in financing operations normally will not be sales-type leases if they qualify under R331-7-2(4), but will most often be direct financing leases, as described in R331-7-2(9).

(b) However, a lessor need not be a dealer to realize dealer's profit or loss on a transaction. For example, if a lessor, who is not a dealer, leases an asset that at the inception of the lease has a fair value that is greater or less than its cost or carrying amount, if

different, such a transaction is a sales-type lease, assuming the criteria referred to are met.

(23) "Subsidiary" means subsidiary as defined in Section 7-1-103.

(24) "Tax lease" means a lease where the depository institution as a lessor is construed to be the tax owner of the property for income tax purposes and thereby receives the tax benefits of ownership including tax credits and depreciation, and the residual dependence of the lessor is greater than 5% of the cost of the property.

(25) "Total Capital" means the sum of capital stock, surplus, undivided profits, reserve for contingencies, reserves for loan losses, and subordinated notes and debentures with more than one year maturity.

(26) "Unearned income" means the difference between the gross investment in the lease and the cost or carrying amount, if different, of the leased property. Unearned income shall be increased by any deferral of the investment tax credit or any other tax credits and decreased by any initial direct costs incurred on direct financing leases.

(27) "Unguaranteed residual value" means the estimated residual value of the leased property exclusive of a portion guaranteed by the lessee, by any party related to the lessee or by a third party unrelated to the lessor. If the guarantor is related to the lessor, the residual value shall be considered as unguaranteed.

(28) "Used property" means property which has been in use for 90 days or more.

### **R331-7-3. Acceptable Leases and Leasing Transactions for Depository Institutions.**

(1) A depository institution may enter into or purchase a participation in net, limited residual dependent leases wherein the depository institution:

(a) Becomes the legal or beneficial owner and lessor of specific real or personal property or otherwise acquires such property at the request of a lessee who wishes to lease it from the depository institution; or

(b) Becomes the owner and lessor of real or personal property by purchasing the property from another lessor in connection with its purchase of the related lease; and

(c) Incurs obligations incidental to its position as the legal or beneficial owner and lessor of the leased property, if the lease is a net, limited residual dependent lease representing a non-cancelable obligation of the lessee, notwithstanding the possible early termination of that lease; or

(d) Becomes the assignee of the lease payments from another lessor where the depository institution is not the legal owner or tax owner of such property.

(2) This rule shall apply to any tax lease, non-tax lease, or assigned lease irrespective of whether the depository institution funded such lease or assignment with deposits or private funds, debt or equity.

(3) The classification of whether this rule applies to any lease and the related terminology should not be confused with other accounting or tax terminology; but should be applied only for the purposes of this rule. Any depository institution and especially any savings and loan association should consult its tax accountant before entering into any lease transaction.

(4) A depository institution, when acting as a lessor of property, may assign leases to a third party funding source. A depository institution shall be considered an assignor of lease payments, residual of assigned leases, or both, if after entering into a lease as a lessor of property, it then borrows against the lease payments, residual, or both, by assigning them to another funding source. A depository institution shall be considered an assignee of lease payments, residual of assigned leases, or both, if another lessor assigns the lease payments, residual, or both, of its own lease to the depository institution in order to fund the lease.

### **R331-7-4. Residual Dependence Restrictions for Depository Institutions.**

(1) The residual dependence by a depository institution as a lessor of property on leases other than leases with terms of 24 months or less or automobiles and small trucks of one ton or less shall not exceed 30% of the acquisition cost of the property to the lessor unless the estimated residual value is guaranteed by a manufacturer of such property, or by a third party which is not an affiliate of the depository institution and the depository institution makes the determination that the guarantor has the resources to meet the guarantee.

(a) Any such guarantee of residual value by a third party is to be considered in addition to the requirement that the unguaranteed residual value estimate shall not exceed 30% of the acquisition cost of the property.

(b) However, the combined total of the 30% unguaranteed residual value and the guaranteed residual value may not exceed 50% of the leased property's acquisition cost without the prior written approval of the commissioner.

(2) In all cases, however, both the estimated residual value of the property and that portion of the guaranteed residual value relied upon by the lessor to satisfy the requirements of a limited residual dependent lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property primarily depends on the credit worthiness of the lessee and any guarantor of the residual value, and only secondarily on the residual market value of the leased property.

### **R331-7-5. Salvage Powers for Depository Institutions.**

(1) If, in good faith, a depository institution believes that there has been an unanticipated change in conditions which threatens its financial position by significantly increasing its exposure to loss, the provisions of this rule shall not prevent the depository institution:

(a) As the owner, lessor, or both, under a net, limited residual dependent lease from taking reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

(b) As the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

(c) Upon return of the leased property by the lessee to the depository institution at the expiration of the lease term or at any other time that the depository institution has possession of the

property upon default by the lessee; the depository institution in order to avoid the cost and inherent liability of maintaining the property and to recoup its investment in the lease plus financing costs shall:

- (i) Sell the property;
- (ii) Release the property by entering into a new and separate net, limited residual dependent lease with a lessee;
- (iii) Rent the property in which case the depository institution may be required to maintain the property in suitable condition to be used by another party on a rental basis. Such maintenance must be performed by an independent firm on a sub-contract basis only;
- (iv) Transfer the property to a separately identified holding or repossessed property account within the depository institution.

(2) The provisions of this section do not prohibit a depository institution from including any provisions in a lease, or from making any additional agreements to protect its financial position or investment in the circumstances.

**R331-7-6. Sales-Type Capital Lease Restrictions for Depository Institutions.**

(1) Within the limitations of this rule, a depository institution, as lessor, shall be permitted to enter into a sales-type capital lease. Although a depository institution shall be allowed to earn a gross profit in a lease transaction in addition to interest income from the rentals and residual, it shall be precluded from inventorying property except for sample or display purposes.

(2) Although many equipment manufacturers and vendors require their dealers to inventory products prior to sale in order for the depository institution to be allowed to receive a wholesale price or comparable discount, the inventory of equipment prior to leasing the equipment is not permitted.

(3) A depository institution may purchase or acquire property in a direct lease situation only in response to a lessee's request for that specific property and any gross profit derived from volume discounts shall be accounted for separately from the lease.

**R331-7-7. Sale-Leaseback Restrictions for Depository Institutions.**

A depository institution acting as a lessor may lease used property in a sale-leaseback transaction provided that:

- (1) The aggregate of the total net investment in such sale-leaseback transactions, at any point, in time does not exceed 50% of the depository institution's total capital; and
- (2) The sale-leaseback transactions are separately identified.

**R331-7-8. Leveraged Lease Restrictions for Depository Institutions.**

(1) Due to increased risk inherent in leveraged leasing, a depository institution may invest as a lessor in a leveraged lease provided that:

- (a) The aggregate of such leveraged leases does not exceed 30% of the depository institution's total capital at any point in time; and
- (b) The leveraged leases are separately identified.

(2) A depository institution shall not enter into a leveraged lease as a lessor, equity-participant unless the inherent tax benefits are useable by the depository institution.

(3) This rule does not preclude a depository institution from purchasing non-recourse interests in leveraged lease pools or joint ventures, provided that:

- (a) The aggregate of such participations or interests does not exceed 30% of the depository institution's total capital; and
- (b) The participations or interests are separately identified.

**R331-7-9. Accounting Requirements for Depository Institutions.**

(1) The following restrictions and procedures shall be adhered to by a depository institution in accounting and reporting for acceptable leases and leasing transactions whether the depository institution is the assignor or the assignee. All other accounting and reporting procedures concerning leasing not covered by this rule shall be in accordance with generally accepted accounting principles as promulgated by the FASB, as amended.

(a) As lease payment revenue is received by the depository institution under a direct financing or sales-type capital lease, the lease payments shall be amortized or allocated between principal and interest income actuarially using the effective interest method over the lease term. A depository institution shall be precluded from using other approximations to the effective interest method such as the "Rule of 78's" method of amortizing lease payments.

(b) In accounting for a capital lease whether a sales-type or direct financing lease, a depository institution shall record the gross investment in the lease on the balance sheet allocated into its two components:

- (i) Total minimum lease payments receivable; and
- (ii) Unguaranteed residuals.

(c) The difference between the gross investment in the lease and the cost or carrying amount, if different, of the leased property shall be recorded as unearned income. Such unearned income shall be increased by any deferral of the investment tax credit or any other tax credits if the lessor elects deferral or if deferral is required by generally accepted accounting principles and decreased by any initial direct costs incurred on direct financing leases.

(d) Initial direct costs are limited to those costs incurred by the lessor that are directly associated with negotiating and consummating completed leasing transactions. Those costs include commissions, legal fees, cost of credit investigations, and costs of preparing and processing documents for new leases acquired.

(i) In addition, that portion of salespersons' compensation, other than commissions, and the compensation of other employees that is applicable to the time spent in the activities described above with respect to completed leasing transactions shall also be included in initial direct costs. That portion of salespersons' compensation and the compensation of other employees that is applicable to the time spent in negotiating leases that are not consummated shall not be included in initial direct costs.

(ii) No portion of supervisory and administrative expenses or other indirect expenses, such as rent and facilities cost, shall be included in initial direct costs.



(iii) In order to prevent initial overstatement by a depository institution of reported earnings and subsequent understatement of reported earnings throughout the remainder of the lease term, the depository institution shall not recognize initial direct costs in excess of 8% of the unearned income for leases which cost less than \$10,000 at their inception; or initial direct costs in excess of 6% of the unearned income for leases which cost \$10,000 or more at the inception of the lease. Initial direct costs shall include all costs directly attributable to consummating a lease as defined above.

(e) In accounting for the amount of initial direct costs associated with consummated direct financing capital leases, a depository institution is not required to treat as an initial direct cost the estimate of bad debt expense pertaining to a lease subject to the limitations of R331-7-9(d)(iii) which limits the maximum amount of initial direct costs.

(f) At any time during the lease term when it has been determined by a depository institution that there has been an impairment of the estimated residual value as initially recorded then such impairment of value shall be recognized in the period that the impairment of value has been determined.

(i) Any such impairment of guaranteed or unguaranteed residual value shall be recognized by a debit charge to income and a corresponding credit reduction to the unearned residual component of the gross investment in the lease.

(ii) A new implicit rate is to be computed for the lease using the reduced residual value and any remaining unearned income is to be recognized actuarially over the remaining lease term using the newly computed implicit rate.

(g) Differences between reported accounting net income for book purposes of a depository institution and its taxable income for the same period caused by the application of different accounting principles such as depreciation methods; or differences in how revenue is recognized; or because of any other timing differences, shall be shown in the depository institution's financial statements as a deferred tax credit or charge as required by interperiod tax allocation procedures explained in Accounting Principles Board Opinion No. 11, Accounting for Income Taxes, as amended, which is incorporated by reference.

(2) The following restrictions and procedures shall be adhered to by a depository institution in accounting and reporting for assigned leases whether the depository institution is the assignor or the assignee.

(a) A depository institution, after having entered into a lease as a lessor, may assign the lease payment stream to a third party in order to fund the lease. To such an assignment, the depository institution becomes the assignor.

(i) If the assignment is non-recourse to the depository institution any profits or loss on the assignment shall be recognized at the time of the transaction except when the assignment is between related parties. The profit or loss is the difference between the net investment in the assigned lease and the loan funds received from the lender.

(ii) If the assignment is recourse to the depository institution or if it is non-recourse but between related parties, both the lease and the related loan should be shown separately in the financial statements of the depository institution.

(iii) The lease shall be shown on the balance sheet by recording the gross investment in the lease receivable and the

unearned income account relating to the lease. The net of these two accounts represents the net investment in the lease. The gross investment in the lease receivable shall be further allocated and shown in the financial statements in its two separate components:

(A) Minimum lease payments, and

(B) Residual.

(b) A depository institution which has funded a lease originated by another lessor and taken an assignment of the lease may have funded the lease on either a recourse or a non-recourse basis to the lessor. In either case, the assignment shall be regulated by this rule only if the residual dependence is greater than 5% of the cost of the leased property, in which case the assignment shall be accounted for as described in R331-7-9(2)(a) above. If the residual dependence is equal to or less than 5% of the cost of the leased property then such assignment shall not be regulated by this rule and shall be accounted for as a loan.

(3) The following restrictions and procedures shall be adhered to by a depository institution in accounting and reporting for operating leases:

(a) Leases other than sales-type, direct financing, or leveraged capital leases are classified as operating leases.

(b) Revenue in an operating lease shall be recognized in conformity with FASB 13 paragraph 19.b.

(4) Accounting for leveraged leases, sale-leasebacks, and real estate sales shall be in conformity with FASB 13 procedures:

(a) Leveraged leases, FASB 13 paragraphs 41-47;

(b) Sale-leasebacks, FASB 13 paragraphs 32-34;

(c) Real estate leases, FASB 13 paragraphs 24-28.

**KEY: financial institutions, leases**

**Date of Enactment or Last Substantive Amendment: [~~October 3, 1997~~]2012**

**Notice of Continuation: July 25, 2007**

**Authorizing, and Implemented or Interpreted Law: 7-1-301(4); 7-1-301(8)(a); 7-1-501**

**Health, Center for Health Data, Health  
Care Statistics  
R428-15  
Health Data Authority Health Insurance  
Claims Reporting**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35616

FILED: 01/04/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to revise the threshold of third-party payers reporting to the All Payer Claims Database from 200 to 2,500 persons, per H.B. 128 (2011 General Session). Also, the rule change is intended to provide minor technical changes and renumber sections to make the rule consistent where necessary.

**SUMMARY OF THE RULE OR CHANGE:** In order to comply with H.B. 128 (2011 General Session), insurance carriers with fewer than 2,500 enrollees are now exempt from reporting to the All Payer Claims Database (up from 200). This change has been made in the rule along with several minor, technical edits.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 26, Chapter 33a

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This rule amendment does not change the process currently in place by rule, it only clarifies the requirement for exemption of carriers reporting to the All Payer Claims Database as well as makes technical changes for consistency; therefore, the Utah Department of Health determines that these amendments will not create any cost or savings impact to the state budget or UDOH's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** Since this amendment only clarifies and amends criteria relating to health carriers, 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:** Health plan carriers with fewer than 2,500 enrollees are now exempt from reporting to the All Payer Claims Database. Since the enactment of H.B. 128 on 05/10/2011, a total of six carriers that had previously received reporting extensions from the Utah Health Data Committee are now exempt from reporting. These carriers -- and any other carrier with fewer than 2,500 enrollees -- will not be bound to costs associated with meeting requirements in Rule R428-15. No additional costs will result for carriers because of this change or other changes within the rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Health plan carriers with fewer than 2,500 enrollees are now exempt from reporting to the All Payer Claims Database. Since the enactment of H.B. 128 on 05/10/2011, a total of six carriers that had previously received reporting extensions from the Utah Health Data Committee are now exempt from reporting. These carriers -- and any other carrier with fewer than 2,500 enrollees -- will not be bound to costs associated with meeting requirements in Rule R428-15. No additional costs will result for carriers because of this change or other changes within the rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Minor technical changes to the rule and new exemption requirements will not result in compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Exempting carriers with fewer than 2,500 enrollees from

being required to report to the All Payer Claims Database will reduce the regulatory impact on those businesses.

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

HEALTH  
CENTER FOR HEALTH DATA,  
HEALTH CARE STATISTICS  
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:**

◆ Keely Cofrin Allen by phone at 801-538-6551, by FAX at 801-538-9916, or by Internet E-mail at kcofrinallen@utah.gov  
◆ Mike Martin by phone at 801-538-9205, by FAX at 801-538-9916, or by Internet E-mail at mikemartin@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012**

**AUTHORIZED BY:** David Patton, PhD, Executive Director

**R428. Health, Center for Health Data, Health Care Statistics.  
R428-15. Health Data Authority Health Insurance Claims Reporting.**

**R428-15-1. [Purpose and] Legal Authority.**

[~~\_\_\_\_\_ (1) This rule establishes requirements for certain entities that pay for health care to submit data to the Utah Department of Health.~~

~~\_\_\_\_\_ (2) ] This rule is promulgated under authority granted in Utah Code Title 26, Chapter 33a and in accordance with the Utah Health Data Plan as adopted in R428-1.~~

**R428-15-2. Purpose.**

~~\_\_\_\_\_ This rule establishes requirements for certain entities that pay for health care to submit data to the Utah Department of Health.~~

**R428-15-[2]3. Definitions.**

These definitions apply to rule R428-15, in addition:

(1) "Office" means the Office of Health Care Statistics within the Utah Department of Health, which serves as staff to the Utah Health Data Committee.

(2) "Carrier" means:

(a) a commercial insurance company engaged in the business of health care insurance in the state of Utah, as defined in 31A-1-301 (74), including a business under an administrative services organization or administrative services contract arrangement;

(b) a third party administrator, as defined in 31A-1-301 (159), licensed by the state of Utah that collects premiums or settles claims of residents of the state, for health care insurance policies or health benefit plans, as defined in 31A-1-301 (148)

(c) a governmental plan as defined in Section 414 (d), Internal Revenue Code;

(d) a non-electing church plan as described in Section 410 (d), Internal Revenue Code;

(e) a licensed professional employer organization acting as an administrator of a health care insurance policy or health benefit plan funded by a self-insurance arrangement; or

(f) a dental stand-alone company as defined in 31A-8-101 (6).

(3) "Claim" means a request or demand on a carrier for payment of a benefit.

(4) "Health care claims data" means information consisting of, or derived directly from, member enrollment, medical claims, and pharmacy claims that this rule requires a carrier to report.

(5) "Health Insurance" has the same meaning as found in Subsection 31A-1-301.

(6) "Technical specifications" means the technical specifications document published by the Health Data Committee describing the variables and formats of the data that are to be submitted as well as submission directions and guidelines.

**R428-15-[3]4. Reporting Requirements.**

(1) Each carrier shall submit enrollment, medical claims, and pharmacy data described in R428-15-[5]6 where Utah is the patient's primary residence and enrollment, medical claims, and pharmacy data for services provided out of state to Utah residents.

(2) Each carrier shall begin submitting the required data to the office no later than October 17, 2009. The initial data submission must be completed by November 15, 2009. The initial data submission shall be for claims incurred from January 1, 2007 through December 31, 2008 and which are paid through September 30, 2009. Thereafter, each carrier shall submit monthly health care claims data. Each monthly submission is due no later than the last day of the following month.

**R428-15-[4]5. Reporting Process.**

(1) Submission procedures and guidelines are described in detail in the technical specifications published by the Health Data Committee. The health care claims data shall be either X12 format, or flat text files formatted according to the technical specifications.

(2) All medical claims shall be submitted to the Office through the Utah Health Information Network (UHIN) in X12 format.

(3) All enrollment and pharmacy data files shall be submitted to the Office in flat text files using either UHIN or FTP Secure.

**R428-15-[5]6. Required Data Elements.**

(1) The enrollment, medical claims, and pharmacy data elements are described in detail in the technical specifications published by the Health Data Committee. Each carrier shall submit data for all fields contained in the submission specifications if the data are available to the carrier.

(a) Each carrier must submit enrollment files as a flat file.

(b) Each carrier must submit medical claims as X12 messages as modified by this rule. All X12 format messages must contain all the necessary segments for processing through UHIN. This includes ISA/IEA segments, GS and GE segments, Segment

Qualifier codes, etc., as specified in the X12 implementation guides. If a segment or qualifier is required for X12 format, it is required for all submissions under this rule. If a segment or qualifier is not required for X12 format, but is required by this rule, it must be submitted as required by this rule. Submitted files must be in the ASC X12 4010A1 x098 for a Professional Claim and in the ASC X12 4010A1 x096 for an Institutional claim.

(c) Each carrier must submit pharmacy claims as a flat file.

(2) Enrollment Files. Each carrier must submit the following data elements for each enrollment file:

- (a) Record Type
- (b) Transaction Code
- (c) File Create Date
- (d) Member ID
- (e) Social Security Number
- (f) Member's Relationship to Subscriber
- (g) Last Name
- (h) First Name
- (i) Middle Name
- (j) Sex
- (k) Street
- (l) City
- (m) State
- (n) Zip Code
- (o) Primary Phone
- (p) Birth date
- (q) Race
- (r) Ethnicity
- (s) Primary/Secondary
- (t) Designated Primary Care Physician
- (u) PCP ID
- (v) Healthplan Code
- (w) Benefit Option Code
- (x) Option Effective Date
- (y) HP Termination Date
- (z) Employer Group Code
- (aa) Patient ID
- (bb) Health Plan Description
- (cc) Orig. HP Effective Date
- (dd) Member Status.

(3) Professional Medical Claims. Each carrier must submit the following data elements for each professional medical claim:

- (a) Data Element - Data Element Description
- (b) BHT06 - BHT Beginning of Hierarchical Trans
- (c) GS08 - Functional Group Header
- (d) GS07 - Functional Group Header
- (e) Submitter Information
- (i) 1000A NM103 - Submitter Name
- (ii) 1000A NM109 - Submitter Identifier
- (iii) 1000A PER01-05 - Submitter EDI Contact Information
- (f) 1000B NM103 - Receiver Name
- (g) 1000B NM109 - Receiver Identifier
- (h) Billing Provider
- (i) 2010AA NM103 - Billing Provider Name
- (ii) 2010AA NM109 - Billing Provider ID
- (iii) 2010AA REF02 - Billing Provider Secondary ID

- (i) 2000B SBR02 - Individual Relationship Code
- (j) 2000B SBR03 - Insured Group or Policy Number
- (k) 2010BB NM103 - Payer Name
- (l) Subscriber Information
  - (i) 2010BA NM103 - Subscriber Lname
  - (ii) 2010BA NM104 - Subscriber Fname
  - (iii) 2010BA NM105 - Subscriber Middle Name
  - (iv) 2010BA NM109 - Subscriber Primary Identifier
  - (v) 2010BA N301 - Subscriber Address1
  - (vi) 2010BA N302 - Subscriber Address2
  - (vii) 2010BA N401 - Subscriber City Name
  - (viii) 2010BA N402 - Subscriber State
  - (ix) 2010BA N403 - Subscriber Zip Code
  - (x) 2010BA DMG20 - Subscriber Date of Birth
  - (xi) 2010BA DMG03 - Subscriber Sex
  - (xii) 2010BA REF01 - Subscriber Secondary ID Qualifier
  - (xiii) 2010BA REF02 - Subscriber Secondary ID
- (m) Patient Information
  - (i) 2000C PAT01 - Patients Relationship to Insured
  - (ii) 2010CA NM103 - Patient Lname
  - (iii) 2010CA NM104 - Patient Fname
  - (iv) 2010CA NM105 - Patient Middle Name
  - (v) 2010CA NM109 - Patient Primary Identifier
  - (vi) 2010BA/2010CA N301 - Patient Address1
  - (vii) 2010CA N302 - Patient Address2
  - (viii) 2010CA N401 - Patient City Name
  - (ix) 2010CA N402 - Patient State
  - (x) 2010CA N403 - Patient Zip Code
  - (xi) 2010CA DMG02 - Patient Date of Birth
  - (xii) 2010CA DMG03 - Patient Sex
  - (xiii) 2010CA REF01 - Patient Secondary ID Qualifier
  - (xiv) 2010CA REF02 - Patient Secondary ID
- (n) 2300 CLM05-1 - Facility Type Code
- (o) 2300 CLM05-3 - Claim Frequency Type Code
- (p) 2300 REF02 When REF01 = F8 - Original Reference
- (q) 2300 CLM01 - Patient Account Number
- (r) 2300 REF02 When REF01 = EA - Medical Record
- (s) 2300 CLM02 - Total Claim Charge Amount
- (t) 2300 AMT02 When AMT01 = F5 - Patient Paid
- (u) 2320 AMT02 When AMT01 = D - COB Payer Paid
- (v) 2310D NM103 - Service Facility Name
- (w) 2310D NM109 - Service Facility ID Code
- (x) 2330B DTP03 When DTP01 = 573 - Claim
- (y) 2320 AMT02 When AMT01 = B6 - COB Allowed
- (z) Claim Adjustment Information
  - (i) 2320 CAS01 - Claim Adjustment Group Code
  - (ii) 2320 CAS02 - Claim Adjustment Reason Code
  - (iii) 2320 CAS03 - Claim Level Adjustment Amount
- (aa) 2310D NM109 - Laboratory or Facility Primary
- (bb) Diagnosis Information
  - (i) 2300 HI01 -2 - Principal Diagnosis
  - (ii) 2300 HI02 -2
- (iii) 2300 HI03 -2
- (iv) 2300 HI04 -2
- (v) 2300 HI05
- (vi) 2300 HI06 -2
- (vii) 2300 HI07 -2
- (viii) 2300 HI08 -2
- (ix) 2300 HI09 -2
- (x) 2300 HI10
- (xi) 2300 HI11 -2
- (xii) 2300 HI12 -2
- (cc) 2310B PRV03 or 2000A - Rendering Provider
- Specialty
  - (dd) Rendering Provider Information
    - (i) 2310B NM103 - Rendering Provider LName
    - (ii) 2310B NM104 - Rendering Provider FName
    - (iii) 2310B NM105 - Rendering Provider Name Middle
    - (iv) 2310B NM107 - Rendering Provider Name Suffix
    - (v) 2310B NM109 - Rendering Provider Primary
- Identifier
  - (vi) 2310B REF02 - Rendering Provider Secondary ID
  - (ee) 2400 LX01 - Line Counter
  - (ff) 2400 DTP03 WHEN DTP01 = 472 - Date(s) of
- Service
  - (gg) Provider Modifiers
    - (i) 2400 SV101-2
    - (ii) 2400 SV101-3
    - (iii) 2400 SV101-4
    - (iv) 2400 SV101-5
    - (v) 2400 SV101-6
  - (hh) 2400 SV104 - Days or Units
  - (ii) 2400 SV102 - Line Item Charge Amount
  - (jj) 2400 AMT02 - Allowed Amount
  - (kk) 2410 LIN03 - Drug Identification
  - (ll) 2410 REF02 When REF01 = XZ - Prescription
- Number
  - (mm) Drug Information
    - (i) 2410 CTP05-1 - Drug Units Qualifier
    - (ii) 2410 CTP04 - Drug Number of Units
    - (iii) 2410 CTP03 - Drug Cost or Unit Price
  - (nn) Line Adjustment Codes
    - (i) 2430 CAS01 - Line Adjustment Group Code
    - (ii) 2430 CAS02 - Line Adjustment Reason Code
    - (iii) 2430 CAS03 - Line Level Adjustment Amount.
- (4) Institutional Medical Claims. Each carrier must submit the following data elements for each institutional medical claim:
  - (a) BHT01 BHT06 - Hierarchical Structure Code
  - (b) GS08 - Functional Group Header
  - (c) GS01 - Functional Group Header
  - (d) Submitter Information
    - (i) 1000A NM103 - Submitter Name
    - (ii) 1000A NM109 - Submitter Identifier
    - (iii) 1000A PER01-05 - Submitter EDI Contact
  - Information
    - (e) 1000B NM103 - Receiver Name
    - (f) 1000B NM109 - Receiver Identifier
    - (g) Billing Provider Information
      - (i) 2010AA NM103 - Billing Provider Name
      - (ii) 2010AA NM109 - Billing Provider ID

