

UTAH STATE BULLETIN

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

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

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

Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Public Meeting on Medicaid Dental Services

The Utah Department of Health, Division of Medicaid and Health Financing will hold a meeting to discuss the data and assumptions used to determine the cost of Medicaid dental services for children and pregnant women for State Fiscal Year 2013. The meeting will be held Friday, May 11, 2012, from 10:00 a.m. to 11:30 a.m. at the Cannon Health Building, Room 125, 288 North 1460 West, Salt Lake City, Utah.

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between April 03, 2012, 12:00 a.m., and April 16, 2012, 11:59 p.m. are included in this, the May 01, 2012 issue of the *Utah State Bulletin*.

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

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

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

From the end of the public comment period through August 29, 2012, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF a CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses and the agency must start the process over.

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

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

The Proposed Rules Begin on the Following Page

**Administrative Services, Fleet
Operations
R27-7
Safety and Loss Prevention of State
Vehicles**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36024

FILED: 04/03/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change eliminates specific language that refers to Utah American Association of Motor Vehicle Administrators Code Dictionary (ACD) codes. It replaces specific codes with more general categories of driving violations. This will eliminate the need to update this rule every time ACD codes are changed.

SUMMARY OF THE RULE OR CHANGE: This rule change eliminates specific language that refers to Utah ACD codes. It replaces specific codes with more general categories of driving violations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63A-9-401(1)(d)(iii)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This rule change replaces specific driving violations in rule with more general driving violation categories. There is no anticipated cost or savings associated with this change.
- ◆ **LOCAL GOVERNMENTS:** This rule change removes a cause for revocation or suspension of driver authorization to align the rule with state law. There is no anticipated cost or savings associated with this change.
- ◆ **SMALL BUSINESSES:** This rule change removes a cause for revocation or suspension of driver authorization to align the rule with state law. There is no anticipated cost or savings associated with this change.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule change removes a cause for revocation or suspension of driver authorization to align the rule with state law. There is no anticipated cost or savings associated with this change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule change replaces specific driving violations with more general driving violation categories. There is no anticipated compliance cost associated with this change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change replaces specific driving violations with more

general driving violation categories. There is no anticipated fiscal impact on businesses associated with this change.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2012

AUTHORIZED BY: Sam Lee, Director

**R27. Administrative Services, Fleet Operations.
R27-7. Safety and Loss Prevention of State Vehicles.
R27-7-1. Authority.**

(1) This rule is established pursuant to Subsection 63A-9-401(1)(d)(iii) which requires the Division of Fleet Operations (DFO) to make rules establishing requirements for fleet safety and loss prevention programs.

R27-7-2. Accident Reporting and Liability.

(1) In the event of an accident involving a state vehicle, either the driver of the vehicle or the employing agency shall notify DFO, the Division of Risk Management, and the agency's management, within 24 hours of the occurrence of the accident.

R27-7-3. Driver Eligibility to Operate a State Vehicle.

(1) The authority to operate a state vehicle is subject to withdrawal, suspension or revocation.

(2) The authority to operate a state vehicle shall be automatically withdrawn, suspended or revoked in the event that an authorized driver's license is not in a valid status.

(a) The authority to operate a state vehicle shall, at a minimum, be withdrawn, suspended or revoked for the period of denial, cancellation, disqualification, suspension or revocation of the authorized driver's license.

(b) The authority to operate a state vehicle shall not be reinstated until such time as the individual provides proof that his or her driver license has been reinstated or DFO verifies the license has been reinstated.

(3) The authority to operate a state vehicle may be suspended or revoked for up to three years by the Driver Eligibility Board for any of the following reasons:

(a) The authorized driver, while acting within the scope of employment, has been involved in 3 or more preventable accidents during a three (3) year period; or

(b) The authorized driver has 4 or more moving violations within a 12 month period; or

(c) The authorized driver has been convicted of any of the following [~~Utah "ACD" codes~~]:

- ~~(i) Alcohol related driving violations;~~
 - ~~(ii) reckless, careless, or negligent driving (including excessive speed violations);~~
 - ~~(iii) driving violations that have resulted in injury or death;~~
 - ~~(iv) felony related driving violations;~~
 - ~~(v) hit and run violations;~~
 - ~~(vi) impaired driving;~~
 - ~~(vii) or any other driving violation determined by the Driver Eligibility Board as posing a significant risk to the safety or loss prevention of state vehicles.~~
- [~~(i) A22 - Driving under the influence of drugs; or~~
- ~~(ii) B23 - Driving while denied; or~~
 - ~~(iii) B25 - Driving on revocation; or~~
 - ~~(iv) B26 - Driving while suspended; or~~
 - ~~(v) M84 - Reckless driving; or~~
 - ~~(vi) S95 - Speed contest (racing) on road open to traffic prior to 5/1/2006; or~~
 - ~~(vii) S95 - Speed contest (racing) (1st 60 days 2ndw/1-3 yrs 90 days); or~~
 - ~~(viii) U01 - Fleeing or evading police or roadblock; or~~
 - ~~(ix) U05 - Using a motor vehicle to aid and abet a felon;~~
- ~~or~~
- ~~(x) U31 - Violation resulting in fatal accident; or~~
 - ~~(xi) MEC - Driving under the influence of drugs-metabolite (MEC); or~~
 - ~~(xii) A21 - Driving under the influence of alcohol; or~~
 - ~~(xiii) B02 - Hit and run/fatal; or~~
 - ~~(xiv) B03 - Hit and run - injury; or~~
 - ~~(xv) B04 - Hit and run - property damage/regular operator; or~~
 - ~~(xvi) ARD - Alcohol Restricted Driver; or~~
 - ~~(xvii) A08 - DUI of alcohol with BAC at or over .08; or~~
 - ~~(xviii) A08 - Driving under the influence alcohol and drugs; or~~
 - ~~(xix) A08 - Driving under the influence w/impaired; or~~
 - ~~(xx) A08 - Driving under the influence w/personal injury;~~
- ~~or~~
- ~~(xxi) A08 - Driving under the influence w/minor in-vehicle; or~~
 - ~~(xxii) A08 - Driving under the influence in a CMV; or~~
 - ~~(xxiii) A25 - Impaired Driving; or~~
 - ~~(xxiv) A41 - Any Violation of ignition interlock device under 41-6a-518; or~~
 - ~~(xxv) A50 - Motor vehicle used in the commission of a felony involving the manufacturing, distributing or dispensing a controlled substance; or~~
 - ~~(xxvi) ACL - Violation alcohol conditional license; or~~
 - ~~(xxvii) B01 - Hit and Run/failure to stop-render aid/property dmg/comm only; or~~
 - ~~(xxviii) B14 - Failure to reveal identity after fatal accident - commercial only; or~~
 - ~~(xxix) B23 - Driving while denied; or~~
 - ~~(xxx) B24 - Driving CMV while disqualified; or~~
 - ~~(xxxi) B25 - Driving on revocation; or~~

- ~~(xxxii) B26 - Driving while suspended; or~~
- ~~(xxxiii) HD - Ignition interlock device violation -- (result in 1 yr revocation); or~~
- ~~(xxxiv) M8A - Alcohol related reckless driving; or~~
- ~~(xxxv) U03 - Felony with a vehicle (joy riding) criminal class required; or~~
- ~~(xxxvi) U07 - Vehicular homicide/ regular or CMV; or~~
- ~~(xxxvii) U08 - Vehicular manslaughter; or~~
- ~~(xxxviii) USV - Shooting gun from a vehicle/Criminal class required (felony only); or~~
- ~~(xxxix) U09 - Negligent homicide while operating a CMV; or~~
- ~~(xl) UIV - Throwing incendiary device from vehicle/criminal class required; or~~
- ~~(xli) U10 - Causing a fatality through the negligent operation of a CMV~~

(d) The unauthorized use, misuse, abuse or neglect of a state vehicle as validated by the driver's agency; or

(e) On the basis of citizen complaints validated by the agency, the authorized driver, while acting within the scope of employment has been found, pursuant to 63A-9-501, to have misused or illegally operated a vehicle three (3) times during a three (3) year period.

(4) The withdrawal of authority to operate a state vehicle imposed by the Driver Eligibility Board shall be in addition to agency-imposed discipline, corrective or remedial action, if any.

(5) Drivers declared ineligible to operate a state vehicle by the Driver Eligibility Board may appeal to the Director of the Department of Administrative Services (DAS) or his/her designee. Any appeal to the Executive Director of DAS or his/her designee must be made in writing within 30 days from the date the Driver Eligibility Board declared a state driver ineligible to operate a vehicle.

(6) Effective Date

(a) Phase in - current state employees shall be subjected to R27-7-3(3) as of the effective date of the rules as published by the Division of Administrative Rules.

(b) State employees hired after the effective date of this administrative rule will be subject to the Driver Eligibility standards in R27-7-3(3) for three years previous to the hire date.