<ul style="list-style-type: none"> <li>(iii) 2010AA REF02 - Billing Provider Secondary ID</li> <li>(h) 2000B SBR02 - Individual Relationship Code</li> <li>(i) 2000B SBR03 - Insured Group or Policy Number</li> <li>(j) 2010BC NM103 - Payer Name</li> <li>(k) Subscriber Information                             <ul style="list-style-type: none"> <li>(i) 2010BA NM103 - Subscriber Lname</li> <li>(ii) 2010BA NM104 - Subscriber Fname</li> <li>(iii) 2010BA NM105 - Subscriber Middle Name</li> <li>(iv) 2010BA NM109 - Subscriber Primary Identifier</li> <li>(v) 2010BA N301 - Subscriber Address1</li> <li>(vi) 2010BA N302 - Subscriber Address2</li> <li>(vii) 2010BA N401 - Subscriber City Name</li> <li>(viii) 2010BA N402 - Subscriber State</li> <li>(ix) 2010BA N403 - Subscriber Zip Code</li> <li>(x) 2010BA DMG02 - Subscriber Date of Birth</li> <li>(xi) 2010BA DMG03 - Subscriber Sex</li> <li>(xii) 2010BA REF01 - Subscriber Secondary ID Qualifier</li> <li>(xiii) 2010BA REF02 - Subscriber Secondary</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>(cc) 2330B DTP03 WHEN DTP01 = 573 - Claim Adjudication Date</li> <li>(dd) 2320 AMT02 When AMT01 = B6 - COB Total Allowed Amount                             <ul style="list-style-type: none"> <li>(ee) Claim Adjustment Information                                     <ul style="list-style-type: none"> <li>(i) 2320 CAS01 - Claim Adjustment Group Code</li> <li>(ii) 2320 CAS02 - Claim Adjustment Reason Code</li> <li>(iii) 2320 CAS03 - Claim Level Adjustment Amount</li> </ul> </li> <li>(ff) 2310E NM109 - Laboratory or Facility Primary ID</li> <li>(gg) Principal, Admitting, E-Code and Patient Reason for</li> </ul> </li> </ul>
<p>Identification</p> <ul style="list-style-type: none"> <li>(l) Patient Information                             <ul style="list-style-type: none"> <li>(i) 2000C PAT01 - Patients Relationship to Insured</li> <li>(ii) 2010CA NM103 - Patient Lname</li> <li>(iii) 2010CA NM104 - Patient Fname</li> <li>(iv) 2010CA NM105 - Patient Middle Name</li> <li>(v) 2010CA NM109 - Patient Primary Identifier</li> <li>(vi) 2010BA/2010CA N301 - Patient Address1</li> <li>(vii) 2010CA N302 - Patient Address2</li> <li>(viii) 2010CA N401 - Patient City Name</li> <li>(ix) 2010CA N402 - Patient State</li> <li>(x) 2010CA N403 - Patient Zip Code</li> <li>(xi) 2010CA DMG02 - Patient Date of Birth</li> <li>(xii) 2010CA DMG03 - Patient Sex</li> <li>(xiii) 2010CA REF01 - Patient Secondary ID Qualifier</li> <li>(xiv) 2010CA REF02 - Patient Secondary Identification</li> <li>(m) 2300 CLM05-1 - Facility Type Code</li> <li>(n) 2300 CLM05-3 - Claim Frequency Type Code</li> <li>(o) 2300 REF02 When REF01 = F8 - Original Reference</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>(ii) Principal, Admitting, E-Code and Patient Reason for</li> </ul> <p>Visit Diagnosis Information Admitting DX</p> <ul style="list-style-type: none"> <li>(i) 2300 HI02-2 When HI02-1 = BJ</li> <li>(ii) 2300 HI01-2 When HI01-1 = BK</li> <li>(jj) Other Diagnosis Information                             <ul style="list-style-type: none"> <li>(i) 2300 HI01-2 When HI01-1 = BF</li> <li>(ii) 2300 HI02-2 When HI02-1 = BF</li> <li>(iii) 2300 HI03-2 When HI03-1 = BF</li> <li>(iv) 2300 HI04-2 When HI04-1 = BF</li> <li>(v) 2300 HI05-2 When HI05-1 = BF</li> <li>(vi) 2300 HI06-2 When HI06-1 = BF</li> <li>(vii) 2300 HI07-2 When HI07-1 = BF</li> <li>(viii) 2300 HI08-2 When HI08-1 = BF</li> <li>(ix) 2300 HI09-2 When HI09-1 = BF</li> <li>(x) 2300 HI10-2 When HI10-1 = BF</li> <li>(xi) 2300 HI11-2 When HI11-1 = BF</li> <li>(xii) 2300 HI12-2 When HI12-1 = BF</li> </ul> </li> <li>(kk) Principal, Admitting, E-Code and Patient Reason for</li> </ul>
<ul style="list-style-type: none"> <li>(p) 2300 DTP03 When DTP01 = 435 - Admission Date/Hour</li> </ul>	<ul style="list-style-type: none"> <li>(i) 2300 HI02-2 When HI02-1-ZZ - Reason for Visit 1</li> <li>(ii) 2300 HI02-2 When HI02-1-ZZ - Reason for Visit 2</li> <li>(iii) 2300 HI02-2 When HI02-1-ZZ - Reason for Visit 3</li> <li>(hh) 2300 K3 - Present on Admission Indicator</li> <li>(ii) Principal, Admitting, E-Code and Patient Reason for</li> </ul>
<ul style="list-style-type: none"> <li>(q) Institutional Claim Code Information                             <ul style="list-style-type: none"> <li>(i) 2300 CL101 - Institutional Claim Code Admit Type</li> <li>(ii) 2300 CL102 - Institutional Claim Code Admit Source</li> <li>(iii) 2300 CL103 - Institutional Claim Code Pt Status</li> <li>(r) 2300 HI01-2 When HI01-1 = DR - Diagnosis Related</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>(i) 2300 HI02-2 When HI02-1-ZZ - Reason for Visit 1</li> <li>(ii) 2300 HI02-2 When HI02-1-ZZ - Reason for Visit 2</li> <li>(iii) 2300 HI02-2 When HI02-1-ZZ - Reason for Visit 3</li> <li>(hh) 2300 K3 - Present on Admission Indicator</li> <li>(ii) Principal, Admitting, E-Code and Patient Reason for</li> </ul>
<p>Group (DRG)</p> <ul style="list-style-type: none"> <li>(s) 2300 DTP03 when DTP01 = 434 - Statement Date</li> <li>(t) 2300 DTP03 WHEN DTP01 = 096 - Discharge Date</li> <li>(u) 2300 DTP03 When DTP01 = 096 - Discharge Hour</li> <li>(v) 2300 CLM01 - Patient Account Number</li> <li>(w) 2300 REF02 When REF01 = EA - Medical Record</li> </ul>	<ul style="list-style-type: none"> <li>(ii) Principal, Admitting, E-Code and Patient Reason for</li> </ul> <p>Visit Diagnosis Information</p> <ul style="list-style-type: none"> <li>(i) 2300 HI03-2 When HI03-1 = BN E-Code 1</li> <li>(ii) 2300 HI03-2 When HI03-1 = BN E-Code 2</li> <li>(iii) 2300 HI03-2 When HI03-1 = BN E-Code 3</li> <li>(ll) 2300 HI01-2 When HI01-1 = BR Principal Procedure</li> </ul>
<ul style="list-style-type: none"> <li>(x) 2300 CLM02 - Total Claim Charge Amount</li> <li>(y) 2300 AMT02 When AMT01 = F5 - Patient Paid</li> </ul>	<ul style="list-style-type: none"> <li>(mm) 2300 HI01-4 When HI01-1 = BR Principal Procedure Date</li> <li>(nn) Other Procedure Codes and Dates                             <ul style="list-style-type: none"> <li>(i) 2300 HI01-2 When HI01-1 = BQ Other Procedure</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>(z) 2320 AMT02 WHEN AMT01 = C4 - Payer Prior Payment</li> </ul>	<ul style="list-style-type: none"> <li>(ii) 2300 HI01-4 When HI01-1 = BQ Other Procedure</li> <li>(iii) 2300 HI02-2 When HI02-1 = BQ Other Procedure</li> <li>(iv) 2300 HI02-4 When HI02-1 = BQ Other Procedure</li> <li>(v) 2300 HI03-2 When HI03-1 = BQ Other Procedure</li> <li>(vi) 2300 HI03-4 When HI03-1 = BQ Other Procedure</li> <li>(vii) 2300 HI04-2 When HI04-1 = BQ Other Procedure</li> <li>(viii) 2300 HI04-4 When HI04-1 = BQ Other Procedure</li> </ul>
<ul style="list-style-type: none"> <li>(aa) 2310E NM103 - Service Facility Name</li> <li>(bb) 2310E NM109 - Service Facility ID Code</li> </ul>	<ul style="list-style-type: none"> <li>(v) 2300 HI03-2 When HI03-1 = BQ Other Procedure</li> <li>(vi) 2300 HI03-4 When HI03-1 = BQ Other Procedure</li> <li>(vii) 2300 HI04-2 When HI04-1 = BQ Other Procedure</li> <li>(viii) 2300 HI04-4 When HI04-1 = BQ Other Procedure</li> </ul>

Code	(ix) 2300 HI05-2 When HI05-1 = BQ Other Procedure	(xiv) Subscriber Secondary Identification
Date	(x) 2300 HI05-4 When HI05-1 = BQ Other Procedure	(d) Patient Information
Specialty Information	(oo) Attending Physician Information	(i) Patients Relationship to Insured
	(i) 2000A or 2310A PRV03 - Attending Physician	(ii) Patient Last name
	(ii) 2310A NM103 - Attending Physician LName	(iii) Patient First name
	(iii) 2310A NM104 - Attending Physician FName	(iv) Patient Middle Name
	(iv) 2310A NM105 - Attending Physician Name Middle	(v) Patient Primary Identifier
	(v) 2310A NM107 - Attending Physician Name Suffix	(vi) Patient Address
	(vi) 2310A NM109 - Attending Physician Primary ID	(vii) Patient Address 2
	(vii) 2310A REF02 - Attending Physician Secondary ID	(viii) Patient City
	(pp) 2400 LX01 - Line Counter	(ix) Patient State
	(qq) 2400 DTP03 When DTP01 = 472 Date(s) of Service	(x) Patient ZipCode
	(rr) Institutional Service Line Codes	(xi) Patient Phone
	(i) 2400 SV202-2 - Institutional Service Line	(xii) Patient Date of Birth
Product/Service ID	(ii) 2400 SV202-3 - Institutional Service Line Procedure	(xiii) Patient Sex
Modifier - 1	(iii) 2400 SV202-4 - Institutional Service Line Procedure	(xiv) Patient Secondary Identification Qualifier
Modifier - 2	(iv) 2400 SV202-5 - Institutional Service Line Procedure	(xv) Patient Secondary Identification
Modifier - 3	(v) 2400 SV202-6 - Institutional Service Line Procedure	(e) RxClaimNo
Modifier - 4	(vi) 2400 SV201 - Institutional Service Line (Revenue	(f) RxClaimNoCrossRef
Codes)	(ss) 2400 SV205 - Service Units	(g) RxNo
	(tt) 2400 SV203 - Line Item Charge Amount	(h) PBMMebID
	(uu) Drug Information	(i) RXClaimTxnType
	(i) 2410 LIN03 - Drug Identification	(j) RxType
	(ii) 2410 REF02 when REF01 = XZ - Prescription	(k) RxClaimXrefNo
Number	(iii) 2410 CTP05-1 - Drug Units Qualifier	(l) RxAdjType
	(iv) 2410 CTP04 - Drug Number of Units	(m) SubscriberSfx
	(v) 2410 CTP03 - Drug Cost or Unit Price	(n) Prescriber Information
	(vv) Line Adjustment Codes	(i) RxPrescriberID
	(i) 2430 CAS01 - Line Adjustment Group Code	(ii) RxPrescriberNoType
	(ii) 2430 CAS02 - Line Level Adjustment Reason Code	(iii) RxPrescriberName
	(iii) 2430 CAS03 - Line Level Adjustment Amount.	(o) RxPharmacyNo
	(5) Pharmacy claims. Each carrier must submit the	(p) MembMcareSStatus
following data elements for each pharmacy claim:	(a) Payer Name	(q) RxWrittenDt
	(b) Insured Group or Policy Number	(r) RxFilledDt
	(c) Subscriber Information	(s) Reject Codes
	(i) Subscriber Last Name	(i) Reject Code 1
	(ii) Subscriber First Name	(ii) Reject Code 2
	(iii) Subscriber Middle Name	(iii) Reject Code 3
	(iv) Subscriber Primary Identifier	(iv) Reject Code 4
	(v) Subscriber Address	(v) Reject Code 5
	(vi) Subscriber Address 2	(t) RxPaidDt
	(vii) Subscriber City	(u) RxTotalPdAmt
	(viii) Subscriber State	(v) PatientPaidAmount
	(ix) Subscriber Zipcode	(w) RxQualifier
	(x) Subscriber Phone	(x) RxID
	(xi) Subscriber Date of Birth	(y) RxNDC
	(xii) Subscriber Sex	(z) RxTradeNm
	(xiii) Subscriber Secondary Identification Qualifier	(aa) RxGenericNm
		(bb) GCNNumber
		(cc) GPINumber
		(dd) UnitsOfMeasure
		(ee) UnitDoseIndicator
		(ff) DispensingStatus
		(gg) QuantityIntended
		(hh) RxMtrcFilQty
		(ii) RxDaysSupplyNo
		(jj) DrugStrength
		(kk) DosageDescription
		(ll) CompoundIndicator

- (mm) RxNoRefills
- (nn) RxRefillNo
- (oo) RxDAWCode
- (pp) Therapeutic ClassCode - AHFS
- (qq) USC Code
- (rr) DEA Class of Drug
- (ss) Drug Class
- (tt) Drug Category Code
- (uu) RxBrandInd
- (vv) RecordDateTimeStamp.

**R428-15-[6]7. Exemptions.**

A carrier that covers fewer than 2,500 individual Utah residents is exempt from all requirements of this rule.

**R428-15-[7]8. Third-party Contractors.**

The Office may contract with a third party to collect and process the health care claims data and will prohibit it from using the data in any way but those specifically designated in the scope of work.

**R428-15-[8]9. Carrier Registration.**

Each carrier shall register with the Office by completing the registration on line at: [http://health.utah.gov/hda/apd/\[-\]](http://health.utah.gov/hda/apd/[-]). Each carrier shall register by September 21, 2009 and annually thereafter by September 1 of each year.

**R428-15-[9]10. Testing of Files.**

(1) Prior to October 5, 2009, each carrier required to report under this rule shall submit to the Office a dataset for determining compliance with the standards for data submission. This test dataset must be in the same format as required by the technical specifications document and shall contain data for any month within 2007 or 2008.

(2) Each carrier must meet with the Office prior to the carrier's initial data submission to review individual submission formatting. The carrier must contact the Office to arrange this meeting by September 30, 2009.

(3) Carriers that become subject to this rule after September 21, 2009 shall submit to the Office a dataset for determining compliance with the standards for data submission no later than 90 days after the first date of becoming subject to the rule.

**R428-15-1[0]1. Rejection of Files.**

The Office or its designee may reject and return any data submission that fails to conform to the submission requirements. Paramount among submission requirements are First Name, Last Name, Member ID, Relationship to Subscriber, Date of Birth, Address, City, State, Zip Code, Sex, which are key data fields that the carrier must submit for each enrolled member and claim. A carrier whose submission is rejected shall resubmit the data in the appropriate, corrected format to the Office, or its designee within 10 state business days of notice that the data does not meet the submission requirements.

**R428-15-1[4]2. Replacement of Data Files.**

A carrier may replace a complete dataset submission if no more than one year has passed since the end of the month in which the file was submitted. However, the Office may allow a later

submission if the carrier can establish exceptional circumstances for the replacement.

**R428-15-1[2]3. Limitation of Liability.**

As provided in Utah Code Section 26-25-1, a carrier that submits data pursuant to this rule, including third-party administrators that submit employee data, is not liable for providing the information to the Department.

**R428-15-1[3]4. Penalties.**

Pursuant to Section 26-23-6, a carrier that violates any provision of this rule may be assessed an administrative civil money penalty for each day of non-compliance. Fines may be imposed as follows:

- (1) Not to exceed the sum of \$10,000 per violation
- (2) Each day of violation is a separate violation.

**KEY:** APD, all payer database, health care quality, transparency

**Date of Enactment or Last Substantive Amendment:** [~~October 27, 2009~~]**2012**

**Authorizing, and Implemented or Interpreted Law:** 26-33a; 26-25

## Health, Family Health and Preparedness, Child Care Licensing **R430-4** General Certificate Provisions

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 35653

FILED: 01/11/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is obsolete and will be combined with two other obsolete rules, R430-2 and R430-3, in a new rule to be numbered Rule R430-1. (DAR NOTE: The proposed new Rule R430-1 is under DAR No. 35581, the proposed repeal of Rule R430-2 is under DAR No. 35579, and the proposed repeal of Rule R430-3 is under DAR No. 35580 all published in the January 15, 2012, issue of the Bulletin.)

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

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 26, Chapter 39

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Because the content of this rule is being moved to another rule, the costs that currently occur will continue. Therefore we do not anticipate any cost or savings associated with this repeal.

◆ LOCAL GOVERNMENTS: Because the content of this rule is being moved to another rule, the costs that currently occur will continue. Therefore we do not anticipate any cost or savings associated with this repeal.

◆ SMALL BUSINESSES: Because the content of this rule is being moved to another rule, the costs that currently occur will continue. Therefore we do not anticipate any cost or savings associated with this repeal.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because the content of this rule is being moved to another rule, the costs that currently occur will continue. Therefore we do not anticipate any cost or savings associated with this repeal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the content of this rule is being moved to another rule, we do not anticipate any increased costs for compliance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact on business predicted as a result of the repeal of this rule. The substantive provisions have been incorporated into a new Rule R430-1. No change in regulatory impact is therefore predicted.

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

HEALTH  
FAMILY HEALTH AND PREPAREDNESS,  
CHILD CARE LICENSING  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Teresa Whiting by phone at 801-538-6320, by FAX at 801-538-6325, or by Internet E-mail at [twhiting@utah.gov](mailto:twhiting@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

#### **R430. Health, Family Health and Preparedness, Child Care Licensing.**

##### **[R430-4. General Certificate Provisions.**

##### **R430-4-1. Legal Authority and Purpose.**

This rule is promulgated pursuant to Title 26, Chapter 39. It defines the standards that a person must follow to obtain a residential certificate for child care. This rule further delineates the role and responsibility of the Department in the enforcement of rules pertaining to a Residential Certificate provider and provides criteria for applying sanctions.

##### **R430-4-2. Informal Discussions.**

~~Independent of any administrative proceeding, an applicant or certificate holder may request, within 30 days, to discuss a Department decision with Department staff.~~

##### **R430-4-3. Definitions.**

~~(1) "Certificate Holder" means the legally responsible person who holds a valid Residential Certificate issued by the Department of Health.~~

~~(2) "Deficiency" means a violation of any rule provision.~~

~~(3) "Department" means the Department of Health.~~

~~(4) "Facility" means the building and adjacent property, equipment, and supplies devoted to the child care operation.~~

~~(5) "Fiscal Year" means the Department's financial year which starts the first of July and ends thirtieth of June.~~

~~(6) "High Risk for Harm" means there is the potential for serious injury to a child.~~

~~(7) "Inspection" means observation, measurement, review of documentation, and interview to determine compliance with rules.~~

~~(8) "Investigation" means an in-depth inspection of specific alleged rule violations.~~

~~(9) "Statement of Findings" means a statement of one or more specific rule violations which, if not corrected, will prompt the Department to take disciplinary action.~~

~~(10) "Technical Assistance" means the noting of a rule violation and providing information on how to come into compliance.~~

##### **R430-4-4. Initial Application.**

~~(1) An applicant for a certificate shall submit to the Utah Department of Health a completed residential certificate application on a form furnished by the Department.~~

~~(2) Each applicant shall comply with all regulations, ordinances, and codes, zoning, fire, sanitation, building and licensing laws, of the city, county, municipality in which the home is located.~~

~~(3) The applicant shall submit the following documentation as part of the application:~~

~~(a) beginning July 1, 2006, a satisfactory report by the local health department for facilities providing food service;~~

~~(b) five hours of Department-approved training in child care;~~

~~(c) current CPR and First Aid certificates from a Department-approved source; and~~

~~(d) background clearance documents as required in R430-6.~~

~~(4) The applicant shall submit with the application packet a non-refundable fee as established in accordance with 26-39-104(1)(e).~~

##### **R430-4-5. Initial Certificate Issuance or Denial.**

~~(1) The Department shall render a decision on an initial residential certificate application within 60 days of receipt of a completed application.~~

~~(2) The applicant must reapply for a residential certificate if the applicant does not complete the application including all necessary submissions within six months of first submitting any portion of an application.~~



~~(3) Upon verification of compliance with rules, the Department shall issue a residential certificate for a period not to exceed one year.~~

~~(4) The Department shall issue a written decision denying a residential certificate application if the applicant and the facility are not in compliance with rules.~~

~~(5) The capacity for a residential certificate shall not exceed those set forth by local ordinances.~~

~~(6) The number of children in care at any given time shall not exceed the capacity identified on the certificate.~~

~~(7) Pursuant to R501-12-4(8)(h), a provider may not have a residential certificate to do child care and a license to do foster care at the same time.~~

#### **R430-4-6. Expiration and Renewal of Certificate.**

~~(1) Each residential certificate expires at midnight on the day designated on the certificate, unless previously revoked by the Department.~~

~~(2) To renew a certificate, the certificate holder must submit to the Department no less than 30 days prior to the current certificate expiration:~~

~~(a) a completed residential certificate application; and~~

~~(b) applicable fees.~~

~~(3) After June 30, 2006, for each renewal falling in a fiscal year that begins in an even-numbered calendar year, a certificate holder that provides food service must also submit with the application a satisfactory report from the local health department.~~

~~(4) A certificate holder that fails to renew its certificate by the certificate expiration date may have an additional 30 days to complete the renewal if the certificate holder pays a late fee.~~

~~(5) The Department shall not renew a residential certificate for a facility that is no longer providing child care.~~

#### **R430-4-7. Change in Residential Certificate.**

~~The certificate holder shall submit a completed residential certificate application to amend or modify an existing certificate at least 30 days before any of the following proposed or anticipated changes:~~

~~(1) increase or decrease of the certificate capacity;~~

~~(2) change in the name of the facility;~~

~~(3) change in the name of the certificate holder;~~

~~(4) change in the address; and~~

~~(5) change in area where child care is provided or a change in interior usable space.~~

#### **R430-4-8. Residential Certificate Transferability, Posting.**

~~(1) The certificate is not transferable.~~

~~(2) The certificate holder shall post the certificate on the premises in a place that is readily visibly and accessible to the public.~~

#### **R430-4-9. Notice of Intent to Inspect.**

~~When the Department issues or renews a residential certificate, it will schedule a compliance inspection within 90 days.~~

#### **R430-4-10. Compliance Assurance.**

~~(1) The Department shall conduct an announced and unannounced inspection of each certified facility to:~~

~~(a) determine compliance with rules;~~

~~(b) verify compliance with conditions placed on a certificate in a conditional status; and~~

~~(c) verify compliance with variance conditions.~~

~~(2) If allegations of child abuse, child neglect or serious health hazards in or around the provider's home are reported to the Department, the Department shall conduct a complaint investigation:~~

~~(a) The Department shall not investigate complaints from an anonymous source.~~

~~(b) The Department shall inform complainants that they are guilty of a class B misdemeanor if they are giving false information to the Department with the purpose of inducing a change in a certification status.~~

#### **R430-4-11. Technical Assistance.**

~~If the Department finds a deficiency that does not pose a high risk for harm:~~

~~(1) the Department shall offer technical assistance; and~~

~~(2) the certificate holder shall provide a date by which correction must be made.~~

~~(a) The correction date shall not exceed 30 days from the date of the inspection.~~

~~(b) The certificate holder may request a correction date of more than 30 days if circumstances outside the certificate holder's control prevent compliance within 30 days.~~

#### **R430-4-12. Statement of Findings.**

~~(1) If a certificate holder does not correct a deficiency by the correction date provided in R430-4-11(2), the Department shall issue a statement of findings that includes:~~

~~(a) a citation to violated rule;~~

~~(b) a description of the violation with the facts which constitute the violation; and~~

~~(c) a date by which the correction must be made.~~

~~(i) The correction date shall not exceed 30 days from the date of the inspection.~~

~~(ii) The certificate holder may request a correction date of more than 30 days if circumstances outside the certificate holder's control prevent compliance within 30 days.~~

~~(2) If a certificate holder violates a rule for which the certificate holder previously received technical assistance, the Department shall issue a statement of findings that includes:~~

~~(a) a citation to the violated rule;~~

~~(b) a description of the violation with the facts which constitute the violation; and~~

~~(c) a date by which the correction must be made.~~

~~(i) The correction date shall not exceed 30 days from the date of the inspection.~~

~~(ii) The certificate holder may request a correction date of more than 30 days if circumstances outside the certificate holder's control prevent compliance within 30 days.~~

~~(3) If a certificate holder violates a rule that creates a high risk for harm, the Department shall issue a statement of findings that includes:~~

~~(a) a citation to the violated rule;~~

~~(b) a description of the violation with the facts which constitute the violation; and~~

~~\_\_\_\_\_ (e) a date by which the correction must be made which shall not exceed 30 days from the date of the inspection.~~

~~\_\_\_\_\_ (5) If the provider elects not to correct any deficiency, letters outlining the deficiency are sent to the parents or guardians of all enrolled children and to all outside supporting agencies.~~

~~\_\_\_\_\_ (6) If the Department discovers deficiencies as the result of a complaint investigation, the provider cannot elect not to correct.~~

**R430-4-13. Directed Plan of Correction.**

~~\_\_\_\_\_ The Department may issue a directed plan of correction that specifies how and when cited findings will be corrected if a certificate holder:~~

~~\_\_\_\_\_ (1) fails to be in compliance after a correction date specified in R430-4-12; or~~

~~\_\_\_\_\_ (2) violates the same rule provision more than three times within any 12-month period.~~

**R430-4-14. Conditional Status.**

~~\_\_\_\_\_ (1) The Department may place a certificate on a conditional status to assist the certificate holder to comply with rules if the certificate holder:~~

~~\_\_\_\_\_ (a) fails to comply with rules by a correction date specific in R430-4-12;~~

~~\_\_\_\_\_ (b) violates the same rule provision more than three times within any 12-month period; or~~

~~\_\_\_\_\_ (c) violates multiple rule provisions.~~

~~\_\_\_\_\_ (2) The Department shall establish the length of the conditional status:~~

~~\_\_\_\_\_ (3) The Department shall set the conditions that the certificate holder must satisfy to remove the conditional status.~~

~~\_\_\_\_\_ (4) The Department shall return the certificate to a standard status when the certificate holder meets the conditions of the conditional status.~~

**R430-4-15. Revocation.**

~~\_\_\_\_\_ (1) The Department may revoke a certificate if the certificate holder:~~

~~\_\_\_\_\_ (a) fails to meet the conditions of a conditional status;~~

~~\_\_\_\_\_ (b) violates the Child Care Licensing Act;~~

~~\_\_\_\_\_ (c) provides false or misleading information to the Department;~~

~~\_\_\_\_\_ (d) refuses to submit or make available to the Department any written documentation required to do an inspection or investigation;~~

~~\_\_\_\_\_ (e) refuses to allow authorized representatives of the Department access to a facility to ascertain compliance to rules;~~

~~\_\_\_\_\_ (f) fails to provide, maintain, equip, and keep the facility in a safe and sanitary condition; or~~

~~\_\_\_\_\_ (g) has committed acts that would exclude a person from being licensed or certified under R430-6;~~

~~\_\_\_\_\_ (2) The Department may set the effective date of the revocation such that parents are given 10 business days to find other care for children.~~

**R430-4-16. Immediate Closure.**

~~\_\_\_\_\_ The Department may order the immediate closure of a facility if conditions create a clear and present danger to children in~~

~~care and which require immediate action to protect their health or safety.~~

**R430-4-17. Death or Serious Injury of a Child in Care.**

~~\_\_\_\_\_ The Department may order a provider to restrict or prohibit new enrollments if the Department learns of the death or serious injury of a child in care, pending the review of the Child Fatality Review Committee or receipt of a medical report determining the probable cause of death or injury.~~

**R430-4-18. Operating without a Residential Certificate.**

~~\_\_\_\_\_ If a person is providing care in lieu of care ordinarily provided by parents for more than four unrelated children without the appropriate license or certificate, the Department may:~~

~~\_\_\_\_\_ (1) issue a cease and desist order; or~~

~~\_\_\_\_\_ (2) allow the person to continue operation if:~~

~~\_\_\_\_\_ (a) the person was unaware of the need for a license or certificate;~~

~~\_\_\_\_\_ (b) conditions do not create a clear and present danger to children in care; and~~

~~\_\_\_\_\_ (c) the person agrees to apply for the appropriate license or certificate within 30 calendar days of notification by the Department.~~

**R430-4-19. Variances.**

~~\_\_\_\_\_ (1) If a certificate holder or applicant cannot comply with a rule but can meet the intent of the rule in another way, he may apply for a variance to that rule. The Department cannot issue a variance to the background screening requirements of Section 26-39-107 and R430-6.~~

~~\_\_\_\_\_ (2) A certificate holder or applicant requesting a variance shall submit a completed variance request form to the Department. The requests must include:~~

~~\_\_\_\_\_ (a) the name and address of the facility;~~

~~\_\_\_\_\_ (b) the rule from which the variance is being sought;~~

~~\_\_\_\_\_ (c) the time period for which the variance is being sought;~~

~~\_\_\_\_\_ (d) a detailed explanation of why the rule cannot be met;~~

~~\_\_\_\_\_ (e) the alternative means for meeting the intent of the rule;~~

~~\_\_\_\_\_ (f) how the health and safety of the children will be ensured; and~~

~~\_\_\_\_\_ (g) other justification that the certificate holder or applicant desires to submit.~~

~~\_\_\_\_\_ (3) The Department may require additional information before acting on the request.~~

~~\_\_\_\_\_ (4) The Department shall act upon each request for a variance within 60 days of the receipt of the completed request and all additional information required by the Department.~~

~~\_\_\_\_\_ (5) If the Department approves the request, the certificate holder shall keep a copy of the approved variance on file in the facility and make it publicly available.~~

~~\_\_\_\_\_ (6) The Department may grant variances for up to 12 months:~~

~~\_\_\_\_\_ (7) The Department may impose health and safety conditions upon granting a variance.~~

~~\_\_\_\_\_ (8) The Department may revoke a variance if:~~

~~\_\_\_\_\_ (a) the provider is not meeting the intent of the varied rule by the documented alternative means;~~

- ~~\_\_\_\_\_ (b) the facility fails to comply with the conditions of the variance; or~~
- ~~\_\_\_\_\_ (c) a change in statute, rule, or case law affects the justification for the variance.~~

**R430-4-20. Statutory Penalties:**

- ~~\_\_\_\_\_ (1) A violation of any rule is punishable by administrative civil money penalty of up to \$5,000 per day as provided in Utah Code Section 26-39-108 or other civil penalty of up to \$5,000 per day or a class B misdemeanor on the first offense and a class A misdemeanor on the second offense as provided in Utah Code, Title 26, Chapter 23.~~
- ~~\_\_\_\_\_ (2) The Department may impose an administrative civil money penalty of up to \$100 per day to a maximum of \$10,000 for unlicensed or uncertified child care.~~
- ~~\_\_\_\_\_ (3) The Department may impose an administrative civil money penalty of up to \$100 per day to a maximum of \$10,000 for each violation of the Child Care Licensing Act or the rules promulgated pursuant to that act.~~
- ~~\_\_\_\_\_ (4) Any person intentionally making false statements or reports to the Department may be fined \$100 for each violation to a maximum of \$10,000.~~
- ~~\_\_\_\_\_ (5) Assessment of any civil money penalty does not preclude the Department from also taking action to deny, revoke, condition, or refuse to renew a license or certificate.~~
- ~~\_\_\_\_\_ (6) Assessment of any administrative civil money penalty under this section does not preclude injunctive or other equitable remedies.~~
- ~~\_\_\_\_\_ (7) Within 10 working days after receipt of a negative licensing action or imposition of a fine, each child care program must provide the Department with the names and mailing addresses of parents or legal guardians of each child cared for at the facility so the Department can notify the parents and guardians of the negative licensing action.~~

**KEY: child care facilities**

**Date of Enactment or Last Substantive Amendment: May 25, 2006**

**Notice of Continuation: June 6, 2008**

**Authorizing, and Implemented or Interpreted Law: 26-39]**

Health, Family Health and  
Preparedness, Child Care Licensing  
**R430-30**  
Adjudicative Procedure

**NOTICE OF PROPOSED RULE**  
(Repeal)

DAR FILE NO.: 35654  
FILED: 01/11/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule on review at the request of the

governor's initiative, was determined to be unnecessary given the department's general adjudicative rule, Rule R380-10.

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 39

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: Because the content of this rule is covered in another existing rule, the costs that currently occur will continue. Therefore we do not anticipate any cost or savings associated with this repeal.
- ◆ LOCAL GOVERNMENTS: Because the content of this rule is covered in another existing rule, the costs that currently occur will continue. Therefore we do not anticipate any cost or savings associated with this repeal.
- ◆ SMALL BUSINESSES: Because the content of this rule is covered in another existing rule, the costs that currently occur will continue. Therefore we do not anticipate any cost or savings associated with this repeal.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because the content of this rule is covered in another existing rule, the costs that currently occur will continue. Therefore we do not anticipate any cost or savings associated with this repeal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the content of this rule is covered in another existing rule, we do not anticipate any increased costs for compliance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact on business predicted as a result of the repeal of this rule. The substantive provisions are present in Rule R380-10. No change in regulatory impact is therefore predicted.

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

HEALTH  
FAMILY HEALTH AND PREPAREDNESS,  
CHILD CARE LICENSING  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Teresa Whiting by phone at 801-538-6320, by FAX at 801-538-6325, or by Internet E-mail at [twhiting@utah.gov](mailto:twhiting@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

**R430. Health, Family Health and Preparedness, Child Care Licensing.**

**[R430-30. Adjudicative Procedure.**

**R430-30-1. Purpose.**

— This rule is adopted pursuant to Title 26, Chapter 39.

**R430-30-2. Definitions.**

— (1) "Department" means the Utah Department of Health, Bureau of Licensing.

— (2) "Initial agency determination" means a decision by department staff, without conducting adjudicative proceedings, of the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all determinations to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license, all as limited by Subsection 63-46b-1(2).

— (3) "Notice of agency action" means the formal notice meeting the requirements of Subsection 63-46b-3(2) that the department issues to commence an adjudicative proceeding.

— (4) "Request for agency action" means the formal written request meeting the requirements of Subsection 63-46b-3(3) that requests the department to commence an adjudicative proceeding.

**R430-30-3. Commencement of Adjudicative Proceedings.**

— (1) All adjudicative proceedings under Title 26, Chapter 39, Utah Child Care Licensing Act, and under R430, Child Care Licensing Rules, are formal adjudicative proceedings.

— (2) The Department may commence an adjudicative proceeding by filing and serving a notice of agency action in accordance with Subsection 63-46b-3(2) when the Department's actions are of a nature that require an adjudicative proceeding before the Department makes a decision.

— (3) A person affected by an initial agency determination may commence an adjudicative proceeding and meet the requirements for a request for agency action under Subsection 63-46b-3(3) by completing the "Facility Licensure Request for Agency Action" form and filing the form with the Department.

**R430-30-4. Responses.**

— (1) A respondent to a notice of agency action shall file and serve a written response within 30 calendar days of the postmarked mailing date or last publication date of the notice of agency action.

— (2) A respondent who has filed a request for agency action, and has received notice from the presiding officer under Subsection 63-46b-3(3)(d)(iii) that further proceedings are required to determine the Department's response to the request, shall file and serve a written response within 30 calendar days of the postmarked mailing date or last publication date of the presiding officer's notice.

— (3) The written response shall:

— (a) include the information specified in Subsection 63-46b-6(1);

— (b) be signed by the respondent or the respondent's representative; and

— (c) be filed with the Department during the time period specified in Subsection R430-30-4(1) or R430-30-4(2);

— (4) The respondent shall send one copy of the response by certified mail to each party.

— (5) A person who has filed a request for agency action and has received notice from the presiding officer under Subsection 63-46b-3(3)(d)(ii) that the request is denied may request a hearing before the Department to challenge the denial. The person must complete and submit the Department hearing request form to the presiding officer within 30 calendar days of the postmarked mailing date of the presiding officer's notice.

— (6) The presiding officer, upon motion of a party or upon the presiding officer's own motion, may allow any pleadings to be amended or corrected. Defects which do not affect substantial rights of the parties shall be disregarded.

**R430-30-5. Discovery.**

— (1) Any party to a formal adjudicative proceeding may engage in discovery consistent with the provisions of this rule.

— (2) The provisions of Rules 26, 27, 28, 29, 30, 32, 34, 36, and 37 of the Utah Rules of Civil Procedure, current January 1, 1995, are adopted and incorporated by reference.

— (a) Where the incorporated Utah Rules of Civil Procedure refer to the court or to the clerk, the reference shall be to the presiding officer.

— (b) Statutory restrictions on the release of information held by governmental entity shall be honored in controlling what is discoverable.

— (c) All response times that are greater than 10 working days in the incorporated Utah Rules of Civil Procedure are amended to be 10 working days from the postmark of the mailing date of the request, unless otherwise ordered by the presiding officer.

— (d) The parties shall ensure that all discovery is completed at least 10 calendar days before the day of the hearing. The parties may not make discovery requests to which the response time falls beyond 10 calendar days before the day of the hearing.

— (e) Depositions may be recorded by audio recording equipment. However, any deposition to be introduced at the hearing must be first transcribed to a written document.

— (f) Service of any discovery request or subpoena may be made upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure. Service may be made by mail, by the party or by the party's agent.

— (g) Subpoenas to compel the attendance of witnesses as provided in Rule 30(a) shall conform to Section R430-30-6.

**R430-30-6. Witnesses and Subpoenas.**

— (1) Each party is responsible for the presence of that party's witnesses at the hearing.

— (2) The presiding hearing officer may issue a subpoena to compel the attendance of a witness or the production of evidence, in accordance with the following:

— (a) the officer may issue the subpoena upon a party's motion supported by affidavit showing sufficient need, or upon the officer's own motion;

— (b) the party to whom the hearing officer has issued a subpoena shall cause the subpoena and a copy of the affidavit, if any, to be served.

~~(c) every subpoena shall be issued by the presiding officer under the seal of the Department, shall state the title of the action, and shall command every person to whom it is directed to attend and give testimony at time and place therein specified.~~

~~(d) a supporting affidavit for a subpoena duces tecum for the production by a witness of books, accounts, memoranda, correspondence, photographs, papers, documents, records, or other tangible thing shall include the following:~~

~~(i) the name and address of the entity upon whom the subpoena is to be served;~~

~~(ii) a description of what the party seeks to have the witness bring;~~

~~(iii) a showing of the materiality to the issue involved in the hearing;~~

~~(iv) a statement by the party that to the best of his knowledge the witness has such items in his possession or under his control.~~

**R430-30-7. Certificate of Service.**

~~There shall appear on all documents required to be served a certificate of service dated and signed by the party or his agent in substantially the following form:~~

~~I certify that I served the foregoing document upon all parties to this proceeding by delivering (or mailing postage prepaid and properly addressed, or causing to be delivered) a copy of it to (provide the name of the person):~~

**R430-30-8. Stays and Temporary Remedy.**

~~(1) During the pendency of judicial review, a party may petition for a stay of the order or other temporary remedy by filing a written petition with the presiding officer within seven calendar days of the day the order is issued.~~

~~(2) The presiding officer shall issue a written decision within ten working days of the filing date of the request. The presiding officer may grant a stay or other temporary remedy if such an action is in the best interest of the children.~~

~~(3) The request for a stay or temporary remedy shall be considered denied if the presiding officer does not issue a written decision within ten days of the filing of a written petition.~~

~~(4) The presiding officer may grant a stay or other temporary remedy on the presiding officer's own motion.~~

**R430-30-9. Declaratory Orders.**

~~Any person or agency may petition for a Department declaratory ruling on orders issued by the Department where there is statutory authority to issue orders by following the procedures outlined in Rule R380-5.~~

**KEY: child care facilities**

**Date of Enactment or Last Substantive Amendment: January 21, 1998**

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

**Authorizing, and Implemented or Interpreted Law: 26-39]**

Health, Family Health and  
Preparedness, Licensing  
**R432-650**  
End Stage Renal Disease Facility  
Rules

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 35652  
FILED: 01/11/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to update the date on the Code of Federal Regulation (CFR) reference numbers within the rule.

**SUMMARY OF THE RULE OR CHANGE:** The references within the rule refer to the 1997 CFR text that was updated in 2008. This amendment will correct the reference date to ensure the correct year is listed. The changes in the updated CFR did increase provider requirements, however for the provider to be certified to provide services they have had to comply with the 2008 CFR since 2008.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 26, Chapter 21

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** These rule amendments will have no effect on state budgets since there will be no change in current practice.

♦ **LOCAL GOVERNMENTS:** These rule amendments will have no effect on local government budgets since there will be no change in current practice.

♦ **SMALL BUSINESSES:** These rule amendments may have had an effect on small businesses in 2008 however there should be no change on current practice.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rule amendments may have had an effect on businesses in 2008 however there should be no change on current practice.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** These rule amendments may have had an effect on persons in 2008 however there should be no change on current practice.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This change updates the incorporation by reference of federal standards that are imposed against these facilities by Medicare and other regulatory agencies. Updating the reference in this rule does not impose any new requirements and therefore no fiscal impact is expected.

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

HEALTH  
FAMILY HEALTH AND PREPAREDNESS,  
LICENSING  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov  
◆ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

**R432. Health, Family Health and Preparedness, Licensing.  
R432-650. End Stage Renal Disease Facility Rules.  
R432-650-3. Definitions.**

(1) The definitions in R432-1-3 apply to this rule.

(2) "Interdisciplinary professional team" means a team of qualified professionals who are responsible for creating the Patient Long Term Care Program and Patient Care Plan. The qualifications are described in 42CFR 405.2137(a) and (b), 2008[+997], which is adopted and incorporated by reference.

**R432-650-5. Patient Care Services.**

Each ESRD facility must comply with the conditions of participation set forth in the Code of Federal Regulations, Title 42, Part 405, Subpart U., 2008[+997], which is adopted and incorporated by reference.

**KEY: health care facilities**

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

**Notice of Continuation:** September 27, 2007

**Authorizing, and Implemented or Interpreted Law:** 26-21-5; 26-21-16

Human Services, Child and Family  
Services  
**R512-80**  
Definitions of Abuse, Neglect, and  
Dependency

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 35630

FILED: 01/06/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This new rule is necessary to bring the Division of Child and Family Services into compliance with the legislative audit titled "Human Services In-depth Budget Review Recommendations and Follow Up."

**SUMMARY OF THE RULE OR CHANGE:** This rule establishes definitions used by the Division of Child and Family Services.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-4a-102

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There will be no increase in cost or savings to the state budget because these proposed definitions do not increase workload that would require additional staff or other costs.

◆ **LOCAL GOVERNMENTS:** Child and Family Services determined that local governments are not affected by the rule and it will have no fiscal impact on them.

◆ **SMALL BUSINESSES:** Child and Family Services determined that small businesses are not affected by the rule and it will have no fiscal impact on them.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** While individuals may be involved with investigations of allegations of child abuse, neglect, or dependency, there is no expected fiscal impact for individuals in the category of "persons other than small businesses, businesses, or local government entities."

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Child and Family Services determined that there will be no compliance costs for affected persons because these are proposed definitions that will be used by Child and Family Services.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule will have no fiscal impact on businesses.

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

HUMAN SERVICES  
CHILD AND FAMILY SERVICES  
195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov  
 ♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjoness@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012

AUTHORIZED BY: Brent Platt, Director

**R512. Human Services, Child and Family Services.****R512-80. Definitions of Abuse, Neglect, and Dependency.****R512-80-1. Purpose, Interpretation, and Authority.**

(1) Purpose. Under Utah law, Child and Family Services is responsible for providing child welfare services and protecting children from abuse, neglect, and dependency. In determining what constitutes abuse, neglect, or dependency, the definitions in Sections 62A-4a-101, et. seq., Sections 78A-6-105, et. seq., the Criminal Code, these Administrative Rules, and court opinions shall apply. These definitions are intended to clarify those definitions or judicial opinions. Conduct that qualifies as abuse, neglect, or dependency under a criminal statute or the Judicial Code or under Child and Family Services' civil statutes (Sections 62A-4a-101, et. seq.), however, shall qualify as abuse, neglect, or dependency even if these definitions inadvertently fail to bring such conduct within the scope of a particular definition. Some criminal statutes recognize defenses to abuse, neglect, or dependency that may not be applicable in Child and Family Services' civil investigations of child abuse, neglect, or dependency.

(2) Interpretation. Child and Family Services' statutes and these definitions shall be interpreted broadly to protect children from abuse, neglect, or dependency. These definitions shall be applied and interpreted according to the following principles:

(a) These definitions supersede earlier definitions.

(b) In cases of ambiguity, the Child and Family Services' definition shall be construed to harmonize with the relevant statutory definitions (as interpreted by the courts) and to further Child and Family Services' statutory responsibility to protect children and act in the best interest of the child.

(3) Authority. This rule is authorized by Section 62A-4a-102.

**R512-80-2. Definitions.**

(1) "Abandonment" means conduct by either a parent or legal guardian showing a conscious disregard for parental obligations where that disregard leads to the destruction of the parent-child relationship, except in the case of the safe relinquishment of a newborn child pursuant to Section 62A-4a-802. Abandonment also includes conduct specified in Section 78A-6-508.

(2) "Abuse" is as defined in Section 78A-6-105. It includes but is not limited to child endangerment, Domestic Violence Related Child Abuse, emotional abuse, fetal exposure to alcohol or other harmful substances, dealing in material harmful to

a child, Pediatric Condition Falsification or medical child abuse (formerly Munchhausen Syndrome by Proxy), physical abuse, sexual abuse, and sexual exploitation.

(3) "Child endangerment" means subjecting a child to threatened harm. This also includes conduct outlined in Sections 76-5-112 and 76-5-112.5.

(4) "Chronic abuse" is as defined in Section 62A-4a-101.

(5) "Chronic neglect" is as defined in Section 62A-4a-101.

(6) "Cohabitant" is as defined in Section 78B-7-102. (See Definitions in Administrative Rule R512-205.)

(7) "Custodian" means a person who has legal custody of a child or a person responsible for a child's care as defined in Section 62A-4a-402.

(8) "Dealing in material harmful to a child" means distributing (providing or transferring possession), exhibiting (showing), or allowing immediate access to material harmful to a child or any other conduct constituting an offense under Sections 76-10-1201 through 1206.

(9) "Dependency" is as defined in Section 62A-4a-101. Dependency includes safe relinquishment of a newborn child as provided in Section 62A-4a-802.

(10) "Domestic Violence Related Child Abuse" means domestic violence between cohabitants in the presence of a child. It may be an isolated incident or a pattern of conduct. (See Definitions in Administrative Rule R512-205.)

(11) "Educational neglect" means failure or refusal to make a good faith effort to ensure that a child receives an appropriate education, after receiving notice that the child has been frequently absent from school without good cause or that the parent has failed to cooperate with school authorities in a reasonable manner in accordance with Sections 78A-6-105 and 78A-6-319.

(12) "Emotional abuse" means engaging in conduct or threatening a child with conduct that causes or can reasonably be expected to cause the child emotional harm. This includes but is not limited to:

(a) Demeaning or derogatory remarks that affect or can reasonably be expected to affect a child's development of self and social competence; or

(b) Threatening harm, rejecting, isolating, terrorizing, ignoring, or corrupting.

(13) "Environmental neglect" means an environment that poses an unreasonable risk to the physical health or safety of a child.

(14) "Failure to protect" means failure to take reasonable action to remedy or prevent child abuse or neglect. Failure to protect includes the conduct of a non-abusive parent or guardian who knows the identity of the abuser or the person neglecting the child, but lies, conceals, or fails to report the abuse or neglect or the alleged perpetrator's identity.

(15) "Failure to thrive" means a medically diagnosed condition in which the child fails to develop physically. This condition is typically indicated by inadequate weight gain.

(16) "Fetal exposure to alcohol or other harmful substances" means a condition in which a child has been exposed to or is dependent upon harmful substances as a result of the mother's use of illegal substances or abuse of prescribed medications during pregnancy, or has fetal alcohol spectrum disorder.

(17) "Harm" is as defined in Section 78A-6-105. (See also the definition of "threatened harm".)

(18) "Material harmful to a child" means any visual, pictorial, audio, or written representation (in whatever form, including performance) that includes pornographic or sexually explicit material, including nudity, sexual conduct, sexual excitement, or sadomasochistic abuse that:

(a) Taken as a whole, appeals to the prurient interest in sex of a child, and

(b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for a child, and

(c) Taken as a whole does not have serious value for a child. "Serious value" includes only serious literary, artistic, political, or scientific value for a child.

(19) "Medical neglect" means failure or refusal to provide proper or necessary medical, dental, or mental health care or to comply with the recommendations of a medical, dental, or mental health professional necessary to the child's health, safety, or well-being. Exceptions and limitations are as provided in Section 78A-6-105.

(20) "Molestation" is as defined in Section 78A-6-105.

(21) "Neglect" is as defined in Section 78A-6-105. It includes but is not limited to abandonment, educational neglect, environmental neglect, failure to protect, failure to thrive, medical neglect, non-supervision, physical neglect, and sibling at risk.

(22) "Non-supervision" means the child is subjected to accidental harm or an unreasonable risk of accidental harm due to failure to supervise the child's activities at a level consistent with the child's age and maturity.

(23) "Pediatric Condition Falsification" (formerly Munchausen Syndrome by Proxy) means a cluster of symptoms or signs, circumstantially related, in which the parent or guardian misrepresents information and/or simulates or produces illness in a child, has knowledge about the etiology of the child's illness but denies such knowledge, seeks multiple medical procedures, or acute symptoms and signs of the illness cease when the child is separated from the parent or guardian.

(24) "Perpetrator" means a person substantially responsible for causing child abuse or neglect, or a person responsible for a child's care who permits another to abuse or neglect a child. (See also Section 76-5-109.)

(25) "Physical abuse" means non-accidental physical harm or threatened physical harm of a child that may or may not be visible. It includes unexplained physical harm of an infant, toddler, disabled, or non-verbal child. "Physical harm" includes but is not limited to "physical injury" and "serious physical injury" as defined in Section 76-5-109.

(26) "Physical neglect" means failure to provide for a child's basic needs of food, clothing, shelter, or other care necessary for the child's health, safety, morals, or well-being.

(27) "Serious harm" includes but is not limited to "serious physical injury" as defined in Section 76-5-109.

(28) "Severe abuse" is as defined in Section 78A-6-105.

(29) "Severe neglect" is as defined as in 78A-6-105.

(30) "Sexual abuse" is as defined in Section 78A-6-105. Sexual abuse also includes forcing a child under 18 years of age into marriage or cohabitation with an adult in an intimate relationship.

(31) "Sexual exploitation" is as defined in Section 78A-6-105.

(32) "Sibling at risk" means a child who is at risk of being abused or neglected because another child in the same home or with the same caregiver has been or is abused or neglected.

(33) "Threatened harm" means any conduct that subjects a child to unreasonable risk of harm or any condition or situation likely to cause harm to a child. (See definition of "harm".)

**KEY: child welfare**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 62A-4a-102**

## Human Services, Substance Abuse and Mental Health

### R523-23-4

#### Provider Responsibilities

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35626

FILED: 01/06/2012

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to revise the Provider Responsibilities, based on feedback from a provider.

**SUMMARY OF THE RULE OR CHANGE:** In response to feedback from a provider, we are changing the provider requirement for the date to be submitted to the division. Rather than an expiration date, they now submit the date the trainee completed the training.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-15-401 and Subsection 62A-15-105(5)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** The change is to the provider responsibilities, so there will not be any cost or saving to the state budget.

♦ **LOCAL GOVERNMENTS:** There are not any local governmental entities providing on-premise training seminars, so there is no cost or saving to local governments.

♦ **SMALL BUSINESSES:** If there are any costs, they would be only minimal in nature. They would be for them to program this change. It is anticipated that if there were any minimal costs, they would be passed to the customer taking the class.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** If there are any costs, they would be only minimal in nature, as a small increase in the cost of the classes.



**COMPLIANCE COSTS FOR AFFECTED PERSONS:** If there are any costs, they would be only minimal in nature. They would be for them to program this change. It is anticipated that if there were any minimal costs, they would be passed to the customer taking the class.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The fiscal impact on businesses would be very minimal and would be passed on to the those who take the server certification classes. The improvement in fraud prevention outweighs any minimal costs that might be incurred.

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

HUMAN SERVICES  
 SUBSTANCE ABUSE AND MENTAL HEALTH  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at [jhjones@utah.gov](mailto:jhjones@utah.gov)  
 ♦ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at [raywinger@utah.gov](mailto:raywinger@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON:** 03/09/2012

**AUTHORIZED BY:** Lana Stohl, Director

(b) Measures to ensure that an individual taking the online course or test is focused on training material throughout the entire training period;

(c) Measures to track the actual time an individual taking the online course or test is actively engaged online;

(d) A seminar provider to provide technical support, such as requiring a telephone number, email, or other method of communication that allows an individual taking the online course or test to receive assistance if the individual is unable to participate online because of technical difficulties;

(e) A test to meet quality standards, including randomization of test questions and maximum time limits to take a test;

(f) A seminar provider to have a system to reduce fraud as to who completes an online course or test, such as requiring a distinct online certificate with information printed on the certificate that identifies the person taking the online course or test, or requiring measures to inhibit duplication of a certificate;

(g) Measures to allow an individual taking an online course or test to provide an evaluation of the online course or test;

(h) A seminar provider to track the Internet protocol address or similar electronic location of an individual who takes an online course or test;

(i) An individual who takes an online course or test to use an e-signature; or

(j) A seminar provider to invalidate a certificate if the seminar provider learns that the certificate does not accurately reflect the individual who took the online course or test.

**KEY: substance abuse, server training, on-premise**  
**Date of Enactment or Last Substantive Amendment:** ~~November 7, 2011~~ 2012  
**Notice of Continuation:** June 22, 2007  
**Authorizing, and Implemented or Interpreted Law:** 62A-15-105(5); 62A-15-401

**R523. Human Services, Substance Abuse and Mental Health.**  
**R523-23. On-Premise Alcohol Training and Education Seminar Rules of Administration.**

**R523-23-4. Provider Responsibilities.**

(1) For each person completing the seminar, the provider shall electronically submit to the Division the name, last four digits of the person's social security number, the date the person completed the training, and the required fee, within 30 days of the completion of the seminar.

(2) Each person who has completed the seminar and passed the provider-administered and Division-approved examination shall be approved as a server for a period which begins at the completion of the seminar and expires three years from this date. Recertification requires the server to complete a new seminar every three years.

(3) The provider shall issue a certification card to the server. The card shall contain at least the name of the server and the expiration date. The provider shall be responsible for issuing any duplicates or lost cards.

(4) The Provider shall implement at least three of the following measures to prevent fraud:

(a) Authentication that the an individual accurately identifies the individual as taking the online course or test;

**Human Services, Substance Abuse  
 and Mental Health**  
**R523-24**  
**Off Premise Retailer (Clerk, Licensee  
 and Manager) Alcohol Training and  
 Education Seminar Rules of  
 Administration**

**NOTICE OF PROPOSED RULE  
 (Amendment)**

**DAR FILE NO.:** 35625  
**FILED:** 01/06/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** In response to feedback from a provider, this rule makes a change to the date on the certificate and to specify

that the division will make this information available to the public.

**SUMMARY OF THE RULE OR CHANGE:** The amendments are: 1) change the date on the certificate from the effective date to the date the training was completed; and 2) specify that the division will make the certification training data available to the public.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-15-401 and Subsection 62A-15-105(5)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There will not be any cost or saving to the state budget because this does not change the way the division administers this program. This amendment clarifies the division's responsibility and makes a minor formatting change to the certificate that is generated for the trainee.

◆ **LOCAL GOVERNMENTS:** The change to the certificate should not affect the local government providers because they can use the certificates created by the division's website. Should they choose to use their own certificates, the cost would be negligible and most likely passed to the trainee in the class fees.

◆ **SMALL BUSINESSES:** The change to the certificate should not affect the providers because they can use the certificates created by the division's website. Should they choose to use their own certificates, the cost would be negligible and most likely passed to the trainee in the class fees.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The change to the certificate should not affect other persons because they can use the certificates created by the division's website. Should they choose to use their own certificates, the cost would be negligible and most likely passed to the trainee in the class fees.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The compliance costs for affected persons should be minimal since they can use the certificates created by the division's website. Should they choose to use their own certificates, the cost would be negligible and most likely passed to the trainee in the class fees.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The fiscal impact on businesses is minimal, if at all. Businesses may avoid any cost by using the certificates generated by the division's website. Should they choose to use their own certificates, any cost incurred would be passed to the trainees in the form of class fees.

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

HUMAN SERVICES  
SUBSTANCE ABUSE AND MENTAL HEALTH  
195 N 1950 W  
SALT LAKE CITY, UT 84116

or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at [jhjones@utah.gov](mailto:jhjones@utah.gov)  
◆ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at [raywinger@utah.gov](mailto:raywinger@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012**

**AUTHORIZED BY:** Lana Stohl, Director

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**R523. Human Services, Substance Abuse and Mental Health.**

**R523-24. Off Premise Retailer (Clerk, Licensee and Manager) Alcohol Training and Education Seminar Rules of Administration.**

**R523-24-1. Authority, Intent, and Scope.**

(1) These rules are adopted under the authority of Section 62A-15-401 authorizing the Division of Substance Abuse and Mental Health to administer the Alcohol Training and Education Seminar Program.

(2) The intent of statute and rules is to require every person to complete the Seminar who sells or furnishes alcoholic beverages to the public for off premise consumption in the scope of the person's employment with a general food store or similar business.

(3) These rules include:

- (a) curriculum content standards,
- (b) seminar provider standards,
- (c) provider certification process;
- (d) the ongoing activities of providers, and
- (e) the process for approval, denial, suspension and revocation of provider certification.

**R523-24-2. Definitions.**

(1) "Approved Curriculum" means a provider's curriculum which has been approved by the Division in accordance with these rules.

(2) "Certification" means written approval from the Division stating a person or company has met the requirements to become a seminar provider.

(3) "Director" means the Director of the Division of Substance Abuse and Mental Health.

(4) "Division" means the Division of Substance Abuse and Mental Health.

(5) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at the premises of a licensee. A manager may also be a supervisor.

(6) "Provider" means an individual or company who has had their curriculum approved and certified by the Division.

(7) "Seminar" means the Off Premise Alcohol Training and Education Seminar.

(8) "Supervisor" means an employee who, under the direction of a manager as defined above if the business

establishment employees a manager, or under the direction of the owner or president of the corporation if no manager is hired, directs or has the responsibility to direct, transfer, or assign duties to employees who actually sell or furnish alcoholic beverages to customers for off premise consumption.

(9) "Retail employee" (clerk or supervisor) means any person employed by a general food store or similar business and who is engaged in the sale of or directly supervises the sale of beer to consumers for off premise consumption.

**R523-24-3. Provider Certification Application Procedure.**

(1) A provider seeking first-time certification shall make application to the Division at least 30 days prior to the first scheduled seminar date. A provider seeking recertification to administer the seminar shall make application to the Division at least 30 days prior to expiration of the current certification.

(2) Any seminar conducted by a non-certified provider shall not meet the retailer training requirements authorized under Section 62A-15-401.

(3) All application forms shall be reviewed by the Division. The Division shall determine if the application is complete and in compliance with Section 62A-15-401 and these rules. If the Division approves the application and curriculum, and determines the provider has met all other requirements, the Division shall certify the provider.

(4) Within 30 days after the Division has taken action, the Division shall officially notify the applicant of the action taken: denial, approval, or request for further information, and notification of the action taken shall be forwarded in writing to the applicant. If an application for recertification requires additional information or corrective action, a provider may continue to conduct seminars for 30 days from the date of notification. If the provider has not resolved the action required with the Division by that date, the provider is no longer certified to provide the seminar and must cease until all actions are approved by the Division.

**R523-24-4. Provider Responsibilities.**

(1) For each person completing the seminar, the provider shall electronically submit to the Division the name, last four digits of the person's social security number, the date the person completed the training and the required fee, within 30 days of the completion of the seminar.

(2) Each person who has completed the seminar and passed the provider-administered and Division-approved examination shall be approved as a retail employee for a period which begins at the completion of the seminar and expires five years from that date.

(3) The provider shall issue a certification card to the retail employee. The card shall contain at least the name of the retail employee and the expiration date. The provider shall be responsible for issuing any duplicates for lost cards.

(4) The Provider shall implement at least three of the following measures to prevent fraud:

(a) Authentication that accurately identifies the individual taking the online course or test;

(b) Measures to ensure that an individual taking the online course or test is focused on training material throughout the entire training period;

(c) Measures to track the actual time an individual taking the online course or test is actively engaged online;

(d) Provide technical support, such as a telephone number, email, or other method of communication that allows an individual taking the online course or test to receive assistance if the individual is unable to participate online because of technical difficulties;

(e) A test to meet quality standards, including randomization of test questions and maximum time limits to take a test;

(f) Issue a distinct online certificate with information printed on the certificate that identifies the person taking the online course or test, or requiring measures to inhibit duplication of a certificate;

(g) Measures to allow an individual taking an online course or test to provide an evaluation of the online course or test;

(h) Track the internet protocol address or similar electronic location of an individual who takes an online course or test;

(i) Provide an individual who takes an online course or test the opportunity to use an e-signature; or

**R523-24-5. Retail Employee Responsibilities.**

(1) A retail employee is required within 30 days of employment by a general food store or similar business to complete and pass the Seminar.

**R523-24-6. Division Responsibilities.**

The Division shall maintain the database of retail employees who have completed the Seminar and make this information available to the public.