R27-7-4. Accident Review Committee (ARC).

(1) Each agency leasing vehicles from the Division of Fleet Operations shall establish and maintain an Accident Review Committee (ARC). Each agency ARC shall conduct at least quarterly reviews of all accidents involving state vehicles under the possession or control of their respective agencies.

(2) The purpose of the ARC is to reduce the number of accidents involving drivers of vehicles being used in the course of conducting state business.

(3) After DFO has made an initial determination regarding the status of an accident the agency ARC shall determine, through a review process, whether an accident was either preventable or non-preventable, using standards published by the National Safety Council.

(4) Each agency ARC shall, within one (1) calendar month following the last day of the quarter (March, June, September, December), provide to DFO, in writing, its determination and recommended actions, if any, as well as all

evidence used to arrive at its determination as to whether the accident was preventable or non-preventable.

(5) If an agency ARC does not send the quarterly accident reviews as specified in R27-7-4(4), the status of the accident will be reviewed by the Driver Eligibility Board on behalf of the agency ARC. The Driver Eligibility Board's decision about the status any vehicle accident will be final. The Driver Eligibility Board may recommend disciplinary actions for agency drivers to the agency when it is acting on behalf of the agency ARC.

R27-7-5. Accident Review Committee Guidelines.

(1) The ARC shall have no less than three (3) voting members. The members shall be from different areas in the agency.

(2) An accident shall be classified as preventable if any of the following factors are involved:

- (a) Driving too fast for conditions;
- (b) Failure to observe clearance;
- (c) Failure to yield;
- (d) Failure to properly lock the vehicle;
- (e) Following too closely;
- (f) Improper care of the vehicle;
- (g) Improper backing;
- (h) Improper parking;
- (i) Improper turn or lane change;
- (j) Reckless Driving as defined in Utah Code 41-6a-528;
- (k) Unsafe driving practices, including but not limited to:

the use of electronic equipment or cellular phone while driving, smoking while driving, personal grooming, u-turn, driving with an animal(s) loose in the vehicle.

(3) An accident shall be classified as non-preventable when:

- (a) The state vehicle is struck while properly parked;
- (b) The state vehicle is vandalized while parked at an authorized location;
- (c) The state vehicle is an emergency vehicle, and
 - (i) At the time of the accident the operator was in the line of duty and operating the vehicle in accordance with their respective agency's applicable policies, guidelines or regulations; and
 - (ii) Damage to the vehicle occurred during the chase or apprehension of people engaged in or potentially engaged in unlawful activities; or
 - (iii) Damage to the vehicle occurred in the course of responding to an emergency in order to save or protect the lives, property, health, welfare and safety of the public.

R27-7-6. Effects of ARC Accident Classification.

(1) In the event that an accident is determined by the ARC to be preventable, the ARC shall impose and enforce the following:

- (a) The authorized driver shall be required to attend a Division of Risk Management-approved driver safety program after being involved in the first preventable accident;
- (b) The driver shall be required to attend, at their own expense, a state certified or nationally recognized defensive driving course after being involved in a second preventable accident.

R27-7-7. Driver Eligibility Board.

(1) The Driver Eligibility Board (DEB) shall have at least 4 voting members. Members of the Board shall include a

representative from the Division of Risk Management, the Division of Fleet Operations, the Department of Human Resource Management and, a representative of the employee's agency. Each member of the Board will be assigned by the Executive Director of the Department of Administrative Services.

(2) The Driver Eligibility Board shall meet at least quarterly.

(3) The employing agency supervisor and the state driver being reviewed shall be notified of the Driver Eligibility Board's meeting place, date and time. Each state employee reviewed by the Driver Eligibility Board will be given the opportunity to speak to the Board and/or answer questions during the meeting if he or she chooses to attend the Board meeting.

(4) The Driver Eligibility Board may impose an ineligible status from a single day up to three years. In no case shall the ineligible status to operate a state vehicle be less than the period imposed by the courts or the employing agency.

KEY: accidents, incidents, tickets, ARC

Date of Enactment or Last Substantive Amendment: [~~April 20, 2009~~2012

Notice of Continuation: November 29, 2010

Authorizing, and Implemented or Interpreted Law: 63A-9-401(1)(d)(iii)

**Alcoholic Beverage Control,
Administration
R81-1-3
General Policies**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 36058

FILED: 04/10/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Since at least 1999, the practice of the Department of Alcoholic Beverage Control has been to impose a case handling markup on alcoholic beverages. With the passage of H.B. 354 (2012 General Session), and the creation in that bill of the Markup Holding Fund, it is necessary to codify this practice and to modify the case handling markup to reflect other control states and the actual cost to the Department to warehouse and ship the product.