**R523-24-7. Approved Curriculum.**

(1) Each provider must have a curriculum approved by the Division. This curriculum must provide at least sixty minutes of instruction both for original certification and for any and all recertifications. The contents of an approved curriculum shall include the following components:

(a) alcohol as a drug;

(b) alcohol's effect on the body and behavior including education on the effects of alcohol on the developing youth brain, which information shall be provided by the Division;

(c) recognizing the problem drinker or signs of intoxication;

(d) statistics identifying the underage drinking problem, which information provided by the Division;

(e) discussion of criminal and administrative penalties for salesclerks and retail stores for selling beer to underage and intoxicated persons;

(f) strategies commonly used by minors to gain access to alcohol;

(g) process for checking ID, for example the FLAG system: Feel Look, Ask, Give Back);

(h) policies and procedures to prevent beer purchases by intoxicated individuals;

(i) techniques for declining a sale including rehearsal and practice of these techniques using face-to-face role play; and

(j) recognition of beverages containing alcohol including examples of such beverages.

**R523-24-8. Examination.**

The examination shall include questions from each of the curriculum components identified in Section R523-24-7. The examination will be submitted for approval with the rest of the provider application.

**R523-24-9. Alcohol Training and Education Seminar Provider Standards.**

- (1) The Division may certify a provider applicant who:
- (a) identifies all program instructors and instructor trainers and certifies in writing that they:
    - (i) have been trained to present the course material, and
    - (ii) that they have not been convicted of a felony or of any violation of the laws or ordinances concerning alcoholic beverages, within the past five years;
  - (b) agrees to notify the Division in writing of any changes in instructors and submit the assurances called for in Subsection R523-24-9(a) for all new instructors;
  - (c) Allow the Division to audit all online courses or tests at any time the Division requests;
  - (d) agrees to invalidate a course completion certificate if the seminar provider learns that the certificate does not accurately reflect the individual who took the online course or test;
  - (e) will establish and maintain course completion records.
- (2) All online training courses shall be provided on a secure website.

**R523-24-10. Grounds For Denial, Corrective Action, Suspension, and Revocation.**

- (1) The Division may deny, suspend or revoke certification if:
- (a) the provider or applicant violates these rules, or
  - (b) the applicant fails to correctly complete all required steps of the application process as determined by these rules or other rules or statutes referenced in these rules; or
  - (c) a provider whose certification has been previously denied, suspended or revoked and has reapplied without correcting the problem that resulted in the denial, suspension or revocation.

**R523-24-11. Corrective Action.**

- (1) If the Division becomes aware that a provider is in violation of these rules or other rules or statutes referenced in these rules:
- (a) within 30 days after becoming aware of the violation, the Division shall identify in writing the specific areas in which the provider is not in compliance and send written notice to the provider.
  - (b) within 30 days of notification of noncompliance, the provider shall submit a written plan for achieving compliance. The provider may be granted an extension.

**R523-24-12. Suspension and Revocation.**

- (1) The Director or designee may suspend the certification of a provider as follows:

(a) When a provider fails to respond in writing to address areas of noncompliance identified in writing by the Division within the defined period. The defined period is 30-days plus any extensions granted by the Division.

(b) When a provider fails to take corrective action as agreed upon in its written response to the Division.

(c) When a provider fails to allow the Division access to information or records necessary to determine the provider's compliance under these rules and referenced rules and statutes.

(2) The Director or designee may revoke certification of a provider as follows:

(a) A provider or its authorized instructors continue to provide the Seminar while the provider is under a suspended certification.

(b) A provider fails to comply with corrective action while under a suspension.

(c) A program has committed a second violation which constitutes grounds for suspension when a previous violation resulted in a suspension during the last 24 months.

**R523-24-13. Procedure for Denial, Suspension, or Revocation.**

(1) If the Division has grounds for action under these rules, or as required by law, and intends to deny, suspend or revoke certification of a provider, the steps governing the action are as follows:

(a) The Division shall notify the applicant or provider by personal service or by certified mail, return receipt requested, of the action to be taken. The notice shall contain reasons for the action, to include all statutory or rule violations, and a date when the action shall become effective.

(b) The provider may request an informal hearing with the Director, or the Director's designee, within ten calendar days. The request shall be in writing. Within ten days following the close of the hearing, the Director or designee shall inform the provider or applicant in writing as required under Section 63G-4-203. The provider may appeal to the Department of Human Services Office of Administrative Hearing as provided for under Section 63G-4-203.

**KEY: off-premises, training, seminars, alcohol**

**Date of Enactment or Last Substantive Amendment: [~~October 24, 2011~~]2012**

**Notice of Continuation: July 13, 2011**

**Authorizing, and Implemented or Interpreted Law: 62A-15-105(5); 62A-15-401**

**Human Services, Recovery Services  
R527-201  
Medical Support Services**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35619

FILED: 01/05/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to require the obligated parent to request and complete an Insurance Premium Credit Request letter from the Office of Recovery Services/Child Support Services (ORS/CSS) prior to the office calculating and giving an insurance credit pursuant to Section 78B-12-212. Also to notify obligated parents that pursuant to Subsection 78B-12-212(7) ORS will end insurance credit on January 2 of every year, unless the obligated parent provides verification of the coverage. Delete unnecessary language in Section R527-201-6 and add "father" to Section R527-201-12. Delete the legal citation "30-3-5.5" reference in the "Authorizing, and Implemented or Interpreted Law" section and add a new citation, "30-3-5.4".

**SUMMARY OF THE RULE OR CHANGE:** In Subsection R527-201-6(2), delete "to modify the order". A new Section R527-201-8, "Insurance Credit" was added to the rule and notification that ORS will end insurance credit on January 2 of every year, unless the obligated parent provides verification of the coverage. The following subsequent sections were renumbered accordingly. In Section R527-201-12, add "alleged" before father. In the "Authorizing, and Implemented or Interpreted Law" section, delete the legal citation, "30-305.5 and add 30-3-5.4".

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-11-326.1 and Section 62A-11-326.2 and Section 62A-11-326.3 and Section 63G-4-102 et seq. and Section 78-45-7.15 and Subsection 35A-7-105(2) and Subsection 62A-11-406(9)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There should be no savings or cost to the state as the office currently gathers most of this information from the obligated parent or his employer through other letters. The use of this new letter should stop the office from having to send as many other letters to employers to gather the necessary information needed to calculate credit.

◆ **LOCAL GOVERNMENTS:** Administrative rules of the Office of Recovery Services/Child Support Services (ORS/CSS) do not apply to local government; therefore, there are no anticipated costs or savings for any local businesses due to this amendment.

◆ **SMALL BUSINESSES:** There are not anticipated costs for small business because the changes affect the internal procedures of the ORS/CSS (Child Support Services) and provide clarification to the child support staff. There may be minimal costs to the obligated parent requesting an insurance credit to mail the Insurance Premium Credit Request letter back to the office.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There may be a small savings to employers who will no longer be required to complete letters sent from the office to gather information necessary to calculate credit for the obligated parent. However, it may be necessary to still send

letters to employers requesting the required information, resulting in no cost or savings to employers.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There may be minimal costs to the obligated parent requesting an insurance credit to mail the Insurance Premium Credit Request letter back to the office.

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

The impact to businesses as a result of these changes will be minimal. While the office will gather information necessary to calculate an insurance credit directly from the obligated parent, there may still be times when it is necessary to request that information directly from the employer. However, if the office is able to gather the required information directly from the obligated parent, the office will send fewer letters to employers to be completed. This will cause both a savings in man-hours spent to complete the form and money to mail or fax the form back to the office.

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

HUMAN SERVICES  
RECOVERY SERVICES  
515 E 100 S  
SALT LAKE CITY, UT 84102-4211  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ LeAnn Wilber by phone at 801-536-8950, by FAX at 801-536-8833, or by Internet E-mail at [lwilber@utah.gov](mailto:lwilber@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/16/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/23/2012**

**AUTHORIZED BY: Mark Brasher, Director**

**R527. Human Services, Recovery Services.****R527-201. Medical Support Services.****R527-201-1. Authority and Purpose.**

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111 and 62A-11-107.

2. The purpose of this rule is to specify the responsibilities and procedures for the Office of Recovery Services/Child Support Services for providing medical support services.

**R527-201-2. Federal Requirements.**

The Office of Recovery Services/Child Support Services, (ORS/CSS), adopts the federal regulations as published in 45 CFR 303.30, 303.31, and 303.32 (2008) which are incorporated by reference in this rule.

**R527-201-3. Definitions.**

1. Accessibility: Insurance is considered accessible to the child if non-emergency services covered by the health plan are available to the child within 90 minutes or 90 miles of the child's primary residence.

2. National Medical Support Notice (NMSN) is the federally approved form that ORS/CSS shall use, when appropriate, to notify an employer to enroll dependent children in an employment-related group health insurance plan in accordance with a child support order.

3. Cash Medical Support: An obligation to equally share all reasonable and necessary medical and dental expenses of children.

**R527-201-4. Limitation of Services.**

ORS/CSS shall not:

1. pursue establishment of specific amounts for ongoing medical support,
2. initiate an action to obtain a judgment for uninsured medical expenses, or
3. collect and disburse premium payments to insurance companies.

**R527-201-5. Conditions Under Which Non-IV-A Medicaid Recipients May Decline Support Services.**

ORS/CSS shall provide child and spousal support services; however, a Non-IV-A Medicaid recipient may decline child and spousal support services if paternity is not an issue and there is an order for the non-custodial parent to provide medical support.

**R527-201-6. Securing a Medical Support Provision in the Support Order.**

1. Notice to potentially obligated parents: The notice to potentially obligated parents shall include a provision that an administrative or judicial proceeding will occur to:

- a. order either parent to purchase and maintain appropriate medical insurance for the children, and
- b. order both parents to pay cash medical support. This notification shall be provided when either of the following conditions is met:

- a. the state initiates an action to establish a final support order or to adjust an existing child support order; or
- b. the state joins a divorce or modification action initiated by either the custodial or the non-custodial parent.

2. If a judicial support order does not include a medical support provision, ORS/CSS shall commence judicial action [~~to modify the order~~] to include a medical support provision.

**R527-201-7. Reasonable Cost of Insurance Premiums.**

Employment-related or other group coverage that does not exceed 5% of the obligated parent's monthly gross income is generally considered reasonable in cost. However, an employer may not withhold more than the lesser of the amount allowed under the Consumer Credit Protection Act, the amount allowed by the state of the employee's principal place of employment, or the amount allowed for health insurance premiums by the child support order. If the combined child support and medical support obligations exceed the allowable deduction amount, the employer

shall withhold according to the law, if any, of the state of the employee's principal place of employment requiring prioritization between child support and medical support. If the employee's principal place of employment is in Utah, the employer shall deduct current child support before deducting amounts for health insurance coverage. If the amount necessary to cover the health insurance premiums cannot be deducted due to prioritization or limitations on withholding, the employer shall notify ORS/CSS.

**R527-201-8. Insurance Credit.**

1. If an obligated parent is required to provide health insurance for his or her minor child(ren) and the order was issued by a Utah tribunal, in accordance with U.C.A. 78B-12-212, the parent may receive an insurance credit. ORS/CSS will calculate and apply the insurance credit if the office receives a completed Insurance Premium Credit Request letter. The Insurance Premium Credit Request must include the following information:

- a. availability of insurance;
- b. policy number;
- c. names of all individuals covered by the policy;
- d. the out-of-pocket cost for the insurance;
- e. proof of the monthly insurance premium paid;
- f. the obligated parent's signature; and
- g. the date the letter was completed.

2. Credit will be given to the obligated parent beginning the first day of the month following the date ORS/CSS receives the completed Insurance Premium Credit Request letter.

3. The insurance credit will be ended each calendar year, January 2, in accordance with U.C.A. 78B-12-212 (7), unless the obligated parent provides verification of coverage and costs to ORS/CSS on an updated Insurance Premium Credit Request. To allow sufficient time for ORS to process the annual insurance verification, the obligated parent may provide verification of the coverage as early as November 1 of the previous year.

**R527-201-9. Credit for Premium Payments and Effect of Changes to the Premium Amount Subsequent to the Order.**

1. If the order or underlying worksheet does not mention a specific credit for insurance premiums, ORS/CSS shall give credit for the child(ren)'s portion of the insurance premium when the obligated parent provides the necessary verification coverage.

2. ORS/CSS shall notify both parents in writing whenever the credit is changed.

**R527-201-[9]10. Enforcement of Obligation to Maintain Medical and Dental Insurance.**

1. In Non-IV-A cases and in IV-A Medicaid cases, appropriate steps shall be taken to ensure compliance with orders which require the obligated parent to maintain insurance. Obligated parents shall demonstrate compliance by providing ORS/CSS with policy numbers and the insurance provider name for the dependent children for whom the medical support is ordered.

2. In Non-IV-A cases and in IV-A Medicaid cases, if an obligated parent has been ordered to maintain insurance and insurance is accessible and available at a reasonable cost, ORS/CSS shall use the NMSN to transfer notice of the insurance provision to the obligated parent's employer unless ORS/CSS is notified pursuant to Section 62A-11-326.1 that the children are already enrolled in an insurance plan in accordance with the order.

3. When appropriate, ORS/CSS shall send the NMSN to the obligated parent's employer within two business days after the name of the obligated parent has been entered into the registry of the State Directory of New Hires, matched with ORS/CSS records, and reported to ORS/CSS in accordance with Subsection 35A-7-105(2).

4. The employer shall transfer the NMSN to the appropriate group health plan for which the children are eligible within twenty business days of the date of the NMSN if all of the following criteria are met:

- a. the obligated parent is still employed by the employer;
- b. the employer maintains or contributes to plans providing dependent or family health coverage;
- c. the obligated parent is eligible for the coverage available through the employer; and
- d. state or federal withholding limitations, prioritization, or both, do not prevent withholding the amount required to obtain coverage.

5. If more than one coverage option is available under a group insurance plan and the obligated parent is not already enrolled, ORS/CSS in consultation with the custodial parent may select the least expensive option if the option complies with the child support order and benefits the children. The insurer shall enroll the children in the plan's default option or least expensive option in accordance with Subsection 62A-11-326.2(1)(b) unless another option is specified by ORS/CSS.

6. The employer shall determine if the necessary employee contributions for the insurance coverage are available. If the amounts necessary are available, the employer shall begin withholding when appropriate and remit directly to the plan.

7. In accordance with Subsections 62A-11-326.1(2) and (3), the obligated parent may contest withholding insurance premiums based on a mistake of fact. The employer shall continue withholding under the NMSN until notified by ORS/CSS to terminate withholding insurance premiums.

8. If a parent successfully contests the action to enroll the children in a group health plan based on a mistake of fact, ORS/CSS shall notify the employer to discontinue enrollment and withholding insurance premiums for the children.

9. In accordance with Subsection 62A-11-406(9), the employer shall:

- a. notify ORS/CSS within five days after the obligated parent terminates employment;
- b. provide the office with the obligated parent's last-known address; and
- c. the name and address of any new employer, if known.

10. ORS/CSS shall promptly notify the employer when a current order for medical support is no longer in effect for which ORS/CSS is responsible.

**R527-201-[10]11. Coordination of Health Insurance Benefits.**

If, at any point in time, a dependent child is covered by the health, hospital, or dental insurance plans of both parents, the health, hospital, or dental insurance plan of the parent whose birthday occurs first in the calendar year, shall be designated as primary coverage for the dependent child. The health, hospital, or dental insurance plan of the other parent shall be designated as secondary coverage for the dependent child.

**R527-201-[H]12. Obligated Parent Receiving Medicaid.**

In an unestablished paternity case, if the alleged father's income was taken into consideration when determining the household's eligibility for Medicaid, ORS/CSS shall not enforce payment of medical expenses regardless of the medical support provisions in the order, but shall enforce the health insurance provision.

**KEY: child support, health insurance, Medicaid**

**Date of Enactment or Last Substantive Amendment:** ~~[July 8, 2010]~~ **2012**

**Notice of Continuation:** December 1, 2011

**Authorizing, and Implemented or Interpreted Law:** 30-3-5; ~~[30-3-5.5]~~ **30-3-5.4**; 62A-1-111; 62A-11-103(2); 62A-11-107; 62A-11-326; 62A-11-326.1; 62A-11-326.2; 62A-11-326.3; 62A-11-406(9); 63G-4-102 et seq.; 78B-12-102(6); 78B-12-212; 35A-7-105(2); 45 CFR 303.30; 45 CFR 303.31; 45 CFR 303.32

**Public Safety, Fire Marshal  
R710-2  
Rules Pursuant to the Utah Fireworks  
Act**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35690

FILED: 01/17/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Utah Fire Prevention Board met on 01/10/2012, in a regularly scheduled Board meeting and voted by majority vote to amend Rule R710-2. The Board approved the amending of the administrative rule by adding four new definitions and adding two more choices for the display and sale of aerial firework devices.

**SUMMARY OF THE RULE OR CHANGE:** The Board proposed to make amendments to the following sections of the rule: 1) in Subsection R710-2-2(2.3), the Board proposed to add the definition of a "Bin"; 2) in Subsection R710-2-2(2.4), the Board proposed to add the definition of "Constant Visual Supervision"; 3) in Subsection R710-2-2(2.6), the Board proposed to add the definition of "Designated Store Employee"; 4) in Subsection R710-2-2(2.7), the Board proposed to add the definition of "Direct Line of Sight"; 5) in Subsection R710-2-6(6.1.1), the Board proposed to add the option of placing the aerial fireworks display not more than 25 feet from a designated store employee's work station; and 6) in Subsection R710-2-6(6.1.2), the Board proposed to add the option of placing the aerial fireworks display not more than 40 feet from a designated store employee's work station with the addition of further restraints to the aerial fireworks.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53-7-204

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no aggregate cost or savings to the state budget because these proposed rule amendments do not impact the state budget.

◆ **LOCAL GOVERNMENTS:** There is no aggregate cost or savings to local government because these proposed rule amendments do not impact any portion of local government.

◆ **SMALL BUSINESSES:** The only aggregate anticipated cost to small businesses for the enactment of these rule amendments would be for the addition of an extra layer of wrap on the aerial fireworks if the small business decided to use the 40 foot display allowance. There would be an anticipated savings to small businesses by allowing the small businesses the option of displaying the aerial fireworks at not more than 25 feet which would not include having a store employee secure the requested aerial fireworks from a secure section of the business.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The affect to persons will be the allowance to pick aerial fireworks from the aerial fireworks display that is near the front of the store and does not require an additional employee to oversee the securing of aerial fireworks. Through monitored business employees, the aerial display will not be required to be in a secure location and can be located near a designated store employee, who will have constant visual oversight of the display.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be no compliance cost for affected persons to enact these rule amendments. There could be a small cost to have to apply one extra layer of packaging if the retailer chooses to have the aerial fireworks display not more than 40 feet from the designated store employee rather than 25 feet. Using the 40 foot allowance would be needed if the store footprint does not allow the usage of the 25 foot allowance.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** It appears the only small fiscal impact on businesses would be for the placing of an additional layer of wrapping on the aerial fireworks if the 40 foot allowance was implemented. It further appears it creates a fiscal advantage for retail occupancies who wish to use the 25 foot allowance that would not require an additional employee to be involved in the securing of the requested fireworks.

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

PUBLIC SAFETY  
FIRE MARSHAL  
ROOM 302  
5272 S COLLEGE DR  
MURRAY, UT 84123-2611  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Brent Halladay by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012**

**AUTHORIZED BY:** Brent Halladay, State Fire Marshal

**R710. Public Safety, Fire Marshal.**

**R710-2. Rules Pursuant to the Utah Fireworks Act.**

**R710-2-1. Adoption.**

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts rules establishing minimum safety standards for retail storage, handling, and sale of class C common state approved explosives indoor or outdoor; and requirements for licensing of importer, wholesaler, display operator, special effects operator, flame effects operator, and flame effect performing artist.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 International Fire Code (IFC), 2009 edition, as published by the International Code Council, Inc. (ICC), and as enacted and amended by the Utah State Legislature in Sections 102 and 201 of the State Fire Code Adoption Act.

1.2 National Fire Protection Association (NFPA), Standard 1123, Code for Fireworks Display, 2006 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-10, et seq.

1.3 National Fire Protection Association (NFPA), Standard 1126, Standard for the Use of Pyrotechnics Before a Proximate Audience, 2006 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-10, et seq.

1.4 National Fire Protection Association (NFPA), Standard 160, Standard for the Use of Flame Effects Before an Audience, 2011 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-10, et seq.

1.5 Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal's Office.

**R710-2-2. Definitions.**

2.1 "Authority having jurisdiction (AHJ)" means such county and municipal officers who are charged with the enforcement of state and municipal laws; consisting of all fire enforcement officials including designated staff from the Utah State Department of Public Safety.

2.2 "Aerial device" means a cake that is a collection of mine/shell tubes that has a single covered fuse which is used to light several tubes in sequence. A cake may also be defined as an aerial repeater or multi-shot aerial and does not exceed more than 500 grams of pyrotechnic composition.



2.3 "Bin" means a container or enclosed space for storing or displaying aerial fireworks that would reasonably limit the effect of the pyrotechnic material if ignited, and would not allow rapid spread of the fire to areas away from the immediate area of ignition.

2.4 "Constant Visual Supervision" means that visual supervision is continually occurring or regularly recurring.

2.[3]5 "Covered fuse" means a fuse or designed point of ignition that is protected against accidental ignition by contact with a spark, smoldering item or small open flame.

2.6 "Designated Store Employee" means a specific employee assigned that title or the employee who works at the work station where the measurement was taken to the aerial fireworks display.

2.7 "Direct Line of Sight" means there is a clear unobstructed view to the aerial fireworks display.

2.[4]8 "Flame Effects" means Flame Effects Operator or Flame Effects Performing Artist.

2.[5]9 "Flame Effects Performing Artist" means a fire spinner, fire dancer or fire performer who is paid to perform professionally in a public location.

2.[6]10 "ICC" means International Code Council, Inc.

2.[7]11 "IFC" means International Fire Code.

2.[8]12 "Licensed Operator" means any person who discharges, ignites, supervises, manages, oversees or directs the discharge of display fireworks, special effects fireworks, flame effects or flame effects performing artist.

2.[9]13 "NAFAA" means the North American Fire Arts Association.

2.1[0]4 "NFPA" means National Fire Protection Association.

2.1[+]5 "Permanent structure" means a non-movable building, securely attached to a foundation, housing a business.

2.1[2]6 "Person" means an individual, company, partnership or corporation.

2.1[3]7 "Pre-packaged means that the product is wrapped in a clear plastic wrap or other equivalent material to prevent the fuse of the class C common state approved explosive from being accessible to the customer.

2.1[4]8 "Resale" means the act of reselling class B or C explosives to a new party.

2.1[5]9 "SFM" means the State Fire Marshal.

2.[+6]20 "Tent" means a temporary structure, enclosure or shelter constructed of fabric or pliable material supported by any manner except by air or the contents it protects.

2.[+7]21 "Temporary Stands and Trailers" means a non-permanent structure used exclusively for the sale of fireworks.

2.[+8]22 "UCA" means Utah Code Annotated.

### **R710-2-3. General Requirements.**

3.1 No person shall engage in any type of retail storage or sale of class C common state approved explosives, without first having obtained a license to sell fireworks from the authority having jurisdiction, if required.

3.2 If a municipality or county in which fireworks are offered for sale, requires a seller to obtain a license, it shall be available at the store or stand for presentation upon request to authorized public safety officials.

3.3 All fireworks retail sales locations shall be under the direct supervision of a responsible person who is 18 years of age or older.

3.4 Those selling fireworks at retail sales locations shall be at least 16 years of age or older.

3.5 A salesperson shall remain at the sales location at all times unless suitable locking devices or secured metal storage containers are provided to prevent the unauthorized access to the merchandise by others.

3.6 Class C common state approved explosives shall not be sold to any person under the age of 16 years, unless accompanied by an adult.

3.7 All retail sales locations shall be kept clear of dry grass or other combustible material for a distance of at least 25 feet in all directions.

3.8 Storage of class C common state approved explosives shall not be located in residences to include attached garages.

3.9 "No Smoking" signs shall be conspicuously posted at all sales and storage locations.

3.10 A sign, clearly visible to the general public, shall be posted at all fireworks sales locations, indicating the legal dates for discharge of fireworks.

3.11 All retail sales locations shall be equipped with an approved, portable fire extinguisher having a minimum 2A rating.

3.12 Class C common state approved explosives shall only be stored, handled, displayed, and sold as packaged units with covered fuses.

### **R710-2-4. Indoor Sales.**

4.1 Display of class C common state approved explosives inside of buildings shall be so located to ensure constant visual supervision.

4.2 In all retail sales locations in permanent structures, the area where class C common state approved explosives are displayed or stored shall be at least 50 feet from any flammable liquid or gas, or other highly combustible material.

4.3 In permanent structures, retail sales displays of Class C common state approved explosives shall not be placed in locations that would impede egress from the building.

4.4 Display of Class C common state approved explosives inside of buildings protected throughout with an automatic fire sprinkler system shall not exceed 25 percent of the area of the retail sales floor or exceed 600 square feet, whichever is less.

4.5 Display of Class C common state approved explosives inside of buildings not protected with an automatic fire sprinkler system shall not exceed 125 pounds of pyrotechnic composition. Where the actual weight of the pyrotechnic composition is not known, 25 percent of the gross weight of the consumer fireworks, including packaging, shall be permitted to be used to determine the weight of the pyrotechnic composition.

4.6 Display of Class C common state approved explosives inside of buildings shall not exceed a height greater than six feet above the floor surface.

4.7 Rack storage of Class C common state approved explosives inside of buildings is prohibited.

**R710-2-5. Temporary Stands, Trailers and Tents.**

5.1 Temporary stands, trailers and tents less than 200 square feet used for the retail sales of class C common state approved explosives shall be constructed in compliance with local rules, or if none, in accordance with nationally recognized practice. Tents having an area in excess of 200 square feet shall comply with IFC, Chapter 24.

5.2 The general public shall not be allowed to enter a temporary stand or trailer.

5.3 Each stand, trailer or tent less than 200 square feet shall have a minimum three foot wide unobstructed aisle, running the length of the stand, trailer or tent.

5.4 All tents where customers enter inside shall have a minimum three foot wide unobstructed aisle and two separate exits located a reasonable distance apart and so located that if one is blocked the other will be available.

5.5 The area used for sales of class C common state approved explosives in stands, trailers or tents shall be arranged to permit the customer to only touch or handle pre-packaged class C common state approved explosives. All non pre-packaged class C common state approved explosives shall be displayed in a manner which prevents the fireworks from being handled by the customer without the direct intervention of the retailer who shall be able to maintain visual contact with the customer.

5.6 Temporary stands, trailers or tents for the sale of class C common state approved explosives shall be located at least 50 feet from other stands, trailers, tents, LPG, flammable liquid or gas storage and dispensing units.

5.7 If the stand or trailer is used for the overnight storage of class C common state approved explosives, it shall be equipped with suitable locking devices to prevent unauthorized entry. Tents shall not be used for overnight storage of class C common state approved explosives unless on site security is provided.

5.8 No person shall be allowed to sleep in any temporary stand, trailer or tent in which class C common state approved explosives are stored or sold.

5.9 Stands, trailers or tents shall not be illuminated or heated by any device requiring an open flame or exposed heating elements. All heaters shall be approved by the authority having jurisdiction (AHJ).

5.10 All illumination shall be installed in accordance with the temporary wiring section of the National Electric Code and approved by the authority having jurisdiction (AHJ).

**R710-2-6. Display, Sale, and Signage of Aerial Devices.**

6.1 In addition to those requirements in R710-2-3, R710-2-4 and R710-2-5, all aerial devices shall be packaged and displayed for sale in a manner that would provide public safety by completing one of the following:

6.1.1 Provide constant visual supervision by direct line of sight by a designated store employee where the aerial display is not more than 25 feet from the designated employee's work station.

6.1.2 Provide constant visual supervision by direct line of sight by a store employee when all of the following requirements are met:

6.1.2.1 The aerial display shall not be more than 40 feet from the designated employee's work station.

6.1.2.2 The aerial devices are restrained by using at least one of the following methods:

~~6.1.2.2.1 The aerial devices are placed in a bin or bins that meets the definition stated in Section 2.3 of these rules.~~

~~6.1.2.2.2 The aerial device shall have an additional layer of packaging requiring that the additional layer of packaging be punctured or torn to gain access to the fuse cover.~~

~~6.1.3 Place the [A]erial devices [shall be placed] in an area that is physically separated from the public so that the customer cannot handle the aerial devices without the assistance of an employee. [There shall be signage placed at the aerial device display directing customers that aerial devices cannot be attained without the assistance of a store employee.]~~

~~6.[+]-2 Where aerial devices are sold in permanent structures [or other approved locations], the aerial device display shall be placed in a location that gives the customer access to the aerial devices just before the customer checks out and exits the store.~~

6.[+]-3 Wherever aerial devices are sold, there shall be signage with a minimum font of one inch, to warn and inform the customer of the dangers of aerial devices and the signage shall state the following:

6.[+]-3.1. Aerial fireworks are designed to travel up to 150 feet into the air and then explode.

6.[+]-3.2 Aerial fireworks shall be placed on a hard level surface outdoors, in a clear and open area prior to ignition.

6.[+]-3.3 Anyone under the age of 16 shall not handle or operate aerial fireworks.

6.[+]-3.4 Ignition of aerial fireworks shall be a minimum of 30 feet from any structure or vertical obstruction.

6.[+]-3.5 Aerial fireworks shall not be ignited within 150 feet of the point of sale.

6.[+]-3.6 Please read and obey all safe handling instructions before using aerial fireworks.["]

**R710-2-7. Display Operator, Special Effects Operator, Flame Effects Operator, or Flame Effects Performing Artist Licenses.**

7.1 Application for a display operator, special effects operator, flame effects operator, or flame effects performing artist license shall be made in writing on forms provided by the SFM.

7.2 Application for a license shall be signed by the applicant.

7.3 Original licenses shall be valid from the date of issuance through December 31st of the year in which issued. Original licenses issued on or after October 1st, will be valid through December 31st of the following year.

7.4 Application for renewal of license shall be made before January 1st of each year. Application for renewal shall be made in writing on forms provided by the SFM.

7.5 The SFM may refuse to renew any license pursuant to Section 9 of these rules. The applicant, upon such refusal, shall also have those rights as are granted by Section 9 of these rules.

7.6 Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of his address or location.

7.7 No licensee shall conduct his licensed business under a name other than the name which appears on his license.

7.8 No license shall be issued to any person as licensee who is under twenty-one (21) years of age.

7.9 The holder of any license shall submit such license for inspection upon request of the SFM, his duly authorized deputies, or any authorized enforcement official.

7.10 The applicant shall indicate on the application which license the applicant wishes to apply for:

- 7.10.1 Display Operator
- 7.10.2 Special Effects Operator
- 7.10.3 Flame Effects Operator
- 7.10.4 Flame Effects Performing Artist

7.11 Every person who wishes to secure a display licensed operator, special effects licensed operator, or flame effects licensed operator original license shall demonstrate proof of competence by:

7.11.1 Successfully passing an open book written examination and obtaining a minimum grade of seventy percent (70%).

7.11.2 The applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination.

7.11.3 Submit written verification with the application of having completed a display operators safety class, a special effects operators safety class, a flame effects operator safety class or demonstrate previous experience acceptable to the SFM.

7.11.4 Submit written verification with the application that the applicant has worked with a licensed display operator, special effects operator, or a flame effects operator for at least three shows or demonstrate previous experience acceptable to the SFM.

7.12 Every person who wishes to secure an original flame effects performing artist operator license shall demonstrate proof of competence by:

7.12.1 Successfully passing an open book written examination and obtaining a minimum grade of seventy percent (70%).

7.12.2 The applicant is allowed to use the statute, the administrative rule, NFPA 160, and the Artisan and Performer Safety Standards prepared by the SFM.

7.12.3 Submit written verification with the application of having received a flame effects performing artist safety class or demonstrate previous experience acceptable to the SFM.

7.12.4 Submit written verification with the application that the applicant has worked with a licensed flame effects performing artist for at least five training meetings or practice sessions or demonstrate previous experience acceptable to the SFM.

7.13 The written examination stated in Section 7.11.1 or 7.12.1 shall be valid for five years from the date of the examination.

7.14 Applicants seeking an original license as stated in Sections 7.11 of these rules, may perform the various acts while under the direct supervision of a person holding a valid license for a period not to exceed 45 days. By the end of the 45 day period, the applicant shall have taken and passed the required examination and completed all other licensing requirements.

7.15 At the end of the five year period the licensed display operator, special effects operator, flame effects operator, or flame effects performing artist shall take a re-examination. The re-examination shall be open book and sent to the license holder at least 60 days before the renewal date. The re-examination shall focus on the changes in the last 5 years to the adopted standards. The license holder is responsible to complete the re-examination and return it to the Division in time to renew and also comply with the requirements listed in Section 7.16 of these rules.

7.16 After the issuance of the original license, and each year thereafter, the display operator, special effects operator, flame effects operator, or flame effects performing artist shall complete a minimum of one of the following:

7.16.1 Complete one show or performance annually

7.16.2 Attend an operator safety class or flame effects performing artist meeting annually

7.16.3 Work with another licensed display operator, special effects operator, flame effects operator, or flame effects performing artist with a show annually to demonstrate proof of competence.

7.17 When the license has expired for more than one year, an application shall be made for an original license and the initial requirements shall be completed as required in Sections 7.11 or 7.12 of these rules.

7.18 Every person who wishes to secure a display operator, special effects operator, flame effects operator, or flame effects performing artist license shall be at least 21 years of age.

7.19 Every licensed display operator, special effects operator, flame effects operator, or flame effects performing artist shall complete an After Action Report within ten (10) working days after the conclusion of any show and send it to the State Fire Marshal. If there are more than one licensed operator involved in the show, only one After Action Report needs to be sent to the State Fire Marshal for that show.

#### **R710-2-8. Importer or Wholesaler License.**

8.1 Application for an importer or wholesaler license shall be made in writing on forms provided by the SFM.

8.2 Application for a license shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association, it shall be signed by a principal officer.

8.3 Original licenses shall be valid from the date of issuance through December 31st of the year in which issued. Original licenses issued on or after October 1st, will be valid through December 31st of the following year.

8.4 The SFM may refuse to renew any license pursuant to Section 9 of these rules. The applicant, upon such refusal, shall also have those rights as are granted by Section 9 of these rules.

8.5 Every licensee shall notify the SFM within thirty (30) days of any change of address or location.

8.6 No licensee shall conduct his licensed business under a name other than the name which appears on his license.

8.7 No license shall be issued to any person as licensee who is under twenty-one (21) years of age.

8.8 The holder of any license shall submit such license for inspection upon request of the SFM, his duly authorized deputies, or any authorized enforcement official.

#### **R710-2-9. Adjudicative Proceedings.**

9.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

9.2 The issuance, renewal, or continued validity of a license may be denied, suspended or revoked, if the SFM, or his authorized deputies finds that the applicant, licensee, person employed for, the person having authority and management of a concern commits any of the following violations:

9.2.1 The person or applicant is not the real person in interest.

9.2.2 The person of applicant provides material misrepresentation or false statement on the application.

9.2.3 The person or applicant refuses to allow inspection by the AHJ.

9.2.4 The person or applicant for a license does not possess the qualifications of skill or competence to conduct operations for which application is made, as evidenced by failure to pass the written examination, demonstrate practical skills or complete the safety class.

9.2.5 The person or applicant has been convicted of one or more federal, state or local laws.

9.2.6 Failure to accurately complete the After Action Report.

9.2.7 The person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

9.2.8 Any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a license or certificate of registration.

9.2.9 There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of being an importer, wholesaler, display operator, special effects operator, flame effects operator or flame effects performing artist.

9.3 A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final notice from the AHJ.

9.4 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

9.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

9.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

9.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

9.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose license or certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

9.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63G-4-402.

#### **R710-2-10. Amendments and Additions.**

10.1 The following are amendments and additions to the codes and standards adopted to regulate class C common state approved explosives, placement and discharge of display fireworks, and importer, wholesaler, display or special effects operator licenses, as adopted in Section 1 of these rules:

10.2 IFC, Chapter 33, Section 3301.2.1 and 3301.2.2 is deleted, and rewritten to read as follows:

10.2.1 For the following periods of time: June 1 through July 31; December 1 through January 5; and 30 days before and up to 5 days after the Chinese New Year; class C common state approved explosives may be stored for retail sale as follows:

10.2.1.1 The retail seller shall notify the local fire authority to where the class C common state approved explosives are to be stored.

10.2.1.2 Class C common state approved explosives shall not be stored in residences to include attached garages.

10.2.1.3 The local fire authority shall approve the storage site of the class C common state approved explosives and may use the following guidelines for acceptable places of storage:

10.2.1.3.1 In self storage units where the owner allows it.

10.2.1.3.2 In a temporary stand or trailer used for the retail sales of Class C common state approved explosives, which must be locked or secured when not open for business.

10.2.1.3.3 In a locked or secured truck, trailer, or other vehicle at an approved location.

10.2.1.3.4 In a locked or secured container, garage, shed, barn, or other building, which is detached from an inhabited building.

10.2.1.3.5 Wholesalers warehouse.

10.2.1.3.6 An approved Group M occupancy.

10.2.1.3.7 In a locked or secured metal container adjacent to the temporary stand, trailer or tent that is acceptable to the authority having jurisdiction.

10.2.1.3.8 Any other structure or location approved by the authority having jurisdiction.

10.2.2 All other periods of time, except those stated in Section 9.2.1 of these rules, the storage, use, and handling of fireworks are prohibited, except as follows:

10.2.2.1 The storage and handling of fireworks are allowed as required in IFC, Chapter 33 and these rules.

10.2.2.2 The use of fireworks for display is allowed as set forth in IFC, Chapter 33 and these rules.

#### **R710-2-11. Fire Department Displays.**

11.1 As required in UCA 53-7-223(1) and as allowed for fire departments in UCA 53-7-202(9)(b), the fire department's involvement in the discharge of display fireworks is allowed only for the discharge of display fireworks in that fire departments community or communities it has a contract to protect.

11.2 Within 10 working days after the conclusion of a fireworks display, the fire chief or an assigned fire department member shall complete an After Action Report and send it to the State Fire Marshal.

11.3 Any fire department member that will be involved in the discharge site as defined in NFPA 1123, shall complete a fireworks display safety class and examination on-line yearly to be allowed in the discharge area during the display. A copy of the completed certificate shall be sent to the SFM yearly to be placed in the fire department file.

11.4 Any fireworks purchased by a community or fire department outside of the State of Utah shall require the securing of an annual importers license as required in UCA 53-7-224.

**KEY: fireworks**

**Date of Enactment or Last Substantive Amendment:** ~~July 8, 2011~~ **March 9, 2012**

**Notice of Continuation:** June 4, 2007

**Authorizing, and Implemented or Interpreted Law:** 53-7-204

**Public Safety, Criminal Investigations  
and Technical Services, Criminal  
Identification  
R722-300  
Concealed Firearm Permit and  
Instructor Rule**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35650

FILED: 01/11/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to provide a description of the requirements for consideration of equivalency to the NRA or POST firearm instructor course.

**SUMMARY OF THE RULE OR CHANGE:** The change provides a description of the requirements for consideration of an Equivalent Standard to the NRA or POST firearm instructor course.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 53, Chapter 5

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** No aggregate anticipated costs or savings to the state budget. This rule amendment addresses the description of the requirements for consideration of an equivalent standard to the NRA or POST firearm instructor course. This amendment will not affect the state budget nor are there any anticipated costs or savings.

◆ **LOCAL GOVERNMENTS:** No aggregate anticipated costs or savings to local government. This rule amendment addresses the description of the requirements for consideration of an equivalent standard to the NRA or POST firearm instructor rule. This amendment will not affect local government budgets nor are there any anticipated costs or savings.

◆ **SMALL BUSINESSES:** No aggregate anticipated costs or savings to small businesses. This rule amendment addresses the description of the requirements for consideration of an equivalent standard to the NRA or POST firearm instructor course. This amendment will not affect small businesses budgets nor are there any anticipated costs or savings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No aggregate anticipated costs or savings to persons other than small businesses, businesses, or local government entities. This rule amendment addresses the description of the requirements for consideration of an equivalent standard to the NRA or POST firearm instructor course. This amendment will not affect other persons' budgets nor are there any anticipated costs or savings.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No compliance costs. As this amended rule addresses the description of the requirements for consideration of an equivalent standard to the NRA or POST firearm instructor course, there are not anticipated compliance costs for any of the persons addressed in the questions above.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This amended rule does not have any fiscal impact on businesses because it only describes the requirements to be considered as equivalent to the NRA or POST firearm instructor course.

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

PUBLIC SAFETY  
CRIMINAL INVESTIGATIONS AND TECHNICAL  
SERVICES, CRIMINAL IDENTIFICATION  
3888 W 5400 S  
TAYLORSVILLE, UT 84118  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Alice Moffat by phone at 801-965-4939, by FAX at 801-965-4944, or by Internet E-mail at aerickso@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012

AUTHORIZED BY: Alice Moffat, Bureau Chief

**R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.**

**R722-300. Concealed Firearm Permit and Instructor Rule.**

**R722-300-5. Application for a Concealed Firearms Instructor Certification.**

(1)(a) An applicant seeking to be certified as a Utah concealed firearms instructor must submit a completed instructor certification application packet to the bureau.

(b) The instructor certification application packet shall include:

(i) a written instructor certification application form provided by the bureau;

(ii) a photocopy of a state-issued driver license or identification card;

(iii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph;

(iv) a non-refundable processing fee of \$50.00, in the form of cash, check, money order, or credit card;

(v) evidence that the applicant has completed a firearm instructor training course from the NRA or POST, or received training equivalent to one of these courses, required by Subsection 53-5-704(9)(a)(iii); and

(vi) evidence that the applicant has completed the course of instruction provided under the direction of the bureau and passed the certification test provided in Subsection 53-5-704(9)(c), within one year of the date of the application.

(2)(a) An applicant who has not completed a firearm instructor training course from the NRA or POST, may meet the requirement in R722-300-5(1)(b)(v) by providing evidence that the applicant has completed a firearm instructor training course that is at least eight (8) hours long and includes the following training components:

(i) instruction and demonstration on:

(A) the safe, effective, and proficient use and handling of firearms;

(B) firearm draw strokes;

(C) the safe loading, unloading and storage of firearms;

(D) the parts and operation of a handgun;

(E) firearm ammunition and ammunition malfunctions, including misfires, hang fires, squib loads, and defensive/protection ammunition vs. practice ammunition;

(F) firearm malfunctions, including failure to fire, failure to eject, feed way stoppage and failure to go into battery;

(G) shooting fundamentals, including shooter's stance, etc.; and

(H) firearm range safety rules; and

(ii) a practical exercise with a proficiency qualification course consisting of not less than 30 rounds and a required score of 80% or greater to pass.

(b) The evidence required in R722-300-5(2)(a) shall include a copy of the:

(i) course completion certificate showing the date the course was completed and the number of training hours completed; and

(ii) training curriculum for the course completed.

(2)(3)(a) If the bureau determines that an applicant meets the requirements found in Subsection 53-5-704(9), the bureau shall issue an instructor certification to the applicant.

(b) An instructor certification identification card shall be mailed to the applicant at the address listed on the application.

(3)(4)(a) If the bureau determines that the applicant does not meet the requirements found in Subsection 53-5-704(9), the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Section 53-5-704(16).

**KEY: concealed firearm permit, concealed firearm permit instructor**

**Date of Enactment or Last Substantive Amendment: ~~June 7, 2011~~ 2012**

**Authorizing, and Implemented or Interpreted Law: 53-5-701 through 53-5-711**

## Transportation, Administration R907-60 Handling of Publications Prepared by the Utah Department of Transportation Either for Sale or Free Copy

### NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 35670

FILED: 01/17/2012

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being repealed because the department has determined it is not necessary because it addresses internal accounting procedures and is not required by law. Documents such as maps, specifications, drawings and plans will continue to be made available to the public as in the past. The department is enacting a new rule to provide information on where to file a request for a record under the Governmental Records Access and Management Act.

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

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 72-1-201

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget because repeal of the rule does not change public access to UDOT publications.

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government because repeal of the rule does not change public access to UDOT publications.

♦ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses because repeal of the rule does not change public access to UDOT publications.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because repeal of the rule does not change public access to UDOT publications.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons because repeal of the rule does not change public access to UDOT publications.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts on businesses because repeal of the rule does not change public access to UDOT publications.

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

TRANSPORTATION  
ADMINISTRATION  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at [cwnewman@utah.gov](mailto:cwnewman@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012

AUTHORIZED BY: John Njord, Executive Director

**R907. Transportation, Administration.**

~~[R907-60. Handling of Publications Prepared by the Utah Department of Transportation Either for Sale or Free Copy.~~

**R907-60-1. Authority and Purpose.**

~~To place the responsibility for handling of publications prepared by the Utah Department of Transportation either for sale or free distribution.~~

**R907-60-2. Procedure.**

~~(1) If the publication is of a technical or non-technical nature and is for sale to the public or others because of demand, the Cashier in the Comptroller's Office shall receive the fees charged for the publication and issue a receipt. The originator shall issue the publication to persons with a receipt for payment of the publication.~~

~~(2) If the publication is of a public information nature, public hearing transcripts, environmental statements, traffic counts, State and county maps, the Community Relations Division shall have available for sale or free copy those publications.~~

~~(3) If the publication is not of a public information nature, is for internal distribution, but may be of interest to the public, and is free of charge, it should be available from the Community Relations Division.~~

~~KEY: printing, government paperwork, transportation research, standards~~

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

~~Notice of Continuation: November 14, 2011~~

~~Authorizing, and Implemented or Interpreted Law: 63G-2-102]~~

Transportation, Administration  
**R907-69**  
Records Access

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 35672

FILED: 01/17/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide contact information for requesting records and filing appeals of department decisions under the Governmental Records Access and Management Act as authorized by Subsection 63G-2-204(2)(d) of that Act.

SUMMARY OF THE RULE OR CHANGE: The proposed rule provides contact information for requesting records and filing appeals of department decisions under the Governmental Records Access and Management Act.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63G-2-204(2)(d)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There is no anticipated cost or savings to the state budget because the proposed rule only formalizes into rule the current practice of the department with regard to requests for records and filing appeals under the Governmental Records Access and Management Act.

♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government because the proposed rule only formalizes into rule the current practice of the department with regard to requests for records and filing appeals under the Governmental Records Access and Management Act.

♦ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses because the proposed rule only formalizes into rule the current practice of the department with regard to requests for records and filing appeals under the Governmental Records Access and Management Act.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses or local government entities because the proposed rule only formalizes into rule the current practice of the department with regard to requests for records and filing appeals under the Governmental Records Access and Management Act.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons because the proposed rule only formalizes into rule the

current practice of the department with regard to requests for records and filing appeals under the Governmental Records Access and Management Act.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact on businesses because the proposed rule only formalizes into rule the current practice of the department with regard to requests for records and filing appeals under the Governmental Records Access and Management Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 TRANSPORTATION  
 ADMINISTRATION  
 CALVIN L RAMPTON COMPLEX  
 4501 S 2700 W  
 SALT LAKE CITY, UT 84119-5998  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at [cwnewman@utah.gov](mailto:cwnewman@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012

AUTHORIZED BY: John Njord, Executive Director

**R907. Transportation, Administration.**

**R907-69. Records Access.**

**R907-69-1. Purpose and Authority.**

This rule provides information about where and to whom to direct requests for access to records of the Utah Department of Transportation (UDOT) under the Government Records Access and Management Act. This rule is authorized by Section 63G-2-204(2) (d).

**R907-69-2. Requests for Access.**

All requests for records shall be directed to:

TABLE

(If by hand delivery)

GRAMA Coordinator  
 Utah Department of Transportation  
 Calvin Rampton Complex, 2nd Floor  
 4501 South 2700 West  
 Salt Lake City, Utah 84119

(If by mail)

GRAMA Coordinator  
 Utah Department of Transportation  
 P.O. Box 148430  
 Salt Lake City, Utah 84114-8430

(If by email)

GRAMA Coordinator  
[grama@utah.gov](mailto:grama@utah.gov)

(If by fax)

GRAMA Coordinator  
 801-965-4838

**R907-69-3. Request Form.**

A request for public information form is available on the UDOT website at: [www.udot.gov/main/uconowner.gfn=7060323128709256](http://www.udot.gov/main/uconowner.gfn=7060323128709256).

**R907-69-4. Appeals.**

Appeals regarding determinations of access to records shall be directed to:

TABLE

(If by hand delivery)

GRAMA Appeal  
 UDOT Executive Director  
 Calvin Rampton Complex, 1st Floor  
 4501 South 2700 West  
 Salt Lake City, Utah 84119

(If by mail)

GRAMA Appeal  
 UDOT Executive Director  
 P.O. Box 141265  
 Salt Lake City, Utah 84114-1265

(If by email)

GRAMA Appeal  
 UDOT Executive Director  
[UDOTExecDir@utah.gov](mailto:UDOTExecDir@utah.gov)

(If by Fax)

GRAMA Appeal  
 UDOT Executive Director  
 801-965-4338

**KEY: public records, government documents, records access.**

**GRAMA**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 63G-2-204**

Transportation, Operations,  
 Maintenance  
**R918-4**  
 Using Volunteer Groups for the Adopt-a-Highway Program



**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35669

FILED: 01/17/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of the change is to expand the existing rule, which related only to Adopt-a-Highway programs, to also include a description and provisions pertaining to participation in the Sponsor-a-Highway program.

**SUMMARY OF THE RULE OR CHANGE:** The rule change adds provisions for the Sponsor-a-Highway program and outlines conditions for participation.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 72-1-201

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There are possible long term savings to the state budget based on expanded participation in volunteer litter removal that may result from adding the Sponsor-a-Highway program to the rule.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government because the rule change only expands volunteer litter removal programs on state highways.

◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses because the rule change only expands volunteer litter removal programs on state highways.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the rule change only expands volunteer litter removal programs on state highways.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no anticipated compliance costs for affected persons because the rule change only expands volunteer litter removal programs on state highways.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no anticipated fiscal impacts imposed on businesses from this rule change inasmuch as participation in the litter removal programs is completely voluntary.

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

TRANSPORTATION  
OPERATIONS, MAINTENANCE  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ David Benard by phone at 801-965-4197, by FAX at 801-965-4338, or by Internet E-mail at dbenard@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012**

**AUTHORIZED BY: John Njord, Executive Director**

**R918. Transportation, Operations, Maintenance.****R918-4. Using Volunteer Groups and Third Party Contractors for the Adopt-a-Highway and Sponsor-a-Highway Litter Pickup Programs.****R918-4-1. Purpose [~~of Procedure~~]and Authority.**

The purpose of this rule is [F]to establish a procedure for using volunteer groups and third party contractors for litter pickup[~~-F~~] and to provide additional resources to increase UDOT's litter control effort at a minimal cost. This program is not operated for the purpose of providing a highway signing program for a free speech forum. This rule is enacted under the general rulemaking authority in Section 72-1-201.

**R918-4-2. Application for the Adopt-A-Highway Program.**

(1) A group or person who wishes to participate in a program to pick up litter along UDOT right-of-way may apply with the UDOT Region in which the right-of-way is located. The application shall contain, at a minimum, the name of the organization or person, the right-of-way requested, along with alternatives if desired, [~~and~~]the name and address of a contact person, and the name of the sponsoring organization requested to be placed on the Recognition Sign.

(2) If the name of an organization is to appear on the sign, the applicant shall submit, with the application, documentation from the state showing the form, status, and official name of the entity. Only the official name of the organization will be printed on the sign.

(3) UDOT also coordinates a program similar to Adopt-A-Highway, known as Sponsor-A-Highway, wherein a private contractor performs the actual litter pickup on behalf of local businesses or other entities ("sponsors") in return for a sponsorship fee. The sponsoring entity is recognized with a sign. A business, government entity, group, or person who wishes to participate in the Sponsor-A-Highway program may apply to the contractor. The contractor shall submit the name of the entity, sponsorship segment, and proposed Sponsor-A-Highway sign rendering to UDOT for approval.

**R918-4-3. Conditions [~~to~~]of Adopt-A-Highway Participation.**

If the Adopt-A-Highway application is granted, UDOT shall notify the applicant's contact person in writing and promptly send to him or her a contract that sets forth the following basic conditions:

(1) the location of the right-of-way;

(2) a hold harmless agreement, waiver of liability, and indemnification for third-party claims;

(3) safety rules;

(4) information concerning safety apparel that must be used and that is recommended;

(5) the name of the entity or organization that is applying for the permit;

(6) an explanation of the condition in which UDOT expects the applicant to keep the roadway and notification that the decision whether or not the applicant has done so is solely within UDOT's discretion;

(7) notification of reasons for termination, which include failure to comply with any part of the agreement, fraud in the application, failure to follow safety requirements or commands;

(8) a date when the agreement will terminate, along with any automatic renewal provisions;

(9) volunteer groups shall provide a responsible supervisor to properly control the activities of the group, with the expertise and degree of supervision to be decided by UDOT;

(10) no person under the age of ~~14~~eleven years may participate in the litter pick-up program or be on the right-of-way;

(11) volunteers shall accept and receive safety instructions by the Region Safety/Risk Manager, or designee;

(12) volunteers shall stay off the traveled area of the roadway, except when traveled area must be crossed, with any crossing being done by the entire group together along with the signing, flagging, or supervision directed by the Region Safety/Risk Manager or designee;

(13) volunteers shall stay off the traveled areas of Interstate Routes, Freeways, and divided highways at all times, except when crossing in the manner specified in paragraph (12);

(14) in areas where the Region Director or Safety/Risk Manager or Traffic Engineer believes it appropriate, the applicant shall use advance warning signs;

(15) work shall be done during daylight hours;

(16) such other information as UDOT believes may be required to adequately advise the applicant of its responsibilities and provide for the public safety;

(17) clean up the assigned right-of-way at least three times a year as well as when UDOT specifically requests; and

(18) notify the appropriate authorities ~~[like]~~such as the Health Department or police if they find items that appear suspicious or unsafe, i.e., syringes, drug paraphernalia, or closed containers.

**R918-4-4. Conditions of Sponsor-A-Highway Participation.**

A business, government entity, group, or person participating in the Sponsor-A-Highway program shall:

(1) be legally empowered to enter a contract in the state of Utah; and

(2) use their legal name or a registered DBA name.

**R918-4-[4]5. UDOT discretion to allow use of right-of-way.**

(1) Nothing in this rule or other UDOT rule may be construed to require UDOT to make any particular portion of right-of-way available for litter pick up. The decision whether to do so is

exclusively within UDOT's discretion. Similarly, the decision to take a route out of the litter pick-up program is also within UDOT's exclusive discretion even if the route is currently available and being used for litter pick-up.

(2) Should UDOT determine that a route no longer qualifies for participation in the Adopt-a-Highway program, UDOT shall notify the person or organization ~~[that is]~~ assigned the route of that determination. The notification constitutes termination of the contract, regardless of how much time is left on the contract.

(3) UDOT may also terminate a contract at any time if it determines that continuing the contract would be counterproductive to the program's purpose or have undesirable results such as vandalism, increased litter, or would otherwise jeopardize the safety of the participants, the traveling public, or UDOT employees.

**R918-4-[5]6. Recognition Signs.**

(1) If the applicant's authorized representative (contact person) signs the contract [sent to him or her] provided by UDOT, UDOT will place a recognition sign along the route, if all other conditions are met. UDOT will not place either slogans or logos on [a]Adopt-A-Highway signs. The name may be edited to comply with space limitations.

(2) Slogans, DBA names, registered trademarks, and registered service marks may be included on Sponsor-A-Highway signs, subject to UDOT review and approval.

**R918-4-[6]7. Replacement of Signs.**

(1) Adopt-A-Highway Signs: UDOT will not replace damaged or missing signs unless the damage was due to weather or other natural cause and then only if there is sufficient funding. In no case will UDOT replace a sign more than once every five years.

(2) Sponsor-A-Highway Signs: Sponsor-A-Highway signs remain the property of the Sponsor-A-Highway contractor.

**R918-4-[7]8. UDOT's Responsibilities.**

UDOT shall:

(1) furnish volunteers with UDOT-standard vests, which, when the contract is terminated shall be returned;

(2) furnish ~~[the]~~litter bags, which, when filled, shall be placed along the shoulder of the road for collection by UDOT personnel[-];

(3) furnish advance warning signs in areas where the Region Director, Safety/Risk Manager, or Traffic Engineer believes it appropriate; and

(4) install contractor furnished Sponsor-A-Highway signs at locations designated by the Region Traffic Engineer and maintain the sign base, posts, and mounting hardware.

**KEY:** adopt-a-highway, sponsor-a-highway, litter, volunteer[ highways, transportation]

**Date of Enactment or Last Substantive Amendment:** [July 20, 2004]2012

**Notice of Continuation:** August 25, 2008

**Authorizing, and Implemented or Interpreted Law:** 72-1-201

**End of the Notices of Proposed Rules Section**

## NOTICES OF CHANGES IN PROPOSED RULES

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After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive public comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

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 March 2, 2012.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [~~example~~]). A row of dots in the text between paragraphs (. . . . .) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Division of Administrative Rules will include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

From the end of the 30-day waiting period through May 31, 2012, an agency may notify the Division of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses and the agency must start the process over.

**CHANGES IN PROPOSED RULES** are governed by Section 63G-3-303; Rule R15-2; and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

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

**Commerce, Occupational and  
Professional Licensing  
R156-67-503  
Administrative Penalties**

**NOTICE OF CHANGE IN PROPOSED RULE**

DAR FILE NO.: 35389

FILED: 01/05/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Following a public rule hearing, further review of the proposed rule by the Division and comments received from Hunter Finch from the Governor's Office of Planning and Budget, the Division is proposing additional amendments to the rule to make various corrections.

**SUMMARY OF THE RULE OR CHANGE:** The fine amounts in Subsection R156-67-503(1)(f) are updated to match the same violation identified in Subsection R156-67-503(1)(uu) as the actions described in both of these subsections are a criminal violation of law. Subsections R156-67-503(1)(v) and (1)(dd) were deleted as they are duplicates of violations identified in other subsections. Updated an incorrect rule citation from "R156-1-502" to "R156-1-501" where applicable. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the November 15, 2011, issue of the Utah State Bulletin, on page 14. 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 58-67-101 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 not incur any additional costs beyond those identified in the original proposed rule filing as a result of these additional amendments.

◆ **LOCAL GOVERNMENTS:** The proposed amendments apply to licensed physicians/surgeons as they clarify violations and create a new standard for discipline which protects the public in a timely manner. The proposed amendments also apply to other persons who may unlawfully engaged in the unlicensed practice of medicine. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** The proposed amendments apply to licensed physicians/surgeons as well as other persons who may be unlawfully engaged in the unlicensed practice of medicine. Licensed physicians/surgeons and other persons who may be unlawfully engaged in the unlicensed practice of medicine 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 apply to licensed physicians/surgeons as well as other persons who may be unlawfully engaged in the unlicensed practice of medicine. However, the Division does not anticipate any additional costs beyond those previously identified in the original proposed rule filing as a result of these additional amendments.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendments apply to licensed physicians/surgeons as well as other persons who may be unlawfully engaged in the unlicensed practice of medicine. However, the Division does not anticipate any additional costs beyond those previously identified in the original proposed rule filing as a result of these additional amendments.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This change in proposed rule corrects certain items indicated in the rule summary, but does not create any fiscal impact to businesses beyond those described in the passage of the statutory amendments which the prior rule filing intended to implement.