SUMMARY OF THE RULE OR CHANGE: This rule codifies the practice of imposing a case handling markup. The markup has remained the same since at least 1999, and is currently approximately half of the next lowest case handling markup imposed by other control states. This rule filing modifies the case handling markup to match the next lowest control state (Alabama) and also establishes it in a way that the revenues will match the actual appropriation the Department is currently receiving for warehouse operations

and costs to ship the product from the warehouse to retail stores. Utah's Budgetary Procedures Act requires fees to be calculated to match the actual costs, and this change will bring the case handling markup into compliance with that law.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-1-607 and Section 32B-2-202

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** In recent years, the revenue into the Liquor Control Fund from the case handling markup has been insufficient to cover the appropriation the Department of Alcoholic Beverage Control receives to operate the warehouse and ship alcoholic beverages from the warehouse to the retail stores. This modification will bring revenues from the case handling markup to a level where they will match that appropriation, and bring the markup in compliance with the Budgetary Procedures Act.

◆ **LOCAL GOVERNMENTS:** None--Local governments are not involved in the sale or warehousing of alcoholic beverages.

◆ **SMALL BUSINESSES:** Manufacturers of alcoholic beverages will see an increase in the case handling markup, which will be passed through to the retail cost of the product. This increase should result in a minimal increase (\$0.02 for items packed 24 to a case, \$0.04 for items packed 12 to a case) to the retail sale price.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Manufacturers of alcoholic beverages will see an increase in the case handling markup, which will be passed through to the retail cost of the product. This increase should result in a minimal increase (\$0.02 for items packed 24 to a case, \$0.04 for items packed 12 to a case) to the retail sale price.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Manufacturers of alcoholic beverages will see an increase in the case handling markup, which will be passed through to the retail cost of the product. This increase should result in a minimal increase (\$0.02 for items packed 24 to a case, \$0.04 for items packed 12 to a case) to the retail sale price.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change codifies what has been the practice for years, and increases the case handling markup to an appropriate amount in compliance with the Utah Budgetary Procedures Act. Utah's case handling markup will remain the lowest in the nation, and will generate revenues sufficient to cover the relevant budget appropriation.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/08/2012

AUTHORIZED BY: Francine Giani, Executive Director

R81. Alcoholic Beverage Control, Administration.

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

R81-1-3. General Policies.

(1) Labeling.

No licensee or permittee shall sell or deliver any alcoholic beverage in containers not marked, branded or labeled in conformity with regulations enacted by the agencies of the United States government pertaining to labeling and advertising.

(2) Manner of Paying Fees.

Payment of all fees for licenses, permits, certificates of approval, or renewals thereof, shall be made in legal tender of the United States of America, certified check, bank draft, cashier's check, United States post office money order, or personal check.

(3) Copy of Commission Rules.

Copies of the commission rules shall be available at the department's office, 1625 South 900 West, P. O. Box 30408, Salt Lake City, Utah 84130-0408 for an administrative cost of \$20 per copy, or on the department's website at <http://www.abc.utah.gov>.

(4) Interest Assessment on Delinquent Accounts.

The department may assess the legal rate of interest provided in Sections 15-1-1 through -4 for any debt or obligation owed to the department by a licensee, permittee, package agent, or any other person.

(5) Returned Checks.

(a) The department will assess a \$20 charge for any check payable to the department returned for the following reasons:

- (i) insufficient funds;
- (ii) refer to maker; or
- (iii) account closed.

(b) Receipt of a check payable to the department which is returned by the bank for any of the reasons listed in Subsection (5) (a) may result in the immediate suspension of the license, permit, or operation of the package agency of the person tendering the check until legal tender of the United States of America, certified check, bank draft, cashier's check, or United States post office money order is received at the department offices, 1625 South 900 West, Salt Lake City, Utah, plus the \$20 returned check charge. Failure to make good the returned check and pay the \$20 returned check charge within thirty days after the license, permit, or operation of the package agency is suspended, is grounds for revocation of the license or permit, or termination of the package agency contract, and the forfeiture of the licensee's, permittee's, or package agent's bond.

(c) In addition to the remedies listed in Subsection (5)(b), the department may require that the licensee, permittee, or package agent transact business with the department on a "cash only" basis.