**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](mailto:ntaxin@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012**

**AUTHORIZED BY: Mark Steinagel, Director**

**R156. Commerce, Occupational and Professional Licensing.****R156-67. Utah Medical Practice Act Rule.****R156-67-503. Administrative Penalties.**

(1) In accordance with Subsection 58-67-503, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

(a) buying, selling, aiding or abetting or fraudulently obtaining, any medical diploma, license, certificate, or registration in violation of Subsection 58-67-501(1):

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(b) substantially interfering with a licensee's lawful and competent practice of medicine in violation of Subsections 58-67-501(1)(c)(i) or (ii):

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(c) entering into a contract that limits the licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients in violation of Subsection 58-67-501(1)(d):

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(d) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule, or making a material misrepresentation regarding the qualifications for licensure in violation of Section 58-67-502:

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(e) prescribing for oneself any Schedule II or III controlled substance in violation of Subsection R156-67-502(1):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(f) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(1)(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate in violation of Subsection R156-67-502(2):

First Offense: [~~\$1,000-\$5,000~~]\$5,000-\$10,000

Second Offense: [~~\$5,000-~~]\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(g) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered in violation of Subsection R156-67-502(3):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(h) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them in violation of Subsection R156-67-502(4):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(i) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative in violation of Subsection R156-67-502(5):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(j) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Medical Practice Act in violation of Subsection R156-67-502(6):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(k) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon who is equally qualified to provide that care in violation of Subsection R156-67-502(7):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(l) billing a global fee for a procedure without providing the requisite care in violation of Subsection R156-67-502(8):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(m) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit

of any patient without having current certification or current eligibility for certification by the American Board of Radiology in violation of Subsection R156-67-502(9):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(n) failing of a licensee without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor in violation of Subsection R156-67-502(10):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(o) failing of a licensee without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure in violation of Subsection R156-67-502(11):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(p) failing to keep the division informed of a current address and telephone number in violation of Subsection R156-67-502(13):

First Offense: \$100-\$500

Second Offense: \$500-\$3,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(q) engaging in alternate medical practice except as provided in Section R156-67-603 in violation of Subsection R156-67-502(14):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(r) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2008-2009 edition, in violation of Subsection R156-67-502(15):

First Offense: \$100-\$5,000

Second Offense: \$500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(s) failing to maintain medical records according to applicable laws, regulations, rules and code of ethics in violation of Section R156-67-602:

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(t) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title in violation of Subsection 58-1-501(1):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(u) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title in violation of Subsection 58-1-501(2)(a):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense[

~~(v) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title in violation of Subsection 58-1-501(2)(a):~~

~~First Offense: \$1,000-\$5,000~~

~~Second Offense: \$5,000-\$10,000~~

~~Ongoing Offense(s): \$2,000 per day but not less than the second offense]~~

(~~(v)~~y) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title in violation of Subsection 58-1-501(2)(b):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~(w)~~x) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession in violation of Subsection 58-1-501(2)(c):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~(y)~~z) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401 in violation of Subsection 58-1-501(2)(d):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~(z)~~y) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in the occupation or profession in violation of Subsection 58-1-501(2)(e):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~aa~~z) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so in violation of Subsection 58-1-501(2)(f):

First Offense: \$500-\$5,000  
 Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~bb~~aa) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence in violation of Subsection 58-1-501(2)(g):

First Offense: \$1,000-\$5,000  
 Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~ee~~bb) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent in violation of Subsection 58-1-501(2)(h):

First Offense: \$1,000-\$5,000  
 Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense]

~~————(dd) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education in violation of Subsection 58-1-501(2)(h):~~

~~————First Offense: \$1,000-\$5,000  
 —————Second Offense: \$5,000-\$10,000~~

~~————Ongoing Offense(s): \$2,000 per day but not less than the second offense]~~

(~~ee~~cc) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education in violation of Subsection 58-1-501(2)(i):

First Offense: \$1,000-\$5,000  
 Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~ff~~dd) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license in violation of Subsection 58-1-501(2)(j):

First Offense: \$1,000-\$5,000  
 Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~gg~~ce) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license in violation of Subsection 58-1-501(2)(k):

First Offense: \$1,000-\$5,000  
 Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~hh~~ff) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule in violation of Subsection 58-1-501(2)(l):

First Offense: \$1,000-\$5,000  
 Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~ii~~gg) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device in violation of Subsection 58-1-501(2)(m):

First Offense: \$5,000-\$10,000  
 Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~jj~~hh) violating a provision of Section 58-1-501.5 in violation of Subsection 58-1-501(2)(n):

First Offense: \$500-\$5,000  
 Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~kk~~ii) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct in violation of Subsection R156-1-~~502~~501(1):

First Offense: \$1,000-\$5,000  
 Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~ll~~jj) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company in violation of Subsection R156-1-~~502~~501(2):

First Offense: \$1,000-\$5,000  
 Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~mm~~kk) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd" in the commercial use of the name of the limited partnership in violation of Subsection R156-1-~~502~~501(3):

First Offense: \$1,000-\$5,000  
 Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~nn~~ll) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation in violation of Subsection R156-1-~~502~~501(4):

First Offense: \$1,000-\$5,000  
 Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~oo~~mm) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing in violation of Subsection R156-1-~~502~~501(5):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~pp~~nn) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", May 2004, established by the Federation of State Medical Boards in violation of Subsection R156-1-501(6):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~qq~~oo) prescribing or administering to oneself any Schedule II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug in violation of Subsection R156-37-502(1)(a):

First Offense: \$500-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~rr~~pp) prescribing or administering a controlled substance for a condition he/she is not licensed or competent to treat in violation of Subsection R156-37-502(1)(b):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~ss~~qq) violating any federal or state law relating to controlled substances in violation of Subsection R156-37-502(2):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~tt~~rr) failing to deliver to the Division all controlled substance license certificates issued by the Division to the Division upon an action which revokes, suspends or limits the license in violation of Subsection R156-37-502(3):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~uu~~ss) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances in violation of Subsection R156-37-502(4):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~vv~~tt) being unable to account for shortages of controlled substances when any controlled substance inventory for which the licensee has responsibility in violation of Subsection R156-37-502(5):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~ww~~uu) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law in violation of Subsection R156-37-502(6):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~xx~~vv) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records in violation of Subsection R156-37-502(7):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~yy~~ww) violating any other provision of Section 58-37-8 "Prohibited Acts" not listed herein:

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

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

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

(5) 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.

**KEY: physicians, licensing**

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

**Notice of Continuation: March 14, 2011**

**Authorizing, and Implemented or Interpreted Law: 58-67-101; 58-1-106(1)(a); 58-1-202(1)(a)**

**Commerce, Occupational and  
Professional Licensing  
R156-68-503  
Administrative Penalties**

**NOTICE OF CHANGE IN PROPOSED RULE**

DAR FILE NO.: 35388

FILED: 01/05/2012



**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Following a public rule hearing, further review of the proposed rule by the Division and comments received from Hunter Finch from the Governor's Office of Planning and Budget, the Division is proposing additional amendments to the rule to make various corrections.

**SUMMARY OF THE RULE OR CHANGE:** The fine amounts in Subsection R156-68-503(1)(f) are updated to match the same violation identified in Subsection R156-68-503(1)(uu) as the actions described in both of these subsections are a criminal violation of law. Subsections R156-68-503(1)(v) and (1)(dd) were deleted as they are duplicates of violations identified in other subsections. Updated an incorrect rule citation from "R156-1-502" to "R156-1-501" where applicable. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the November 15, 2011, issue of the Utah State Bulletin, on page 19. 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 58-68-101 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 not incur any additional costs beyond those identified in the original proposed rule filing as a result of these additional amendments.

◆ **LOCAL GOVERNMENTS:** The proposed amendments apply to licensed osteopathic physicians/surgeons as they clarify violations and create a new standard for discipline which protects the public in a timely manner. The proposed amendments also apply to other persons who may unlawfully engaged in the unlicensed practice of osteopathic medicine. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** The proposed amendments apply to licensed osteopathic physicians/surgeons as well as other persons who may be unlawfully engaged in the unlicensed practice of osteopathic medicine. Licensed osteopathic physicians/surgeons and other persons who may be unlawfully engaged in the unlicensed practice of osteopathic medicine 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 apply to licensed osteopathic physicians/surgeons as well as other persons who may be unlawfully engaged in the unlicensed practice of osteopathic medicine. However, the Division does not anticipate any additional costs beyond those previously identified in the

original proposed rule filing as a result of these additional amendments.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendments apply to licensed osteopathic physicians/surgeons as well as other persons who may be unlawfully engaged in the unlicensed practice of osteopathic medicine. However, the Division does not anticipate any additional costs beyond those previously identified in the original proposed rule filing as a result of these additional amendments.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This change to proposed rule corrects certain items indicated in the rule summary, but does not create any fiscal impact to businesses beyond those described in the passage of the statutory amendments which the prior rule filing intended to implement.

**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](mailto:ntaxin@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 03/09/2012**

**AUTHORIZED BY: Mark Steinagel, Director**

**R156. Commerce, Occupational and Professional Licensing.  
R156-68. Utah Osteopathic Medical Practice Act Rule.  
R156-68-503. Administrative Penalties.**

(1) In accordance with Subsection 58-68-503, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

(a) buying, selling, aiding or abetting or fraudulently obtaining, any medical diploma, license, certificate, or registration in violation of Subsection 58-68-501(1):

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(b) substantially interfering with a licensee's lawful and competent practice of medicine in violation of Subsections 58-68-501(1)(c)(i) or (ii):

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(c) entering into a contract that limits the licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients in violation of Subsection 58-68-501(1)(d):

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(d) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule, or making a material misrepresentation regarding the qualifications for licensure in violation of Section 58-68-502:

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(e) prescribing for oneself any Schedule II or III controlled substance in violation of Subsection R156-68-502(1):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(f) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(1)(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate in violation of Subsection R156-68-502(2):

First Offense: [~~\$1,000-\$5,000~~]\$5,000-\$10,000

Second Offense: [~~\$5,000-~~]\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(g) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered in violation of Subsection R156-68-502(3):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(h) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them in violation of Subsection R156-68-502(4):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(i) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative in violation of Subsection R156-68-502(5):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(j) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Utah Osteopathic Medical Practice Act in violation of Subsection R156-68-502(6):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(k) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed osteopathic physician and surgeon who is equally qualified to provide that care in violation of Subsection R156-68-502(7):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(l) billing a global fee for a procedure without providing the requisite care in violation of Subsection R156-68-502(8):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(m) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology in violation of Subsection R156-68-502(9):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(n) failing of a licensee without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor in violation of Subsection R156-68-502(10):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(o) failing of a licensee without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the

licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure in violation of Subsection R156-68-502(11):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(p) failing to keep the division informed of a current address and telephone number in violation of Subsection 58-1-501(2)(a) and Section 58-1-301.7:

First Offense: \$100-\$500

Second Offense: \$500-\$3,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(q) engaging in alternate medical practice except as provided in Section R156-68-603 in violation of Subsection R156-68-502(13):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(r) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2008-2009 edition, in violation of Subsection R156-68-502(14):

First Offense: \$100-\$5,000

Second Offense: \$500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(s) failing to maintain medical records according to applicable laws, regulations, rules and code of ethics in violation of Section R156-68-602:

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(t) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title in violation of Subsection 58-1-501(1):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(u) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title in violation of Subsection 58-1-501(2)(a):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense]

~~(v) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title in violation of Subsection 58-1-501(2)(a):~~

~~First Offense: \$1,000-\$5,000~~

~~Second Offense: \$5,000-\$10,000~~

~~Ongoing Offense(s): \$2,000 per day but not less than the second offense]~~

~~([w]v) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title in violation of Subsection 58-1-501(2)(b):~~

~~First Offense: \$500-\$5,000~~

~~Second Offense: \$1,500-\$10,000~~

~~Ongoing Offense(s): \$2,000 per day but not less than the second offense~~

~~([x]w) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession in violation of Subsection 58-1-501(2)(c):~~

~~First Offense: \$1,000-\$5,000~~

~~Second Offense: \$5,000-\$10,000~~

~~Ongoing Offense(s): \$2,000 per day but not less than the second offense~~

~~([y]x) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401 in violation of Subsection 58-1-501(2)(d):~~

~~First Offense: \$1,000-\$5,000~~

~~Second Offense: \$5,000-\$10,000~~

~~Ongoing Offense(s): \$2,000 per day but not less than the second offense~~

~~([z]y) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in the occupation or profession in violation of Subsection 58-1-501(2)(e):~~

~~First Offense: \$1,000-\$5,000~~

~~Second Offense: \$5,000-\$10,000~~

~~Ongoing Offense(s): \$2,000 per day but not less than the second offense~~

~~([aa]z) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so in violation of Subsection 58-1-501(2)(f):~~

~~First Offense: \$500-\$5,000~~

~~Second Offense: \$1,500-\$10,000~~

~~Ongoing Offense(s): \$2,000 per day but not less than the second offense~~

~~([bb]aa) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence in violation of Subsection 58-1-501(2)(g):~~

~~First Offense: \$1,000-\$5,000~~

~~Second Offense: \$5,000-\$10,000~~

~~Ongoing Offense(s): \$2,000 per day but not less than the second offense~~

(~~ee~~bb) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent in violation of Subsection 58-1-501(2)(h):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense]

~~(dd) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education in violation of Subsection 58-1-501(2)(h):~~

~~First Offense: \$1,000-\$5,000~~

~~Second Offense: \$5,000-\$10,000~~

~~Ongoing Offense(s): \$2,000 per day but not less than the second offense]~~

(~~ee~~cc) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education in violation of Subsection 58-1-501(2)(i):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~ff~~dd) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license in violation of Subsection 58-1-501(2)(j):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~gg~~ce) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license in violation of Subsection 58-1-501(2)(k):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~hh~~ff) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule in violation of Subsection 58-1-501(2)(l):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~ii~~gg) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device in violation of Subsection 58-1-501(2)(m):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~jj~~hh) violating a provision of Section 58-1-501.5 in violation of Subsection 58-1-501(2)(n):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~kk~~ii) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct in violation of Subsection R156-1-~~502~~501(1):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~ll~~jj) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company in violation of Subsection R156-1-~~502~~501(2):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~mm~~kk) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd" in the commercial use of the name of the limited partnership in violation of Subsection R156-1-~~502~~501(3):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~nn~~ll) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation in violation of Subsection R156-1-~~502~~501(4):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~oo~~mm) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing in violation of Subsection R156-1-~~502~~501(5):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~pp~~nn) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", May 2004, established by the Federation of State Medical Boards in violation of Subsection R156-1-501(6):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(~~qq~~oo) prescribing or administering to oneself any Schedule II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug in violation of Subsection R156-37-502(1)(a):

First Offense: \$5000-\$10,000  
 Second Offense: \$10,000  
 Ongoing Offense(s): \$2,000 per day but not less than the second offense  
 ([#]pp) prescribing or administering a controlled substance for a condition he/she is not licensed or competent to treat in violation of Subsection R156-37-502(1)(b):  
 First Offense: \$1,000-\$5,000  
 Second Offense: \$5,000-\$10,000  
 Ongoing Offense(s): \$2,000 per day but not less than the second offense  
 ([ss]qq) violating any federal or state law relating to controlled substances in violation of Subsection R156-37-502(2):  
 First Offense: \$500-\$5,000  
 Second Offense: \$1,500-\$10,000  
 Ongoing Offense(s): \$2,000 per day but not less than the second offense  
 ([#]rr) failing to deliver to the Division all controlled substance license certificates issued by the Division to the Division upon an action which revokes, suspends or limits the license in violation of Subsection R156-37-502(3):  
 First Offense: \$1,000-\$5,000  
 Second Offense: \$5,000-\$10,000  
 Ongoing Offense(s): \$2,000 per day but not less than the second offense  
 ([##]ss) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances in violation of Subsection R156-37-502(4):  
 First Offense: \$1,000-\$5,000  
 Second Offense: \$5,000-\$10,000  
 Ongoing Offense(s): \$2,000 per day but not less than the second offense  
 ([vv]tt) being unable to account for shortages of controlled substances any controlled substance inventory for which the licensee has responsibility in violation of Subsection R156-37-502(5):  
 First Offense: \$1,000-\$5,000  
 Second Offense: \$5,000-\$10,000  
 Ongoing Offense(s): \$2,000 per day but not less than the second offense  
 ([ww]uu) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug

dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law in violation of Subsection R156-37-502(6):  
 First Offense: \$5,000-\$10,000  
 Second Offense: \$10,000  
 Ongoing Offense(s): \$2,000 per day but not less than the second offense  
 ([xx]yy) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records in violation of Subsection R156-37-502(7):  
 First Offense: \$5,000-\$10,000  
 Second Offense: \$10,000  
 Ongoing Offense(s): \$2,000 per day but not less than the second offense  
 ([yy]ww) violating any other provision of Section 58-37-8 "Prohibited Acts" not listed herein:  
 First Offense: \$500-\$5,000  
 Second Offense: \$1,500-\$10,000  
 Ongoing Offense(s): \$2,000 per day but not less than the second offense  
 (2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.  
 (3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.  
 (4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.  
 (5) 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.

**KEY: osteopaths, licensing, osteopathic physician**  
**Date of Enactment or Last Substantive Amendment: [2011]2012**  
**Notice of Continuation: March 27, 2008**  
**Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-68-101**

**End of the Notices of Changes in Proposed Rules Section**



## NOTICES OF 120-DAY (EMERGENCY) RULES

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An agency may file a **120-Day (EMERGENCY) RULE** when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-Day RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-Day RULE** including the name of a contact person, justification for filing a **120-Day RULE**, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (. . . . .) indicates that unaffected text was removed to conserve space.

A **120-Day RULE** is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A **120-Day RULE** is effective for 120 days or until it is superseded by a permanent rule.

Because **120-Day RULES** are effective immediately, the law does not require a public comment period. However, when an agency files a **120-Day RULE**, it usually files a **PROPOSED RULE** at the same time, to make the requirements permanent. Comments may be made on the **PROPOSED RULE**. Emergency or **120-Day RULES** are governed by Section 63G-3-304; and Section R15-4-8.

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### Natural Resources, Geological Survey **R638-3** Energy Efficiency Fund

#### NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 35685  
FILED: 01/17/2012

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The rule change is to make adjustments following the transfer of the State Energy Program (SEP) to the Office of Energy Development (OED) (H.B. 475, 2011 General Session) and to expand eligible activities and criteria in order to spend all federal funds before the 04/30/2012 deadline.

**SUMMARY OF THE RULE OR CHANGE:** Rule change accounts for transfer of activities from SEP to OED, allows political subdivisions to participate, expands the list of eligible energy efficiency activities, authorizes fees and interest rates on loans, and other minor procedural adjustments. The rule change was approved by the UGS Board on 01/12/2012.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53A-20c-102

**EMERGENCY RULE REASON AND JUSTIFICATION:** REGULAR RULEMAKING PROCEDURES WOULD cause an imminent budget reduction because of budget restraints or federal requirements; and place the agency in violation of federal or state law.

**JUSTIFICATION:** Program is ARRA funded: the rule modification allows the agency to expend funds before the 04/30/2012 deadline.

#### ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Funds are from the federal government and so the program does not directly affect the state budget. However, funds will indirectly have a long-term positive impact on the state budget through energy savings.
- ◆ **LOCAL GOVERNMENTS:** Funds are from the federal government and so the program does not directly affect local governments. However, funds will indirectly have a long-term positive impact on budgets through energy savings.
- ◆ **SMALL BUSINESSES:** Funds are from the federal government and so the program does not directly affect small businesses. However, funds will bring business opportunities to the energy efficiency business sector by creating or retaining jobs.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The rule only affects political subdivisions and school districts. The rule does not impact any person or individual.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The rule only affects political subdivisions and school districts. The rule will have no compliance cost impact on any person or individual.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The rule provides businesses the opportunity to acquire funding for energy efficiency projects in schools or political subdivisions.

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

NATURAL RESOURCES  
GEOLOGICAL SURVEY  
ROOM 3110  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Kimm Harty by phone at 801-537-3313, by FAX at 801-537-3400, or by Internet E-mail at kimmharty@utah.gov

EFFECTIVE: 02/01/2012

AUTHORIZED BY: Rick Allis, Director

**R638. Natural Resources, Geological Survey.**

**R638-3. Energy Efficiency Fund.**

**R638-3-1. Purpose.**

This rule is for the purposes of

A. Conducting the responsibilities assigned to the Board of the Utah Geological Survey (UGS) and the Office of Energy Development (OED)~~[State Energy Program (SEP)]~~ in managing the Energy Efficiency Fund and implementing the associated loan program established in Utah Code Section 53A-20c-102; and

B. Establishing requirements for eligibility for loans from the Energy Efficiency Fund, procedures for accepting, evaluating, and prioritizing applications for loans, and the terms and conditions for loans.

**R638-3-2. Authority.**

Pursuant to Utah Code Section 53A-20c-102, the UGS board shall make rules establishing criteria, procedures, priorities, and conditions for the award of loans from the Energy Efficiency Fund.

**R638-3-3. Definitions.**

A. "Board" means the Board of the Utah Geological Survey.

B. "Energy" means, for the purposes of this rule, electricity, wind, geothermal, solar, biomass or other renewable energy, natural gas or other methane, fuel oil, coal, or propane that is used by a political subdivision, or school district, to operate a building's electrical devices, lighting, heating and cooling systems, and other equipment necessary for the building's operation.

C. "Energy cost payback" means the period of time, generally expressed in years, that is needed for the energy cost savings of an energy efficiency project to equal the cost of the energy efficiency project. It does not include the time-value of money and is sometimes referred to as simple payback.

D. "Energy cost savings" means the monetary value to a political subdivision, or school district, of the energy that is saved or is not consumed as a result of an energy efficiency project, or measure, and is generally stated on an annual cost savings basis. This value is measured based upon the current cost per unit of the energy source or sources used by the building at which an energy efficiency project is to take place.

E. "Energy efficiency project" means

1. For existing buildings, a retrofit to improve energy efficiency; or

2. For new buildings, an enhancement to improve energy efficiency beyond the minimum required by the energy code.

3. It does not mean

a. The repair of existing buildings or equipment;

~~b. Projects that save money through the switching of fuels, energy sources, or vendors;~~

b.~~e.~~ Projects or measures intended to save money by changing the time of day or year at which energy is consumed (i.e. thermal energy storage or other peak demand reduction systems); or

~~c.~~d.~~~~ Upgrades to non-fixed appliances or equipment within a building such as computers, copiers, and other systems.

F. "Energy savings" means the combined value, in British thermal units (Btu's), of all energy sources saved or not consumed as a result of an energy efficiency project. For purposes of this rule, the following conversion factors are used in calculating the total energy savings:

1. Electricity - One kilowatt hour = 10,495 Btu's.

2. Natural gas or methane - One therm = 100,000 Btu's.

3. Natural gas or methane - One cubic foot = 1,030 Btu's.

4. Fuel oil - One gallon = 138,690 Btu's.

5. Coal - One pound = 11,580 Btu's.

6. Propane - One gallon = 91,333 Btu's.

G. "Fund" means the Energy Efficiency Fund established by Utah Code Section 53A-20c-102.

H. "Utah Energy Code" means the most-recent edition of the International Energy Conservation Code currently in effect within the State of Utah and as incorporated and amended by Utah Rule 156.56 (Utah Uniform Building Standard Act Rules).

I. "Quarter" means a three month period beginning with one of the following dates: January 1, April 1, July 1, and October 1.

J. "OED"~~["SEP"]~~ means the Office of Energy Development. ~~[State Energy Program, a subdivision of the Utah Geological Survey, which] OED is required [by Utah Code 53A-20c-102]~~ to serve as staff to the revolving loan program associated with the Energy Efficiency Fund.

K. "UGS" means the Utah Geological Survey.

**R638-3-4. Eligibility of Projects for Loans.**

A. Eligibility for loans from the Fund is limited to political subdivisions, including school districts within the state of Utah.

B. Loans may be used only by political subdivisions, including school districts, to fully or partially finance energy efficiency projects within buildings owned and operated by ~~[the] political subdivisions, including school districts~~.

C. For energy efficiency projects involving renovation, upgrade, or improvement of existing buildings, the following project measures are eligible for loan financing from the Fund:

1. Building exterior weatherization, air sealing, or thermal efficiency;

2. Increase or improvement in building insulation;

3. Door, window, or skylight upgrades;

4. Lighting technology upgrades, or reduction of the number of fixtures;



5. Heating, ventilation, and air conditioning (HVAC) replacements or upgrades;

6. Improvements to energy control systems;

7. Other energy efficiency projects that a political subdivision or school district can demonstrate will result in a significant reduction in the consumption of energy within a building.

8. Renewable energy systems such as, but not limited to, ground source heat pumps, biomass, wind turbines, photovoltaic and solar thermal installations.

D. An energy efficiency project or measure can be eligible as part of a new building construction if the following conditions are met:

1. The building measure or system for which a loan is sought must surpass the minimum prescriptive requirements of the Utah Energy Code; and

2. The completed building must exceed the minimum energy performance standards of the Utah Energy Code for its building type by at least 10%.

E. There is no limit to the total number of loans a political subdivision or single school district may receive from the Fund, however, no political subdivision or school district may receive a loan that would cause the sum of its outstanding loan balances to exceed \$2,000,000~~[\$500,000]~~.

F. An energy efficiency project is eligible for a loan only if the total amount of funds awarded to the project are repaid in a term of more than two and less than twenty~~[twelve]~~ years.

**R638-3-5. Eligible Costs.**

A. This section defines the specific costs incurred by an energy efficiency project that are eligible for financing from the Fund.

B. The following direct costs of an energy efficiency project may be eligible for financing, subject to the remaining conditions of this section:

1. Building and related project materials;

2. Doors, windows, and skylights;

3. Mechanical systems and components including HVAC and hot water;

4. Electrical systems and components including lighting and energy management systems.

5. Labor necessary for the construction or installation of the energy efficiency project;

6. Design and planning of the energy efficiency project;

7. Energy audits that identify measures that are included in the energy efficiency project;

8. Commissioning, inspections or certifications necessary for implementing the energy efficiency project.

C. The following costs are not eligible for financing from the Fund:

1. The costs of a construction or renovation project that are not directly related to energy efficiency measures;

~~[2. Costs incurred for the acquisition of financing for the project;~~

2.~~[3-]~~ Costs for equipment or systems that reduce energy costs without also resulting in reductions in the use of energy.

D. In cases for which the political subdivision or school district, receives a financial incentive or rebate from a utility or

other third party for undertaking some or all of the measures in an energy efficiency project, such incentives or rebates are to be deducted from the costs that are eligible for financing from the Fund. No loans made from the Fund may exceed the final cost incurred by the political subdivision or school district, for the project after third party financing.

E. For an energy efficiency project or measure, undertaken as part of a new building construction, only the incremental cost of the project is eligible. For purposes of this section, incremental cost means the portion of the overall cost of a measure or system that exceeds the cost that would have been incurred by meeting the minimum prescriptive requirements of the Utah Energy Code.

F. For an energy efficiency project or measure, undertaken as part of the renovation of an existing building, building components or systems that are covered by the prescriptive requirements of the Utah Energy Code must exceed the minimum Utah Energy Code requirements in order for their costs to be eligible for a loan from the Fund.

**R638-3-6. Loan Application Process.**

A. The Board shall receive and evaluate applications for loans from the Fund on a rolling basis as complete proposals are developed in conjunction with OED[SEP] staff.

B. Political subdivisions, including School districts, interested in applying for a loan should first contact OED[SEP]. OED[SEP] staff may~~[will]~~ consult or meet with political subdivision or school district staff to make an initial assessment of the strength or weakness of a proposed project. OED[SEP] staff may also choose to conduct a site visit of the proposed project location prior to an application. OED[SEP] staff shall engage with school districts in a pre-application process evaluating potential project measures and preparing applications. Final applications shall be checked for completeness and eligibility by OED[SEP] staff prior to submission to the Board.

C. Applications for loans will be made using forms developed by OED[SEP]. Application forms shall require that the following information be provided by the political subdivision or school district:

1. Identification of political subdivision or school district personnel responsible for financial authority and project management;

2. Name and location of the building or buildings where the energy efficiency project will take place;

3. A description of the energy efficiency project to be undertaken, including existing conditions, specific measures to be undertaken, the cost or incremental cost of each measure, and the equipment or building materials to be installed;

4. Projected or estimated energy savings that result from each measure undertaken as part of the project;

5. Projected or estimated energy cost savings from each measure undertaken as part of the project;

6. Appendices providing supplemental information detailing the extent of political subdivision or school district commitment to the project (i.e. special needs, prior investments, existing audit/design documents) or descriptions of any additional community or environmental benefits that may result from the project.

D. The Board shall establish a Review Committee to provide in-depth evaluation of loan applications. The Committee must consist of at least the following:

1. ~~An~~ OED[SEP] Manager;
2. An OED[SEP] technical specialist chosen by the OED[SEP] Manager;
3. The UGS Associate Director;
4. One member of the Board selected by the Board for a two year renewable term;
5. A representative of the Utah Office of Education approved by the Board for a two year renewable term or for political subdivision, a representative from the Division of Facility Construction and Management (DFCM).

Other members may be designated at the discretion of the Board.

E. When OED[SEP] has deemed that an application is complete and that the proposed project complies with this rule, the application will be forwarded to the Review Committee for its evaluation.

F. The Review Committee will review and discuss the merits of each application in light of all materials submitted by the political subdivision, or school district, and technical analysis undertaken by OED[SEP] staff. After discussion of each application, Review Committee members will evaluate each according to the following criteria and scoring:

1. The feasibility and practicality of the project (maximum 30 points);
2. The projected energy cost payback period of the project (maximum 20 points);
3. The energy savings and energy cost savings attributable to the project (maximum 30 points);
4. Any supplemental information contained in the appendices or available to the Review Committee through the Utah State Office of Education (i.e. school district finances and enrollment) (maximum 20 points).

A separate score sheet will be completed by each Review Committee member for each application under consideration.

G. The Review Committee will compile the scores of each of its members for each application. Based upon the compiled scores of all members, the Committee will make recommendations to the Board for the funding of energy efficiency projects. For applications that receive an average score of less than 70 points, the Review Committee shall recommend that the Board not provide a loan from the Fund. Applications receiving an average score over 70 will normally be recommended for funding. However, if the current balance of the fund does not permit for the funding of all projects with an average score over 70, the Review Committee will recommend, beginning with the highest scoring application and working downward in score, those applications that may be funded given the current balance of the Fund.

H. The Review Committee provides advice and recommendations to the Board. It is not vested with the authority to make decisions regarding the public's business in connection with the Fund. The Board is the decision making authority with regard to the award of loans from the Fund.