The determination of when to put a licensee, permittee, or package agency operator on "cash only" basis and how long the licensee, permittee, or package agency operator remains on "cash only" basis shall be at the discretion of the department and shall be based on the following factors:

- (i) dollar amount of the returned check(s);
- (ii) the number of returned checks;
- (iii) the length of time the licensee, permittee, or package agency operator has had a license, permit, or package agency with the department;
- (iv) the time necessary to collect the returned check(s);

and

- (v) any other circumstances.
- (d) A returned check received by the department from or on behalf of an applicant for or holder of a single event permit or temporary special event beer permit may, at the discretion of the department, require that the person or entity that applied for or held the permit be on "cash only" status for any future events requiring permits from the commission.

(e) In addition to the remedies listed in Subsections (5) (a), (b), (c) and (d), the department may pursue any legal remedies to effect collection of any returned check.

- (6) Disposition of unsaleable merchandise.

The department, after determining that certain alcoholic products are distressed or unsaleable, but consumable, may make those alcoholic products available to the Utah Department of Public Safety for education or training purposes.

All merchandise made available to the Utah Department of Public Safety must be accounted for as directed by the Department of Alcoholic Beverage Control.

- (7) Administrative Handling Fees.

(a) Pursuant to 32B-4-414(1)(b) a person, on a one-time basis, who moves the person's residence to this state from outside of this state may have or possess for personal consumption and not for sale or resale, liquor previously purchased outside the state and brought into this state during the move if the person obtains department approval before moving the liquor into the state, and the person pays the department a reasonable administrative handling fee as determined by the commission.

(b) Pursuant to 32B-4-414(1)(c) a person who as a beneficiary inherits as part of an estate liquor that is located outside the state, may have or possess the liquor and transport or cause the liquor to be transported into the state if the person obtains department approval before moving the liquor into the state, the person provides sufficient documentation to the department to establish the person's legal right to the liquor as a beneficiary, and the person pays the department a reasonable administrative handling fee as determined by the commission.

(c) The administrative handling fee to process any request for department approval referenced in subsections (7)(a) and (7)(b) is \$20.00.

- (8) Case Handling Markup

- (a) An alcoholic beverage shall:

(i) be subject to a case handling markup of \$0.90 per case above the landed case cost; and

(ii) receive all appropriate markups from Utah Code Ann. Section 32B-2-304 calculated from the landed case cost plus the case handling markup.

(b) If a manufacturer and the Department have agreed to allow the manufacturer to ship an alcoholic beverage directly to a state store or package agency without being received and stored by the Department in the Department's warehouse, the manufacturer shall receive a credit equaling the case handling markup for the product that is not warehoused by the Department.

(c) The Department shall collect and remit the case handling markup as outlined in Utah Code Ann. Section 32B-2-304.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: [March 4], 2012

Notice of Continuation: May 10, 2011

Authorizing, and Implemented or Interpreted Law: 32B-2-201(10); 32B-2-202; 32B-3-203(3)(c); 32B-1-305; 32B-1-306; 32B-1-307; 32B-1-607; 32B-1-304(1)(a); 32B-6-702; 32B-6-805(3); 32B-9-204(4); 32B-4-414(1)(b) and (c)

Commerce, Occupational and Professional Licensing **R156-1** General Rule of the Division of Occupational and Professional Licensing

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36077

FILED: 04/16/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this filing is first, to incorporate changes from the 2012 General Session of the Legislature, specifically H.B. 496, Mental Health Practice Act Amendments, S.B. 53, Recreational Therapy Practice Act Amendments, and S.B. 202, Dentist Practice Act Amendments; and second, to amend the term of initial licensure to be consistent with statute.

SUMMARY OF THE RULE OR CHANGE: Section R156-1-305 is changed to include the necessary changes to the list of classifications eligible to apply for inactive licensure, to incorporate the classification changes for what were formerly professional counselors to what are now clinical mental health counselors, and for what were formerly substance abuse counselors to what are now substance use disorder counselors. The new classification of licensed advanced substance use disorder counselor is also included. Section R156-1-308a is changed to include the necessary changes to the list of renewal dates. Specifically, what was formerly professional counselor and associate professional counselor