I. Based upon the Review Committee's evaluations and recommendations, OED[SEP] will prepare a memorandum for the Board that will

1. Provide a brief description of each project reviewed by the Review Committee;

2. List estimates of energy savings, energy cost savings and simple paybacks.

3. Specify projects recommended for funding and those not recommended for funding;

4. Provide a brief explanation of the Review Committee's rationale for each application that is not recommended for funding.

J. The Board can approve or deny loans through electronic correspondence if a majority of the quorum is in favor.

K. When considering Loan applications, the Board may modify the dollar amount or project scope for approved projects if the Board determines that individual measures included in a project do not meet the requirements of this rule, are not cost effective, or that funds could better be used for funding of other projects.

#### **R638-3-7. Loan Terms.**

A. The maximum amount that may be approved by the Board for any single energy efficiency project or measure is \$1,000,000~~[\$250,000]~~. The minimum amount that may be approved is \$5,000.

B. No political subdivision or school district may receive a loan that would cause the sum of its outstanding loan balances to exceed \$2,000,000~~[\$500,000]~~.

C. The final value of any loan may vary from the Board-approved amount according to the actual incursion of costs by the political subdivision or school district. In cases where costs have exceeded those presented in the initial application, a school district may request that the Board increase its loan award, subject to the limitations of subsections (A) and (B) above.

D. After approval of a loan application by the Board, a political subdivision or school district has one year in which to complete the energy efficiency project. If at the end of one year a political subdivision or school district is unable to meet this time limitation, it may request an extension from ~~the~~ OED[Board] of no more than six additional months.

E. Loan amounts from the Fund will be encumbered in an escrow account for periodic disbursement at the discretion of the school district-appointed project manager (designated in loan application form, see R638-3-6.C1), with invoices of the expenditures documented in each quarterly progress report, and the final 10% withheld pending a determination of substantial completion by OED[SEP].

F. Once a project has been completed, the political subdivision or school district shall provide to OED[SEP] documentation of actual costs incurred, such as invoices from contractors, as well as information on any third party financial incentives received. OED[SEP] will use this information to determine the actual cost of the project measures approved by the Board.

G. The final loan amount will be equal to actual costs incurred for the project minus the value of any third party incentives received unless

1. This amount exceeds \$2,000,000~~[\$250,000]~~, in which case the amount of the loan will be set at \$2,000,000~~[\$250,000]~~; or

2. This amount exceeds the amount approved by the Board, in which case the loan amount will be set at the amount originally approved by the Board; or

3. This amount exceeds the amount approved by the Board and the Board increases the loan award at the request of the school district.

H. No interest will be charged to school districts receiving loans for energy efficiency projects from the Fund.

I. Interest may be charged on loans issued to political subdivision projects.

J.[F-] An administrative fee may be charged to loan recipients to defray the cost of servicing loan accounts.

K.[F-] Loan repayment periods will be set to any term desired by the applicant between two and twenty[twelve] years. The loan repayment period for a specific energy efficiency project begins with the first day of the next quarter after all of the loan funds have been disbursed.

L.[K-] Loan repayments will be due at the beginning of each quarter.

M.[F-] For loans issued to school districts, Quarterly loan repayment amounts will be calculated as follows:

(Total loan amount + (annual administrative fee x loan repayment period) / loan repayment period) / 4.

N. For loans issued to political subdivisions, quarterly loan repayment amounts will be calculated based on a fixed interest rate compound quarterly and determined by OED. Origination and administrative fees charged by OED may be included in the total loan amount.

O.[M-] Political subdivisions and [S]school districts that are approved for a loan award will enter into a contract with OED[SEP] that specifies all terms applying to the loan, including the terms specified in this rule and standard contract terms for contracts and loans currently in effect for the State of Utah.

**R638-3-8. Reporting and Site Visits.**

A. In the period between Board approval and project completion, the political subdivision or school district shall complete and provide to OED[SEP] a report at the beginning of each quarter. The report shall include information on the school district's progress in completing the energy efficiency project, its most-current estimate for the time of project completion, what proportion of the loan award has been disbursed in the quarter and total to date, and any notable problems or changes in the project since Board approval such as construction delays or cost overruns.

B. If a political subdivision or school district fails to submit the quarterly reports described in subsection (A) above, the Board may freeze the remainder of the loan award escrow account.

C. After loan funds have been completely disbursed, the political subdivision or school district shall complete and provide to OED[SEP] annual reports due at the beginning of the calendar quarter in which the anniversary of the loan repayment period began. This report shall include the following:

1. A description of the performance of the building and of the performance of the measures included in the energy efficiency project;

2. A description of any notable problems that have occurred with the building or the project;

3. A description of any notable changes to the building or to its operations that would cause a significant change in its energy consumption;

4. Documentation of building energy consumption and cost in the prior year.

Annual reports shall be provided for either the first four years after project completion or for each year of the repayment period, whichever is longer.

D. If a political subdivision or school district fails to submit the annual reports described in subsection (C) above, the Board may bar the school district from eligibility for future loans from the Fund

E. Approximately one year after project completion, OED[SEP] staff will conduct a site visit to the location of the energy efficiency project to verify project completion and assess the success of the project. Additional site visits may also be conducted by OED[SEP] staff during the repayment period. Loan recipients will assist OED[SEP] with such site visits, including providing access to all components of the energy efficiency project.

**KEY: energy[.] efficiency, schools, loans, political subdivisions**  
**Date of Enactment or Last Substantive Amendment: February 1, 2012**

**Authorizing, and Implemented or Interpreted Law: 53A-20c-102**

**Public Safety, Driver License  
 R708-10  
 Classified License System**

**NOTICE OF 120-DAY (EMERGENCY) RULE**  
 DAR FILE NO.: 35629  
 FILED: 01/06/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This change is required to bring the Utah Driver License Division in compliance with federal regulations. In addition, the "Authorizing, Implemented or Interpreted Law" citation has been corrected.

**SUMMARY OF THE RULE OR CHANGE:** This change modifies and clarifies the codes used for driving restrictions and adds new restriction codes.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53-3-104

**EMERGENCY RULE REASON AND JUSTIFICATION:** REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

**JUSTIFICATION:** Federal Motor Carrier Safety Improvement Act (MCSIA) defines driving restrictions and the corresponding data entry code. This rule will bring the Utah Driver License Division in compliance with those restrictions and codes.

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This change will not affect the state budget because federal grant funds have been awarded through the FY 2010 Commercial Driver License

Modernization grant to fund the costs to modify the restrictions changes on the commercial driver license certificate.

♦ LOCAL GOVERNMENTS: Local government is not affected by the change because local government does not issue Utah driver license certificates.

♦ SMALL BUSINESSES: Small business is not affected by the change because local government does not issue Utah driver license certificates.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Some drivers who currently hold a Utah Commercial driver license will need a new certificate reflecting the restriction changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The drivers who currently hold a Utah Commercial driver license that are affected by the restriction changes will not incur any costs because federal grant funds have been awarded through the FY 2010 Commercial Driver License Program Improvement grant and will be used to cover the costs to generate letters explaining the changes, create new certificates, and postage.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will not be a fiscal impact on business as a result of this rule change.

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

PUBLIC SAFETY  
DRIVER LICENSE  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W 3RD FL  
SALT LAKE CITY, UT 84119-5595  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jill Laws by phone at 801-964-4469, by FAX at 801-964-4482, or by Internet E-mail at [jlaws@utah.gov](mailto:jlaws@utah.gov)

EFFECTIVE: 01/07/2012

AUTHORIZED BY: Lance Davenport, Commissioner

#### **R708. Public Safety, Driver License.**

#### **R708-10. Classified License System.**

##### **R708-10-1. Authority.**

This rule is authorized by Section ~~[53-3-401]~~[53-3-104] et seq.

##### **R708-10-2. Specifications for Utah License Classifications.**

Class A Commercial Driver - (must be at least 18 years of age). Every person operating any combination of vehicles over 26,000 lbs. GVWR (Gross Vehicle Weight Rating) where the towed unit is more than 10,000 lbs. GVWR.

Class B Commercial Driver - (must be at least 18 years of age). Every person operating a straight truck or bus (single vehicle) more than 26,000 lbs. GVWR or any combination of vehicles over 26,000 lbs. GVWR where the towed unit is less than 10,001 lbs. GVWR.

Class C operator - (must be at least 21 years of age). Every person operating a vehicle or combination of vehicles less than 26,001 GVWR which transports amounts of hazardous materials requiring placarding or which transports more than 15 occupants including the driver, or which is used as a school bus.

Class D operator - (must be at least 16 years of age). Every person operating vehicles not defined above except motorcycles.

#### **R708-10-3. Endorsements.**

H = Hazardous materials  
M = Motorcycle.  
N = Tank vehicle.  
P = Passengers.  
S = School bus. (includes P)  
T = Double or triple trailers.  
X = Hazardous material and tank combination.  
Z = Taxis.

#### **R708-10-4. Restrictions.**

A = ~~[None.]~~No restrictions.  
B = Corrective lenses[-] - Restricted to wearing corrective lenses while operating a vehicle.  
C = Mechanical aid[-] - Mechanical aid or compensatory device must be installed in the vehicle the driver is operating.  
D = Prosthetic aid[-] - Prosthetic aid must be used while operating a vehicle.  
E = Automatic transmission[-] - Restricted to driving a vehicle with automatic transmission.  
F = Outside rearview mirrors[-] - Restricted to driving a vehicle with outside rearview mirrors.  
~~[-----] I = Limit - other.~~  
] G = Daylight driving only[-] - Restricted to driving during daylight hours only.  
J = Restricted Other[-] - Used as a free text field to identify additional restrictions.  
K = CDL Intrastate only - Restricted to intrastate operation of commercial vehicles.  
L = Vehicle without airbrake - Restricted to vehicles not equipped with air[-]brakes.  
M = Except Class A bus - Class A license prohibited from driving a Class A bus.  
N = Except Class A and Class B bus - Class A license prohibited from driving a Class A or Class B bus.  
~~[O = 90 cc or less motorcycle.~~  
~~-----] U = [a 3 wheel eyele.]~~Three wheel motorcycle - Restricted to operating only three-wheel motorcycles.  
V = ~~[POSTED 40 mph or less.]~~Medical variance - Driver must have a medical variance letter accompanied by a DOT Medical Card.  
~~[W = medical.]~~1 = Interlock device - Required to have an ignition interlock device installed in the vehicle they are operating.  
2 = 249cc or less motorcycle[-] - Restricted to operating a motorcycle with 249cc or less.

3 = 649cc or less motorcycle[-] - Restricted to operating a motorcycle with 649cc or less.

4 = Street legal ATV[-only-] - Restricted to operating a street legal ATV.

5 = 90cc or less motorcycle - Restricted to operating a motorcycle with 90cc or less.

6 = Speed posted 40 mph or less - Restricted to operating a vehicle on a road with a posted speed limit of 40 mph or less.

**KEY: classified license, licensing**

**Date of Enactment or Last Substantive Amendment: January 7, 2012**

**Notice of Continuation: April 7, 2009**

**Authorizing, and Implemented or Interpreted Law: ~~[53-3-401]~~53-3-104 et seq.**

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**End of the Notices of 120-Day (Emergency) Rules Section**



# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to remove obsolete rules from the Utah Administrative Code. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **NOTICE**. By filing a Notice, the agency indicates that the rule is still necessary.

**NOTICES** are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. **NOTICES** are effective upon filing.

**NOTICES** are governed by Section 63G-3-305.

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## Administrative Services, Finance **R25-14**

### Payment of Attorneys Fees in Death Penalty Cases

#### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 35663  
FILED: 01/12/2012

#### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 78B-9-202(3) directs the Division of Finance to establish rules governing the payment of attorney fees and litigation expenses for indigent post-conviction death penalty petitioners.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: On 03/31/2008, the Division of Finance received comment from Thomas Brunker, Assistant Attorney General. The comment pertained to the relationship between S.B. 277 (2008 General Session) and a proposed amendment to this rule, DAR No. 31011, published in the March 1, 2008, issue of the Utah State Bulletin. Subsequent to Mr. Brunker's comments, the proposed rule was allowed to lapse. A later proposed rule was filed that took into account amendments made by S.B. 277. No other comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Subsection 78B-9-202(3) continues to require

this rule. The Division of Finance continues to make payments under this program as required by the courts. Therefore, this rule should be continued.

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

ADMINISTRATIVE SERVICES  
FINANCE  
ROOM 2110 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:

♦ Barbara Sutherland by phone at 801-538-3020, by FAX at 801-538-3244, or by Internet E-mail at bsutherland@utah.gov

AUTHORIZED BY: John Reidhead, Director

EFFECTIVE: 01/12/2012

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## Administrative Services, Fleet Operations **R27-4**

### Vehicle Replacement and Expansion of State Fleet

#### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 35622  
FILED: 01/05/2012

#### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS

ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is established pursuant to Subsections 63A-9-401(1)(a), 63A-9-401(1)(d)(v), 63A-9-401(1)(d)(ix), 63A-9-401(1)(d)(x), 63A-9-401(1)(d)(xi), 63A-9-401(1)(d)(xii), 63A-9-401(4)(ii), and 63A-9-401(6) which require the Division of Fleet Operations (DFO) to: coordinate all purchases of state vehicles; make rules establishing requirements for the procurement of state vehicles, whether for the replacement or upgrade of current fleet vehicles or fleet expansion; make rules establishing requirements for cost recovery and billing procedures; make rules establishing requirements for the disposal of state vehicles; make rules establishing requirements for the reassignment and reallocation of state vehicles and make rules establishing rate structures for state vehicles.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments regarding this rule have been submitted over the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The continuation of this rule is necessary for the DFO to maintain statutory compliance and to insure that the state fleet expansion and vehicle replacement processes are in compliance with state and federal law and in the best interest of the state.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ADMINISTRATIVE SERVICES  
 FLEET OPERATIONS  
 ROOM 4120 STATE OFFICE BLDG  
 450 N 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 801-359-0759, or by Internet E-mail at bfay@utah.gov

AUTHORIZED BY: Sam Lee, Director

EFFECTIVE: 01/05/2012

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**Administrative Services, Fleet  
 Operations  
 R27-5  
 Fleet Tracking**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 35617  
 FILED: 01/05/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted pursuant to Subsection 63A-9-401(1)(c) which requires the Division of Fleet Operations (DFO) to establish one or more fleet automation and information systems for state vehicles.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments regarding this rule have been received from interested persons over the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The continuation of this rule is necessary for the DFO to maintain statutory compliance and to insure that state vehicles and miscellaneous equipment under the ownership or control of all state agencies are accounted for and properly inventoried.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ADMINISTRATIVE SERVICES  
 FLEET OPERATIONS  
 ROOM 4120 STATE OFFICE BLDG  
 450 N 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 801-359-0759, or by Internet E-mail at bfay@utah.gov

AUTHORIZED BY: Sam Lee, Director

EFFECTIVE: 01/05/2012

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**Administrative Services, Fleet  
 Operations  
 R27-6  
 Fuel Dispensing Program**



**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**DAR FILE NO.: 35620  
FILED: 01/05/2012**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is established pursuant to Subsections 63A-9-401(1)(d)(vi) and 63A-9-401(1)(f) which require the Department of Administrative Services, Division of Fleet Operations (DFO), to make rules establishing requirements for fuel management programs, and to create and administer a fuel dispensing services program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments regarding this rule have been received over the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The continuation of this rule is necessary for the DFO to maintain statutory compliance and to provide efficient fuel management and efficient and accurate accounting of fuel-related expenses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
ADMINISTRATIVE SERVICES  
FLEET OPERATIONS  
ROOM 4120 STATE OFFICE BLDG  
450 N 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 801-359-0759, or by Internet E-mail at [bfay@utah.gov](mailto:bfay@utah.gov)

AUTHORIZED BY: Sam Lee, Director

EFFECTIVE: 01/05/2012

Administrative Services, Fleet  
Operations  
**R27-8**  
State Vehicle Maintenance Program

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**DAR FILE NO.: 35621  
FILED: 01/05/2012**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is established pursuant to Subsections 63A-9-401(1)(d)(i) and (iv), which require the Department of Administrative Services, Division of Fleet Operations (DFO), to establish rules governing maintenance operations for state vehicles, and preventative maintenance programs.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments regarding this rule have been received over the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The continuation of this rule is necessary for the DFO to maintain statutory compliance and to optimize state vehicle safety and efficiency through proper vehicle maintenance.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
ADMINISTRATIVE SERVICES  
FLEET OPERATIONS  
ROOM 4120 STATE OFFICE BLDG  
450 N 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 801-359-0759, or by Internet E-mail at [bfay@utah.gov](mailto:bfay@utah.gov)

AUTHORIZED BY: Sam Lee, Director

EFFECTIVE: 01/05/2012

Agriculture and Food, Administration  
**R51-2**  
Administrative Procedures for Informal  
Proceedings Before the Utah  
Department of Agriculture and Food

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35614  
FILED: 01/04/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: These rules are promulgated as per provisions outlined in Subsection 4-2-2(1)(i) and Section 4-1-3.5 and govern the administrative proceedings before the Utah Department of Agriculture and Food. Part 3 in the Enforcement and Penalties Section, specifically Section 4-2-12 gives the department authority to initiate action against a person or firm that may be violating any provisions of the code and this Administrative Rule outlines the procedures for taking enforcement action.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has received no comments from persons or groups supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes and governs the administrative proceedings before the Utah Department of Agriculture and Food and is required to enable the agency to conduct this administrative function. Therefore, this rule should be continued.

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

AGRICULTURE AND FOOD  
ADMINISTRATION  
350 N REDWOOD RD  
SALT LAKE CITY, UT 84116-3034  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at [kmathews@utah.gov](mailto:kmathews@utah.gov)  
◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at [kylestephens@utah.gov](mailto:kylestephens@utah.gov)

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 01/04/2012

**Agriculture and Food, Regulatory  
Services****R70-201****Compliance Procedures****FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35660  
FILED: 01/12/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 4-2-2(1)(j) indicates that the department shall, when necessary, make investigations, subpoena witnesses and records, conduct hearings, issue orders, and make recommendations concerning all matters related to agriculture. The department promulgated this rule via authority of this section, in order to clearly establish the process for issuing orders. It is paramount that all orders be issued in a consistent way.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments in support or opposing this rule have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should continue because of the need for orders to be issued in a consistent manner is still present.

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

AGRICULTURE AND FOOD  
REGULATORY SERVICES  
350 N REDWOOD RD  
SALT LAKE CITY, UT 84116-3034  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at [kmathews@utah.gov](mailto:kmathews@utah.gov)  
◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at [kylestephens@utah.gov](mailto:kylestephens@utah.gov)  
◆ Richard Clark by phone at 801-538-7150, by FAX at 801-538-7126, or by Internet E-mail at [richardwclark@utah.gov](mailto:richardwclark@utah.gov)

AUTHORIZED BY: Leonard Blackham, Commissioner

SALT LAKE CITY, UT 84116-3034  
or at the Division of Administrative Rules.

EFFECTIVE: 01/12/2012

**Agriculture and Food, Regulatory  
Services  
R70-320**

**Minimum Standards for Milk for  
Manufacturing Purposes, its Production  
and Processing**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35661  
FILED: 01/12/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 4-2-2(1)(i) and Section 4-3-2 indicate that the department shall adopt, according to Title 63G, Chapter 3, the Utah Administrative Rulemaking Act, rules necessary for the effective administration of the agricultural laws of the state. The department is authorized and directed, subject to Title 63G, Chapter 3, the Utah Administrative Rulemaking Act, to make and enforce such rules as may in its judgment and discretion be necessary to carry out the purposes of this chapter. The department has determined that for the protection of the consumer and the protection of the industry, sanitation standards for milk manufacturing facilities are needed.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received in support of or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The department has determined that for the protection of the consumer and the protection of the industry, sanitation standards for milk manufacturing facilities are needed and that these standards are necessary. Therefore, this rule should be continued.

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

AGRICULTURE AND FOOD  
REGULATORY SERVICES  
350 N REDWOOD RD

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
- ◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
- ◆ Richard Clark by phone at 801-538-7150, by FAX at 801-538-7126, or by Internet E-mail at richardwclark@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 01/12/2012

**Agriculture and Food, Regulatory  
Services  
R70-350**

**Ice Cream and Frozen Dairy Food  
Standards**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35658  
FILED: 01/12/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: In Section 4-3-2, the department is authorized and directed, subject to Title 63G, Chapter 3, the Utah Administrative Rulemaking Act, to make and enforce such rules as may in its judgment and discretion be necessary to carry out the purposes of this chapter. The department determined that a standard of identity, bacteriological standards, and labeling requirements were necessary to protect the market integrity of ice cream and frozen dairy foods, and to protect the consumer.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The department has determined that the product and consumer protection requirements are still needed. Therefore, this rule should be continued.

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

AGRICULTURE AND FOOD  
REGULATORY SERVICES  
350 N REDWOOD RD  
SALT LAKE CITY, UT 84116-3034  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
- ◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
- ◆ Richard Clark by phone at 801-538-7150, by FAX at 801-538-7126, or by Internet E-mail at richardwclark@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 01/12/2012

**Agriculture and Food, Regulatory  
Services  
R70-360**

**Procedure for Obtaining a License to  
Test Milk for Payment**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35657  
FILED: 01/12/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: In Section 4-3-2, the department is authorized and directed, subject to Title 63G, Chapter 3, the Utah Administrative Rulemaking Act, to make and enforce such rules as may in its judgment and discretion be necessary to carry out the purposes of this chapter. The department determined that requirements for milk testers were needed to assure accuracy of testing results for the good of the milk industry and the consumer.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments supporting or opposing this rule have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The department has determined that the

requirements are still needed to assure accuracy of testing results for the good of the milk industry and consumer. Therefore, this rule should be continued.

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

AGRICULTURE AND FOOD  
REGULATORY SERVICES  
350 N REDWOOD RD  
SALT LAKE CITY, UT 84116-3034  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
- ◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
- ◆ Richard Clark by phone at 801-538-7150, by FAX at 801-538-7126, or by Internet E-mail at richardwclark@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 01/12/2012

**Agriculture and Food, Regulatory  
Services  
R70-550**

**Utah Inland Shellfish Safety Program**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35659  
FILED: 01/12/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 4-5-17 is the authority to make and enforce rules. (1) The department may adopt rules to efficiently enforce this chapter, and if practicable, adopt rules that conform to the regulations adopted under the Federal Food, Drug and Cosmetic Act, 21 U.S.C. Sec. 301 et seq. This statute allows the Utah Department of Agriculture and Food to adopt the Interstate Shellfish Shipper Model Ordinance: 2005 edition Recommendations of the United States Public Health Service/Food and Drug Administration.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments opposing or supporting this rule have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule was promulgated at the request of Utah's seafood distribution industry to enable them to export shellfish to other states. The rule is still required in order for them to conduct this portion of their business. Therefore, this rule should be continued.

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

AGRICULTURE AND FOOD  
REGULATORY SERVICES  
350 N REDWOOD RD  
SALT LAKE CITY, UT 84116-3034  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov  
♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov  
♦ Richard Clark by phone at 801-538-7150, by FAX at 801-538-7126, or by Internet E-mail at richardwclark@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 01/12/2012

**Agriculture and Food, Regulatory  
Services  
R70-560**

**Inspection and Regulation of Cottage  
Food Production Operations**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35662  
FILED: 01/12/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 4-5-9.5 (2)(a) indicates that the department shall adopt rules pursuant to Title 63G, Chapter 3, the Utah Administrative Rulemaking Act, as necessary to protect public health and ensure a safe food supply; (b) Rules adopted pursuant to this Subsection (2) shall provide for: (i) the registration of cottage food production operations as food establishments under this chapter; (ii) the labeling of products from a cottage food production operation as "Home Produced"; and (iii) other

exceptions to the chapter that the department determines are appropriate and that are consistent with Section 4-5-9.5.

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 only comments received were several requests to give cottage food operations the option not to include the street address on the product labels.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is still required by the above referenced statute. It establishes the protocols for making and reviewing applications. It also sets the criteria for product labels and for processing area sanitation. Therefore, this rule should be continued.

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

AGRICULTURE AND FOOD  
REGULATORY SERVICES  
350 N REDWOOD RD  
SALT LAKE CITY, UT 84116-3034  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov  
♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov  
♦ Richard Clark by phone at 801-538-7150, by FAX at 801-538-7126, or by Internet E-mail at richardwclark@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 01/12/2012

**Capitol Preservation Board (State),  
Administration  
R131-10**

**Commercial Solicitations**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35687  
FILED: 01/17/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The purpose of this rule is to

define and implement Board policy regarding commercial solicitation activities at the Utah State Capitol Hill Complex. This rule is promulgated pursuant to Section 63C-9-301 of the Utah Code.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Capitol Preservation Board needs this rule so the public will know how the Utah Capitol Hill complex defines and implements commercial solicitations. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 CAPITOL PRESERVATION BOARD (STATE)  
 ADMINISTRATION  
 ROOM E110 EAST BUILDING  
 420 N STATE ST  
 SALT LAKE CITY, UT 84114-2110  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov  
 ♦ Allyson Gamble by phone at 801-537-9156, by FAX at 801-538-3221, or by Internet E-mail at agamble@utah.gov  
 ♦ Chiarina Gleed by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov

AUTHORIZED BY: Allyson Gamble, Executive Director

EFFECTIVE: 01/17/2012

**Capitol Preservation Board (State),  
 Administration  
 R131-11**

**Preservation of Free Speech Activities**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 35688  
 FILED: 01/17/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS

ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The purpose of this rule is to promote and encourage free speech on the Capitol Hill Complex and to preserve the right of every person to exercise free speech and freedom of assembly as protected by the constitutions of the State of Utah and the United States, within the Capitol Hill Complex. This rule is adopted pursuant to the authority granted to the Board under Utah Code Section 63C-9-301.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Capitol Hill Complex needs this rule to promote and encourage free speech on the Capitol Hill Complex and to preserve the right of every person to exercise free speech and freedom of assembly as protected by the constitutions of the State of Utah and the United States. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 CAPITOL PRESERVATION BOARD (STATE)  
 ADMINISTRATION  
 ROOM E110 EAST BUILDING  
 420 N STATE ST  
 SALT LAKE CITY, UT 84114-2110  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov  
 ♦ Allyson Gamble by phone at 801-537-9156, by FAX at 801-538-3221, or by Internet E-mail at agamble@utah.gov  
 ♦ Chiarina Gleed by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov

AUTHORIZED BY: Allyson Gamble, Executive Director

EFFECTIVE: 01/17/2012

**Commerce, Occupational and  
 Professional Licensing  
 R156-1**

**General Rule of the Division of  
 Occupational and Professional  
 Licensing**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 35624  
FILED: 01/05/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-1-308(1)(a) provides that the Division will establish a rule with respect to the renewal cycle of occupations and professions regulated by the Division. This rule was enacted to clarify the provisions of Title 58, Chapter 1, with respect to all occupations and professions regulated by the Division.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in March 2007, it has been amended several times. The Division received a 07/26/2011 email from Hunter Finch from the Governor's Office of Planning and Budget in which he notified the Division of an incorrect statutory citation. The Division filed a nonsubstantive rule change filing on 07/26/2011 to correct the statutory citation. The Division also received an 08/19/2009 email from Hunter Finch with respect to the vocational rehabilitation counselor renewal date and provided a suggested change. The Division filed a nonsubstantive rule change filing which was effective on 10/01/2009 to make the change suggested by Mr. Finch. The Division received no other written comments with respect to proposed rule filings made with respect to this rule in July 2011, February 2011, November 2010, July 2010, March 2010, December 2009, August 2009, February 2009, October 2008, June 2008, and January 2008.

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 as it provides a mechanism to inform potential licensees of the general rules of the Division, as allowed under statutory authority provided in Title 58, Chapter 1, applicable to all occupations and professions regulated by the Division. The rule should also be continued as it provides information to ensure applicants for licensure are knowledgeable about general rules of the Division with respect to items that are not covered separately in each occupational/professional rule.

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

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 01/05/2012

Education, Administration  
**R277-511**  
Highly Qualified Teacher Grants

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 35671  
FILED: 01/17/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(3) allows the Utah State Board of Education (Board) to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Board reviewed this rule for continuation at its December 2011 meeting. The Board determined that the rule is no longer necessary because funding has been discontinued. The rule will be continued for administrative rulemaking purposes and then is expected to be repealed by the Board.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

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

EFFECTIVE: 01/17/2012

**Education, Administration**  
**R277-512**  
**Online Licensure**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 35673  
 FILED: 01/17/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-402(1)(a) directs the Utah State Board of Education to make rules regarding the certification of educators.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides standards and procedures specific to online educator licensing.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

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

EFFECTIVE: 01/17/2012

**Financial Institutions, Nondepository Lenders**  
**R343-1**  
**Rule Governing Form of Disclosures For Title Lenders, Who Are Under the Jurisdiction of the Department of Financial Institutions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 35628  
 FILED: 01/06/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 7-24-203 requires that the department adopt a disclosure form for title loans. This rule establishes minimum standards for the form of disclosure, for title lenders, to protect the public interest.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No supporting or opposing written comments have been received since the last notice of continuation.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The statutory provision states that the department shall by rule specify the information to be provided in a disclosure form. This rule establishes minimum standards for the form of disclosure, for title lenders, to protect the public interest. Therefore, this rule should be continued.

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

FINANCIAL INSTITUTIONS  
 NONDEPOSITORY LENDERSROOM 201  
 324 S STATE ST  
 SALT LAKE CITY, UT 84111-2393  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pallred@utah.gov



AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 01/06/2012

CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-510**

**Intermediate Care Facility for  
Individuals with Mental Retardation  
Transition Program**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35639  
FILED: 01/09/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department to implement Medicaid policy through administrative rules, which allow the Department to administer the Medicaid program. In addition, Section 26-1-5 allows the Department to adopt administrative rules that provide services to Medicaid recipients and reimbursement for Medicaid providers. Further, 42 CFR 440.225 allows the Department to provide optional services under this waiver program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because it sets forth client eligibility and program access requirements for Medicaid recipients who wish to transition into the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions Home and Community-Based Services Waiver Program. It also implements service coverage under the waiver and reimbursement for providers of waiver services. Therefore, this rule should be continued.

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

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 01/09/2012

**Human Services, Administration  
R495-810**

**Government Records Access and  
Management Act**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35689  
FILED: 01/17/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: As required by Section 63-2-204 , this rule specifies where and to whom a request for access of Department of Human Services (DHS) records shall be directed.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received.

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 gives clarity to the state law and helps the public understand department policies, procedures, and what they need to do in order to comply with the Government Records and Access Act. Without this rule, the public would not know how to file a GRAMA request, what costs are involved, or how to appeal a denial of their request. Therefore, this rule should be continued.

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

HUMAN SERVICES  
ADMINISTRATION

DHS ADMINISTRATIVE OFFICE  
 MULTI STATE OFFICE BUILDING  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at [jhjones@utah.gov](mailto:jhjones@utah.gov)

AUTHORIZED BY: Palmer DePaulis, Executive Director

EFFECTIVE: 01/17/2012

**Human Services, Recovery Services**  
**R527-5**  
**Release of Information**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 35631  
 FILED: 01/06/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules by Subsection 62A-11-107(8). Rule R527-5 establishes how ORS records may be accessed under Title 63G, Chapter 2.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: ORS has not received any written comments regarding Rule R527-5 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 R527-5 should be continued because ORS is required to allow access to properly classified Agency records by Title 63G, Chapter 2.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HUMAN SERVICES  
 RECOVERY SERVICES  
 515 E 100 S  
 SALT LAKE CITY, UT 84102-4211  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Catherine Taylor by phone at 801-536-8929, by FAX at 801-536-8509, or by Internet E-mail at [catherinetaylor@utah.gov](mailto:catherinetaylor@utah.gov)  
 ♦ Kenneth Ransom by phone at 801-536-8948, by FAX at 801-536-8509, or by Internet E-mail at [kransom@utah.gov](mailto:kransom@utah.gov)

AUTHORIZED BY: Palmer DePaulis, Executive Director

EFFECTIVE: 01/06/2012

**Insurance, Administration**  
**R590-70**  
**Insurance Holding Companies**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 35643  
 FILED: 01/10/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201, the department's general rulemaking authority section, allows the department to write rules to implement the provisions of the insurance code, Title 31A. The rule provides guidance regarding the registration of an insurance holding company, forms to be used, and filings to be made with the department as noted in Section 31A-16-105.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments regarding this rule have been received in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R590-70 contains detailed instructions for the registration and filings of Utah domestic insurers in a holding company corporate structure. Without this rule, the statute itself is not adequate to prescribe uniformity, completeness, and accuracy in compliance with the same. Without the rule, there would be little or no guidance for insurers and no linkage to the department's policies, procedures, and forms. Therefore, this rule should be continued.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [jwhitby@utah.gov](mailto:jwhitby@utah.gov)

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 01/10/2012

**Insurance, Administration  
R590-95**

**Rule to Permit the Same Minimum  
Nonforfeiture Standards for Men and  
Women Insureds Under the 1980 CSO  
and 1980 CET Mortality Tables**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35641  
FILED: 01/10/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201 gives the department general rulemaking authority. It allows the department to write rules to implement the provisions of Title 31A. Section 31A-22-408 allows a rule to be written to set the cash surrender values and paid-up nonforfeiture benefits provided by a plan and computed by a method consistent with the principles of the Standard Nonforfeiture Law for Life Insurance. The rule provides the same cash surrender values and paid-up nonforfeiture benefits to both men and women.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments regarding this rule have been received by the department within the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule was adopted because of the U.S. Supreme Court case, *Arizona Governing Committee v. Norris*

in 1983. The court ruled that the use of gender-based actuarial tables in an annuity for an employer's pension plan violates the federal Civil Rights Act of 1964. As a result the National Association of Insurance Commissioners (NAIC) created a regulation that recognizes gender-blended mortality tables nonforfeiture standards for men and women. Most states, including Utah, adopted the rule. It allows insurance companies issuing annuity contracts to employer-clients to comply with the Norris decision. Therefore, this rule should be continued.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [jwhitby@utah.gov](mailto:jwhitby@utah.gov)

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 01/10/2012

**Insurance, Administration  
R590-114**

**Letters of Credit**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35644  
FILED: 01/10/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) provides broad rulemaking authority to implement the provisions of Title 31A, the Insurance Code. Subsection 31A-17-404(3) provides for a rule to determine the form letters of credit are to take to be used as security to protect a ceding insurer in a transaction of reinsurance. This rule sets the standards and form for letters of credit.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Without Rule R590-114, letters of credit may not be of adequate quality to ensure the effectiveness of certain reinsurance agreements. The rule protects the ceding insurer's security interest in reinsurance ceded by means of the letter of credit. This rule may also affect other areas of statutory accounting such as credit for reinsurance ceded. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [jwhitby@utah.gov](mailto:jwhitby@utah.gov)

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 01/10/2012

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**Insurance, Administration**  
**R590-142**  
**Continuing Education Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 35642  
FILED: 01/10/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The following code references give the commissioner the authority to do the following in conjunction with this rule: Subsection 31A-2-201(3) provides authority to implement the provisions of Title 31A, the Utah Insurance Code; Subsection 31A-23a-202(1) provides authority to prescribe the continuation requirements for a producer and a consultant; Subsection 31A-23a-202(5) provides authority to prescribe the processes and procedures for continuing education provider registration and course approval; Subsection 31A-26-206(1) provides authority to prescribe the continuing education requirements for an adjuster; and Subsection 31A-35-401.5 provides authority to

implement the continuing education requirement for renewal of a bail bond producer license. Currently the rule is being amended adding a new authority section, 31A-30-209. This section authorizes the commissioner to adopt a rule to implement the continuing education (CE) requirements for a defined contribution market. As a result wording is being added to the rule that provides these requirements.

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 repealed and reenacted this rule recently and made two nonsubstantive changes to the rule. Only one written comment was received during the comment periods and within the past five years and that was to correct an incorrect code reference. This correction was made via a nonsubstantive change, DAR No. 35180. Regarding current changes being made to the rule in DAR No. 35543, no comments have been received so far.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is important because it specifies how CE courses are approved by the department. The rule also sets standards for the issuance and filing of the certificate for CE credit. This rule makes clear the standards all licensees must meet in order to receive the CE hours required by law. It also helps build the professionalism of those that work in the insurance industry and improves the accuracy of insurance information delivered to consumers. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [jwhitby@utah.gov](mailto:jwhitby@utah.gov)

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 01/10/2012

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**Insurance, Administration**  
**R590-143**  
**Life and Health Reinsurance  
Agreements**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35646  
FILED: 01/10/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by the general rulemaking provision of the Utah Code, Section 31A-2-201, which gives the commissioner the authority to write rules to implement the provisions of the Insurance Code.

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 comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule prevents insurers from reducing a liability or increasing an asset when any of the listed provisions exist. This rule contains scenarios that should not exist relating to the Life and Health Reinsurance Agreements to assure transfer of risk. Risk transfer is essential if a large event (claim) should occur that would cause the insurer to make a monetary settlement beyond its surplus capacity. The contracts shall be written in a manner that assures the reinsurer is assuming the risk to prevent a significant drain of the insurer's surplus. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [jwhitby@utah.gov](mailto:jwhitby@utah.gov)

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 01/10/2012

Insurance, Administration

**R590-147**

**Annual and Quarterly Statement Filing  
Instructions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35647  
FILED: 01/10/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) authorizes the commissioner to establish by rule specific requirements for filing forms, rates, or reports required by the Utah Insurance Code; Section 31A-2-202 authorizes the commissioner to require statements, reports, and information to be delivered to the department or the National Association of Insurance Commissioners (NAIC) in a form specified by the commissioner; and Section 31A-4-113 authorizes the commissioner to prescribe by rule the information to be submitted with and the form of the annual statement. The rule provides instructions for the filing of annual and quarterly statements with supplemental schedules, exhibits, and documents by insurers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received by the department within the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: If this rule is not continued in force, it may create confusion for insurers regarding their quarterly and annual reporting requirements for the NAIC and the Utah Insurance Department. Annual and quarterly statements may be filed incorrectly more frequently resulting in costly and unnecessary follow-ups by both insurers and the department. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [jwhitby@utah.gov](mailto:jwhitby@utah.gov)

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 01/10/2012

**Insurance, Administration**  
**R590-150**  
**Commissioner's Acceptance of**  
**Examination Reports**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT**  
**OF CONTINUATION**  
 DAR FILE NO.: 35645  
 FILED: 01/10/2012

**NOTICE OF REVIEW AND STATEMENT OF**  
**CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201 authorizes the commissioner to make rules to implement provisions of Title 31A. Subsection 31A-2-203(4) authorizes the commissioner to approve actuarial evaluations made by an actuary. The rule supports Subsection 31A-2-203(4) by defining standards that reports of examinations conducted by insurance departments of other states must meet to be acceptable to the commissioner. Standards were implemented as a result of the National Association of Insurance Commissioners' accreditation program.

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 comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule supports Subsection 31A-2-203(4) by defining standards that reports of examinations conducted by insurance departments of other states must meet to be acceptable to the commissioner. Standards were implemented as a result of the National Association of Insurance Commissioners' accreditation program. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 INSURANCE  
 ADMINISTRATION  
 ROOM 3110 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [jwhitby@utah.gov](mailto:jwhitby@utah.gov)

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 01/10/2012

**Insurance, Title and Escrow**  
**Commission**  
**R592-14**

**Delay or Failure to Record Documents**  
**and the Insuring of Properties with the**  
**False Appearance of Unmarketability**  
**as Unfair Title Insurance Practices**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT**  
**OF CONTINUATION**  
 DAR FILE NO.: 35648  
 FILED: 01/10/2012

**NOTICE OF REVIEW AND STATEMENT OF**  
**CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-404(2) authorizes the Title and Escrow Commission to write rules related to rating standards and methods, licensing requirements, continuing education requirements examination procedures, and standards of conduct for a title licensee. This rule relates to standards of conduct in the recording of documents and insuring of properties.

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 received one written request for a hearing during a comment period on DAR No. 34258. It was suggested that Subsection R592-14-4(B) be eliminated due to perceived violation that would occur

if old trust deeds were insured. After discussion with other members of the title industry and the department, it was determined that Subsection R592-14-4(A) resolved the concerns expressed. Another concern that arose was whether underwriters or the department should set the standard of what is insurable. The changes to this rule were then allowed to lapse to allow for further discussion. Proposed changes were again made to the rule (DAR No. 34931), a comment period provided that drew no comments for or against.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is important to prohibit intentional delay, neglect, or refusal by insurers to record or deliver for recording, documentation necessary to support policy insuring provisions, resulting in the false appearance of unmarketability, in the record only, of property which would otherwise be marketable. This practice is deemed to be an unfair or deceptive act or practice detrimental to free competition in the business of insurance and is injurious to the public. Therefore, this rule should be continued. See the comment summary above for comments made regarding the rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [jwhitby@utah.gov](mailto:jwhitby@utah.gov)

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 01/10/2012

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**Money Management Council,  
Administration**

**R628-17**

**Limitations on Commercial Paper and  
Corporate Notes**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35640

FILED: 01/09/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 51-7-18 of the Money Management Act allows the Council to set up quality criteria for public treasurers when they invest in corporate obligations. This section also allows the Council to make rules regarding the conditions and procedures by which public treasurers may invest public funds.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments received in the last five years 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 provides limits on exposure to any one issuer of corporate obligations that are reasonable by basing the limit on the size of the portfolio of the public treasurer. It allows for the investment in corporate obligations by public treasurers while maintaining safety when a public treasurer invests in corporate obligations. Therefore, this rule should be continued.

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](mailto:apedroza@utah.gov)

AUTHORIZED BY: William Wallace, Chair

EFFECTIVE: 01/09/2012

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**Public Safety, Driver License**

**R708-3**

**Driver License Point System  
Administration**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 35636  
 FILED: 01/09/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53-3-221(4) indicates that the division shall determine a number of points to be assigned to each moving traffic violation as a measure of the violation's seriousness. Subsection 53-3-209(2) indicates a separate point system is established to facilitate behavioral influence upon drivers age 20 and younger. In compliance with this section the division may counsel a driver with regards to the development of safe driving attitudes, habits, and skills. In Section R708-3-9, drivers who are sanctioned under the provisions of this point system rule are entitled to a hearing in accordance with Subsection 53-3-221(5)(a)(i) and Rule R708-35.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written public comment was received in reference to 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 continues to be very useful in regulating driving privilege for moving violations. Therefore, this rule should be continued.

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

PUBLIC SAFETY  
 DRIVER LICENSE  
 CALVIN L RAMPTON COMPLEX  
 4501 S 2700 W  
 THIRD FLOOR  
 SALT LAKE CITY, UT 84119-5595  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@utah.gov

AUTHORIZED BY: Lance Davenport, Commissioner

EFFECTIVE: 01/09/2012

Public Safety, Driver License  
**R708-7**

Functional Ability in Driving: Guidelines for Physicians

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 35632  
 FILED: 01/09/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53-3-224 outlines the process for filing a petition for hearing or judicial review of a decision made by the Division. Section 53-3-303 directs the Driver License Division to create a Medical Advisory Board in order to make recommendations for medical standards and guidelines to address conditions that may impact an individual's ability to safely operate a motor vehicle. The board is also directed to function in an advisory capacity to review decisions made by the Division in reference to an individual's privilege to drive. Section 53-3-304 directs the Driver License Division to review physical, mental, and emotional ability of drivers based on information submitted by a health care professional, and to issue restricted driving privileges when appropriate. 49 CFR 391-43 is the federal mandate which outlines medical requirements for commercial driver license applicants and the process for issuance of a DOT medical card.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written public comment was received in reference to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary in order to establish standards and guidelines to assist health care professionals in determining who may be impaired, the responsibilities of the health care professionals, and the driver's responsibilities regarding their health as it relates to highway safety. Therefore, this rule should be continued.

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

PUBLIC SAFETY  
 DRIVER LICENSE



CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
THIRD FLOOR  
SALT LAKE CITY, UT 84119-5595  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@utah.gov

AUTHORIZED BY: Lance Davenport, Commissioner

EFFECTIVE: 01/09/2012

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**Public Safety, Driver License**  
**R708-8**  
**Review Process: Driver License**  
**Medical Section**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35633  
FILED: 01/09/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53-3-303 directs the Driver License Division to create a Medical Advisory Board in order to make recommendations for medical standards and guidelines to address conditions that may impact an individual's ability to safely operate a motor vehicle. The board is also directed to function in an advisory capacity to review decisions made by the Division in reference to an individual's privilege to drive. Section 53-3-224 outlines the process for filing a petition for hearing or judicial review of a decision made by the Division.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written public comment was received in reference to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary in order to outline the steps an individual must follow in order to seek review before the Medical Advisory Board following notice of restriction or denial of a driving privilege based on evidence of physical, mental, or emotional conditions which may impair his ability to

safely operate a motor vehicle. Therefore, this rule should be continued.

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

PUBLIC SAFETY  
DRIVER LICENSE  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
THIRD FLOOR  
SALT LAKE CITY, UT 84119-5595  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@utah.gov

AUTHORIZED BY: Lance Davenport, Commissioner

EFFECTIVE: 01/09/2012

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**Public Safety, Driver License**  
**R708-14**  
**Adjudicative Proceedings For Driver**  
**License Actions Involving Alcohol and**  
**Drugs**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35637  
FILED: 01/09/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: These proceedings deal with the following types of hearings: a) driving under the influence of alcohol/drugs (per se), Section 53-3-223; b) implied consent (refusal), Section 41-61-520; c) measurable metabolite in the body, Section 41-6a-517; d) consumption by a minor (not a drop), Section 53-3-231; and e) CDL (.04), Section 53-3-418. Hearing procedures include time and place, notice, default, evidence, information, subpoenas, administrative notice, presiding officers duties with their findings, conclusions, and recommendations and orders. In accordance with Section 63G-4-302, a driver may file a request for reconsideration of the order within 20 days after receiving it.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written public comment was received in reference to 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 continues to be very useful in regulating driving privilege for alcohol and drug sanctions. Therefore, this rule should be continued.

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

PUBLIC SAFETY  
 DRIVER LICENSE  
 CALVIN L RAMPTON COMPLEX  
 4501 S 2700 W  
 THIRD FLOOR  
 SALT LAKE CITY, UT 84119-5595  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@utah.gov

AUTHORIZED BY: Lance Davenport, Commissioner

EFFECTIVE: 01/09/2012

**Public Safety, Driver License  
 R708-34  
 Medical Waivers for Intrastate  
 Commercial Driving Privileges**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 35634  
 FILED: 01/09/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 63G-3-201(2) references the requirement to create rules in order to issue a written interpretation of state or federal legal mandates. This program is created to allow an individual to obtain a commercial driving privilege when they do not meet federal medical requirements and are unable to obtain a DOT medical card. Section 53-3-303.5 directs the Driver License Division to establish guidelines and standards for issuance of a medical waiver for intrastate commercial driver license applicants.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR

OPPOSING THE RULE: No written comment was received in reference to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary in order to outline requirements that must be met in order for an individual to obtain a medical waiver card and an intrastate commercial driver license once it has been determined that they meet minimum state fitness standards. The rule outlines responsibilities of the driver, the Medical Advisory Board, and the Driver License Division, in addition to the driver's right to seek administrative or judicial review of a decision made by the Driver License Division. Therefore, this rule should be continued.

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

PUBLIC SAFETY  
 DRIVER LICENSE  
 CALVIN L RAMPTON COMPLEX  
 4501 S 2700 W  
 THIRD FLOOR  
 SALT LAKE CITY, UT 84119-5595  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@utah.gov

AUTHORIZED BY: Lance Davenport, Commissioner

EFFECTIVE: 01/09/2012

**Public Safety, Driver License  
 R708-35  
 Adjudicative Proceedings For Driver  
 License Offenses Not Involving Alcohol  
 or Drug Actions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 35638  
 FILED: 01/09/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section R708-35-4 in compliance with Section 63G-4-202, indicates all division nonalcohol drug adjudicative proceedings are designated as informal

proceedings, unless converted to formal proceedings by a presiding officer or the division supervisor. Section R708-35-5 proceedings will be conducted in accordance with Sections 53-3-221 and 63G-4-203, and this rule. Section R708-35-7 deals with the following types of hearings: a) point system, Sections 53-3-209 and 53-3-221; b) financial responsibility, Sections 41-12a-303.2, 41-12a-503, 41-12a-511, and 53-3-221; c) contributing to a fatality, Section 53-3-221; d) serious violations, Section 53-3-221; e) unlawful use of a license, Section 53-3-229; f) unlawful use of a license, Section 53-3-229; g) failure to appear or comply, Section 53-3-221; h) review examination request, Subsection 53-3-221(11); i) driving during denial, suspension, revocation, or disqualification, Subsection 53-3-220(2); j) leaving the scene of an accident, Section 53-3-221; and k) limited license, Subsection 53-3-220(4)(a). Section R708-35-8, Hearing Procedures, deals with time and place, notice, default, evidence, information, subpoenas, administrative notices, presiding officers findings conclusions, and recommendations and orders.

**SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE:** No written public comment was received in reference to 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 continues to be very useful in regulating driving privilege for offenses not involving alcohol and drug sanctions. Therefore, this rule should be continued.

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

PUBLIC SAFETY  
DRIVER LICENSE  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
THIRD FLOOR  
SALT LAKE CITY, UT 84119-5595  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
♦ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@utah.gov

**AUTHORIZED BY:** Lance Davenport, Commissioner

**EFFECTIVE:** 01/09/2012

## Public Safety, Peace Officer Standards and Training **R728-411**

### Guidelines Regarding Administrative Action Taken Against Individuals Functioning As Peace Officers Without Peace Officer Certification Or Powers

#### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 35627  
FILED: 01/06/2012

#### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

**CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE:** This rule is authorized by Subsection 53-6-105(1)(k) which provides that the director shall, with the advice of the council, make rules necessary to administer Title 53, Chapter 6.

**SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE:** No public comments regarding this rule have been received since the last five-year review.

**REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY:** This rule establishes guidelines which must be followed when an employee of a public safety agency is found to be performing the duties and functions of a peace officer without certification or authority as required by Title 53, Chapter 13, Utah Code Annotated. It is necessary to continue this rule in order to ensure proper process are followed in any case involving an individual acting as a peace officer without proper authority or an annual training deficiency of a peace officer.

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

PUBLIC SAFETY  
PEACE OFFICER STANDARDS AND TRAINING  
410 W 9800 S  
SANDY, UT 84070  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Kelly Sparks by phone at 801-256-2321, by FAX at 801-256-0600, or by Internet E-mail at ksparks@utah.gov

AUTHORIZED BY: Scott Stephenson, Director

EFFECTIVE: 01/06/2012

**Public Service Commission,  
 Administration  
 R746-348  
 Interconnection**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 35651  
 FILED: 01/11/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The commission may require any telecommunications corporation to interconnect its essential facilities with another telecommunications corporation that provides public telecommunications services in the name, adjacent, or overlapping services territory. These statutes (Sections 54-8B-2, 54-8B-2.2, and 54-4-12) require a commission rule for interconnection and that the commission set rules governing interconnection standards between companies.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been submitted in the five-year period.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Statutes requiring this rule and the need to regulate still remain in effect. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ David Clark by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at drexclark@utah.gov  
 ♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

AUTHORIZED BY: David Clark, Legal Counsel

EFFECTIVE: 01/11/2012

**School and Institutional Trust Lands,  
 Administration  
 R850-90  
 Land Exchanges**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 35655  
 FILED: 01/12/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsections 53C-1-302(1)(a)(ii) and 53C-4-101(1) authorize the Director of the School and Institutional Trust Lands Administration to make rules for the day-to-day administration of the agency and to specify the application and review criteria used for the exchange of trust lands.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received by the agency concerning this rule 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: Land exchanges are typically very complicated transactions that require a lot of preliminary review and evaluation. This rule provides the application procedures and review criteria required for the exchange of trust lands in order that the agency may fulfill its fiduciary responsibility to the various trust beneficiaries by optimizing and maximizing the return on the exchanged lands. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 SCHOOL AND INSTITUTIONAL TRUST LANDS  
 ADMINISTRATION

ROOM 500  
675 E 500 S  
SALT LAKE CITY, UT 84102-2818  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ John Andrews by phone at 801-538-5180, by FAX at 801-538-5118, or by Internet E-mail at jandrews@utah.gov

AUTHORIZED BY: Kevin Carter, Director

EFFECTIVE: 01/12/2012

**School and Institutional Trust Lands,  
Administration  
R850-120  
Beneficiary Use of Institutional Trust  
Land**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35656  
FILED: 01/12/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsections 53C-1-302(1)(a)(ii) and 53C-4-101(1) authorize the Director of the School and Institutional Trust Lands Administration to make rules governing the use of lands granted under Sections 7, 8, and 12 of the Utah Enabling Act by their respective beneficiary. This rule provides the guidelines whereby beneficiary institutions may request non-compensated, in-kind use of

their own granted lands as a direct economic benefit to that institution.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received by the agency since the previous five-year review was filed.

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 allows for in-kind use by the trust beneficiaries of their respective institutional trust lands administered by the agency, for a direct economic benefit. The procedures and criteria allow for the agency to respond to beneficiary requests for non-compensated use of their respective lands without having to use the same standards that apply to members of the general public. Therefore, this rule should be continued.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS  
ADMINISTRATION  
ROOM 500  
675 E 500 S  
SALT LAKE CITY, UT 84102-2818  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ John Andrews by phone at 801-538-5180, by FAX at 801-538-5118, or by Internet E-mail at jandrews@utah.gov

AUTHORIZED BY: Kevin Carter, Director

EFFECTIVE: 01/12/2012

**End of the Five-Year Notices of Review and Statements of Continuation Section**



## NOTICES OF RULE EFFECTIVE DATES

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State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a Notice of Effective Date within 120 days from the publication of a Proposed Rule or a related Change in Proposed Rule the rule lapses and the agency must start the rulemaking process over.

Notices of Effective Date are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

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### Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

### Administrative Services

Child Welfare Parental Defense (Office of)

No. 35205 (AMD): R19-1-6. Child Welfare Parental Defense

Oversight Committee

Published: 09/15/2011

Effective: 01/12/2012

No. 35206 (AMD): R19-1-7. Electronic Meetings

Published: 09/15/2011

Effective: 01/12/2012

### Commerce

Occupational and Professional Licensing

No. 35430 (AMD): R156-20a. Environmental Health

Scientist Act Rule

Published: 12/01/2011

Effective: 01/10/2012

### Education

Administration

No. 35449 (AMD): R277-100. Rulemaking Policy

Published: 12/01/2011

Effective: 01/10/2012

No. 35451 (AMD): R277-470. Charter Schools

Published: 12/01/2011

Effective: 01/10/2012

No. 35452 (NEW): R277-481. Charter School Oversight,

Monitoring and Appeals

Published: 12/01/2011

Effective: 01/10/2012

No. 35453 (NEW): R277-482. Charter School Timelines and

Approval Processes

Published: 12/01/2011

Effective: 01/10/2012

No. 35454 (AMD): R277-608. Prohibition of Corporal Punishment in Utah's Public Schools

Published: 12/01/2011

Effective: 01/10/2012

### Environmental Quality

Environmental Response and Remediation

No. 35447 (AMD): R311-201. Underground Storage Tanks: Certification Programs and UST Operator Training

Published: 12/01/2011

Effective: 01/13/2012

Radiation Control

No. 35417 (AMD): R313-22-75. Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material

Published: 12/01/2011

Effective: 01/16/2012

No. 35418 (AMD): R313-36. Special Requirements for Industrial Radiographic Operations

Published: 12/01/2011

Effective: 01/16/2012

Solid and Hazardous Waste

No. 35349 (AMD): R315-1. Utah Hazardous Waste Definitions and References

Published: 11/01/2011

Effective: 01/13/2012

No. 35350 (AMD): R315-2. General Requirements - Identification and Listing of Hazardous Waste

Published: 11/01/2011

Effective: 01/13/2012

No. 35351 (AMD): R315-3. Application and Permit Procedures for Hazardous Waste Treatment, Storage, and Disposal Facilities

Published: 11/01/2011

Effective: 01/13/2012

No. 35352 (AMD): R315-5. Hazardous Waste Generator Requirements  
 Published: 11/01/2011  
 Effective: 01/13/2012

No. 35353 (AMD): R315-6. Hazardous Waste Transporter Requirements  
 Published: 11/01/2011  
 Effective: 01/13/2012

No. 35354 (AMD): R315-7. Interim Status Requirements for Hazardous Waste Treatment, Storage, and Disposal Facilities  
 Published: 11/01/2011  
 Effective: 01/13/2012

No. 35355 (AMD): R315-8. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities  
 Published: 11/01/2011  
 Effective: 01/13/2012

No. 35356 (AMD): R315-13. Land Disposal Restrictions  
 Published: 11/01/2011  
 Effective: 01/13/2012

No. 35357 (AMD): R315-14-8. Military Munitions  
 Published: 11/01/2011  
 Effective: 01/13/2012

No. 35358 (AMD): R315-50-9. Basis for Listing Hazardous Wastes  
 Published: 11/01/2011  
 Effective: 01/13/2012

No. 35432 (AMD): R315-312-1. Recycling and Composting Facility Standards  
 Published: 12/01/2011  
 Effective: 01/13/2012

No. 35433 (AMD): R315-315-5. Special Waste Requirements  
 Published: 12/01/2011  
 Effective: 01/13/2012

No. 35434 (AMD): R315-320-2. Definitions  
 Published: 12/01/2011  
 Effective: 01/13/2012

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 35390 (AMD): R414-2A. Inpatient Hospital Services  
 Published: 11/15/2011  
 Effective: 01/11/2012

Natural Resources

Wildlife Resources

No. 35440 (AMD): R657-13. Taking Fish and Crayfish  
 Published: 12/01/2011  
 Effective: 01/10/2012

No. 35209 (AMD): R657-17. Lifetime Hunting and Fishing License  
 Published: 09/15/2011  
 Effective: 01/10/2012

No. 35211 (AMD): R657-38. Dedicated Hunter Program  
 Published: 09/15/2011  
 Effective: 01/10/2012

No. 35435 (AMD): R657-42. Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents  
 Published: 12/01/2011  
 Effective: 01/10/2012

No. 35210 (AMD): R657-43. Landowner Permits  
 Published: 09/15/2011  
 Effective: 01/10/2012

No. 35439 (AMD): R657-58. Fishing Contests and Clinics  
 Published: 12/01/2011  
 Effective: 01/10/2012

No. 35438 (AMD): R657-59. Private Fish Ponds  
 Published: 12/01/2011  
 Effective: 01/10/2012

No. 35436 (AMD): R657-62. Drawing Application Procedures  
 Published: 12/01/2011  
 Effective: 01/10/2012

Transportation

Motor Carrier

No. 35425 (AMD): R909-1. Safety Regulations for Motor Carriers  
 Published: 12/01/2011  
 Effective: 01/10/2012

No. 35427 (REP): R909-16. Overall Motor Carrier Safety Standing  
 Published: 12/01/2011  
 Effective: 01/10/2012

No. 35428 (REP): R909-17. Appeal Process for Utah Commercial Vehicle Safety Alliance Inspections  
 Published: 12/01/2011  
 Effective: 01/10/2012

No. 35426 (AMD): R909-75. Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes  
 Published: 12/01/2011  
 Effective: 01/10/2012

Preconstruction, Right-of-Way Acquisition

No. 35429 (AMD): R933-1. Right of Way Acquisition  
 Published: 12/01/2011  
 Effective: 01/10/2012



Workforce Services

Unemployment Insurance

No. 35448 (AMD): R994-403-112c. Available

Published: 12/01/2011

Effective: 01/17/2012

**End of the Notices of Rule Effective Dates Section**



**RULES INDEX  
BY AGENCY (CODE NUMBER)  
AND  
BY KEYWORD (SUBJECT)**

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The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2012 through January 17, 2012. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

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## RULES INDEX - BY AGENCY (CODE NUMBER)

### ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>ADMINISTRATIVE SERVICES</b>					
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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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