is now clinical mental health counselor and associate clinical mental health counselor, respectively. What was formerly licensed substance abuse counselor, certified substance abuse counselor, certified substance abuse counselor intern, and certified substance abuse counselor extern is now licensed advanced substance use disorder counselor, certified advanced substance use disorder counselor, certified advanced substance use disorder counselor intern, and certified substance use disorder counselor, respectively. The terminology under the recreational therapy classification is corrected to reflect the classification names of therapeutic recreational technician, therapeutic recreation specialist, and master therapeutic recreation specialist, respectively. Finally, the new classifications of licensed substance use disorder counselor, certified substance use disorder counselor intern, and dental educator license are added to the list of renewal dates.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-1-308 and Subsection 58-1-106(1) (a) and Subsection 58-1-501(4)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The change in classification names for inactive licensure and renewal of licensure lists does not create any fiscal impact. The new license classifications were established by statute. Denoting the new license classification renewal dates and making some of them eligible for inactive licensure will not create any additional fiscal impact beyond what was addressed in the legislative fiscal notes. The change to the length of time for which an initial license is issued from a full renewal cycle plus four months for applicants who apply at four months prior to the next renewal date, to a full renewal cycle plus one year for applicants who apply one year prior to the next renewal date, will impact government the cost for affected licensees of an extra renewal fee, which varies by profession. There will also be a small savings to the Division because it will have slightly fewer renewal applications to process. Neither of these impacts can be quantified.

◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to the regulated professions identified above and as a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** The change in classification names for inactive licensure and renewal of licensure lists does not create any fiscal impact. The new license classifications were established by statute. Denoting the new license classification renewal dates and making some of them eligible for inactive licensure will not create any additional fiscal impact beyond what was addressed in the legislative fiscal notes. The change to the length of time for which an initial license is issued from a full renewal cycle plus four months for applicants who apply at four months prior to the next renewal date, to a full renewal cycle plus one year for applicants who apply one year prior to the next renewal date, will save affected licensees the cost of an extra renewal fee, which varies by profession. There will also be a small savings to the Division because it will have slightly fewer

renewal applications to process. Neither of these impacts can be quantified.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The change in classification names for inactive licensure and renewal of licensure lists does not create any fiscal impact. The new license classifications were established by statute. Denoting the new license classification renewal dates and making some of them eligible for inactive licensure will not create any additional fiscal impact beyond what was addressed in the legislative fiscal notes. The change to the length of time for which an initial license is issued from a full renewal cycle plus four months for applicants who apply at four months prior to the next renewal date, to a full renewal cycle plus one year for applicants who apply one year prior to the next renewal date, will save affected licensees the cost of an extra renewal fee, which varies by profession.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The change in classification names for inactive licensure and renewal of licensure lists does not create any fiscal impact. The new license classifications were established by statute. Denoting the new license classification renewal dates and making some of them eligible for inactive licensure will not create any additional fiscal impact beyond what was addressed in the legislative fiscal notes. The change to the length of time for which an initial license is issued from a full renewal cycle plus four months for applicants who apply at four months prior to the next renewal date, to a full renewal cycle plus one year for applicants who apply one year prior to the next renewal date, will save affected licensees the cost of an extra renewal fee, which varies by profession.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As indicated in the rule summary, no fiscal impact to businesses is anticipated beyond those addressed by the Legislature during the 2012 General Session. There may even be some cost savings to licensees as a result of these changes.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2012

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-1. General Rule of the Division of Occupational and Professional Licensing.

R156-1-305. Inactive Licensure.

(1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee may not apply for inactive licensure status.

(2) The following licenses issued under Title 58 that are active in good standing may be placed on inactive licensure status:

- (a) advanced practice registered nurse;
- (b) architect;
- (c) audiologist;
- (d) certified nurse midwife;
- (e) certified public accountant emeritus;
- (f) certified registered nurse anesthetist;
- (g) certified court reporter;
- (h) certified social worker;
- (i) chiropractic physician;
- ~~(j) clinical mental health counselor;~~
- ~~([j]k) clinical social worker;~~
- ~~([k]l) contractor;~~
- ~~([l]m) deception detection examiner;~~
- ~~([m]n) deception detection intern;~~
- ~~([n]o) dental hygienist;~~
- ~~([o]p) dentist;~~
- ~~([p]q) direct-entry midwife;~~
- ~~([q]r) genetic counselor;~~
- ~~([r]s) health facility administrator;~~
- ~~([s]t) hearing instrument specialist;~~
- ~~([t]u) landscape architect;~~
- ~~([u]v) licensed advanced substance ~~[abuse]use disorder~~ counselor;~~
- ~~([v]w) marriage and family therapist;~~
- ~~([w]x) naturopath/naturopathic physician;~~
- ~~([x]y) optometrist;~~
- ~~([y]z) osteopathic physician and surgeon;~~
- ~~([z]aa) pharmacist;~~
- ~~([aa]bb) pharmacy technician;~~
- ~~([bb]cc) physical therapist;~~
- ~~([cc]dd) physician assistant;~~
- ~~([dd]ee) physician and surgeon;~~
- ~~([ee]ff) podiatric physician;~~
- ~~([ff]gg) private probation provider;[~~
- ~~(gg) professional counselor;]~~
- ~~(hh) professional engineer;~~
- ~~(ii) professional land surveyor;~~
- ~~(jj) professional structural engineer;~~
- ~~(kk) psychologist;~~
- ~~(ll) radiology practical technician;~~
- ~~(mm) radiologic technologist;~~
- ~~(nn) security personnel;~~
- ~~(oo) speech-language pathologist;[and]~~
- ~~(pp) substance use disorder counselor; and~~
- ~~([pp]qq) veterinarian.~~

(3) Applicants for inactive licensure shall apply to the Division in writing upon forms available from the Division. Each completed application shall contain documentation of requirements for inactive licensure, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(4) If all requirements are met for inactive licensure, the Division shall place the license on inactive status.

(5) A license may remain on inactive status indefinitely except as otherwise provided in Title 58 or rules which implement Title 58.

(6) An inactive license may be activated by requesting activation in writing upon forms available from the Division. Unless otherwise provided in Title 58 or rules which implement Title 58, each reactivation application shall contain documentation that the applicant meets current renewal requirements, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(7) An inactive licensee whose license is activated during the last ~~[four]12~~ months of a renewal cycle shall, upon payment of the appropriate fees, be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their activated license.

(8) A Controlled Substance license may be placed on inactive status if attached to a primary license listed in Subsection R156-1-305(2) and the primary license is placed on inactive status.

R156-1-308a. Renewal Dates.

(1) The following standard two-year renewal cycle renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

TABLE
RENEWAL DATES

(1) Acupuncturist	May 31	even years
(2) Advanced Practice Registered Nurse	January 31	even years
(3) Architect	May 31	even years
(4) Athlete Agent	September 30	even years
(5) Athletic Trainer	May 31	odd years
(6) Audiologist	May 31	odd years
(7) Barber	September 30	odd years
(8) Barber School	September 30	odd years
(9) Building Inspector	November 30	odd years
(10) Burglar Alarm Security	November 30	even years
(11) C.P.A. Firm	September 30	even years
(12) Certified Court Reporter	May 31	even years
(13) Certified Dietitian	September 30	even years
(14) Certified Medical Language Interpreter	March 31	odd years
(15) Certified Nurse Midwife	January 31	even years
(16) Certified Public Accountant	September 30	even years
(17) Certified Registered Nurse Anesthetist	January 31	even years
(18) Certified Social Worker	September 30	even years
(19) Chiropractic Physician	May 31	even years
(20) Clinical Mental Health Counselor	September 30	even years
([20]21) Clinical Social Worker	September 30	even years
([21]22) Construction Trades Instructor	November 30	odd years
([22]23) Contractor	November 30	odd years
([23]24) Controlled Substance License	Attached to primary license renewal	
([24]25) Controlled Substance Precursor	May 31	odd years
([25]26) Controlled Substance Handler	May 31	odd years
([26]27) Cosmetologist/Barber	September 30	odd years
([27]28) Cosmetology/Barber School	September 30	odd years
([28]29) Deception Detection	November 30	even years
([29]30) Dental Hygienist	May 31	even years

([30]31)	Dentist	May 31	even years
([31]32)	Direct-entry Midwife	September 30	odd years
([32]33)	Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	November 30	even years
([33]34)	Electrologist	September 30	odd years
([34]35)	Electrology School	September 30	odd years
([35]36)	Elevator Mechanic	November 30	even years
([36]37)	Environmental Health Scientist	May 31	odd years
([37]38)	Esthetician	September 30	odd years
([38]39)	Esthetics School	September 30	odd years
([39]40)	Factory Built Housing Dealer	September 30	even years
([40]41)	Funeral Service Director	May 31	even years
([41]42)	Funeral Service Establishment	May 31	even years
([42]43)	Genetic Counselor	September 30	even years
([43]44)	Health Facility Administrator	May 31	odd years
([44]45)	Hearing Instrument Specialist	September 30	even years
([45]46)	Internet Facilitator	September 30	odd years
([46]47)	Landscape Architect	May 31	even years
(48)	Licensed Advanced Substance Use Disorder Counselor	May 31	odd years
([47]49)	Licensed Practical Nurse	January 31	even years
([48]50)	Licensed Substance [Abuse] Use Disorder Counselor	May 31	odd years
([49]51)	Marriage and Family Therapist	September 30	even years
([50]52)	Massage Apprentice, Therapist	May 31	odd years
([51]53)	Master Esthetician	September 30	odd years
([52]54)	Medication Aide Certified	March 31	odd years
([53]55)	Nail Technologist	September 30	odd years
([54]56)	Nail Technology School	September 30	odd years
([55]57)	Naturopath/Naturopathic Physician	May 31	even years
([56]58)	Occupational Therapist	May 31	odd years
([57]59)	Occupational Therapy Assistant	May 31	odd years
([58]60)	Optometrist	September 30	even years
([59]61)	Osteopathic Physician and Surgeon, Online Prescriber	May 31	even years
([60]62)	Outfitter/Hunting Guide	May 31	even years
([61]63)	Pharmacy Class A-B-C-D-E, Online Contract Pharmacy	September 30	odd years
([62]64)	Pharmacist	September 30	odd years
([63]65)	Pharmacy Technician	September 30	odd years
([64]66)	Physical Therapist	May 31	odd years
([65]67)	Physical Therapist Assistant	May 31	odd years
([66]68)	Physician Assistant	May 31	even years
([67]69)	Physician and Surgeon, Online Prescriber	January 31	even years
([68]70)	Plumber Apprentice, Journeyman, Master, Residential Master, Residential Journeyman	November 30	even years
([69]71)	Podiatric Physician	September 30	even years
([70]72)	Pre Need Funeral Arrangement Sales Agent	May 31	even years
([71]73)	Private Probation Provider	May 31	odd years
(72)	Professional Counselor	September 30	even years
([73]74)	Professional Engineer	March 31	odd years
([74]75)	Professional Geologist	March 31	odd years
([75]76)	Professional Land Surveyor	March 31	odd years
([76]77)	Professional Structural Engineer	March 31	odd years
([77]78)	Psychologist	September 30	even years
([78]79)	Radiologic Technologist, Radiology Practical Technician Radiologist Assistant	May 31	odd years

([79]80)	Recreational Therapy <u>Therapeutic Recreation</u> Technician, <u>Therapeutic Recreation</u> Specialist, Master <u>Therapeutic</u> <u>Recreation</u> Specialist	May 31	odd years
([80]81)	Registered Nurse	January 31	odd years
([81]82)	Respiratory Care Practitioner	September 30	even years
([82]83)	Security Personnel	November 30	even years
([83]84)	Social Service Worker	September 30	even years
([84]85)	Speech-Language Pathologist	May 31	odd years
(86)	Veterinarian	September 30	even years
(87)	Vocational Rehabilitation Counselor	March 31	odd years

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:

(a) Associate Clinical Mental Health Counselor licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

([a]b) Associate Marriage and Family Therapist licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.[]

~~(b) Associate Professional Counselor licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.~~

(c) Certified Advanced Substance Use Disorder Counselor licenses shall be issued for a period of four years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(d) Certified Advanced Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(e) Certified Substance Use Disorder Counselor licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

([e]f) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(g) Certified Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed, whichever occurs first.

(h) Dental Educator licenses shall be issued for a two-year renewable term, until the date of termination of employment with the dental school as an employee, or until the failure to maintain any of the requirements of Section 58-69-302.5, whichever occurs first.

([d]j) Funeral Service Apprentice licenses shall be issued for a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

([e]j) Hearing Instrument Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examination, but a circumstance arose beyond the control of the licensee, to prevent the completion of the examination process.

([f]k) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

([g]l) Type I Foreign Trained Physician-Educator licenses will be issued initially for a one-year term and thereafter renewed every two years following issuance.

([h]m) Type II Foreign Trained Physician-Educator licenses will be issued initially for an annual basis and thereafter renewed annually up to four times following issuance if the licensee continues to satisfy the requirements described in Subsection 58-67-302.7(3) and completes the required continuing education requirements established under Section 58-67-303.

R156-1-308c. Renewal of Licensure Procedures.

The procedures for renewal of licensure shall be as follows:

(1) The Division shall send a renewal notice to each licensee at least 60 days prior to the expiration date shown on the licensee's license. The notice shall include directions for the licensee to renew the license via the Division's website.

(2) Except as provided in Subsection(4), renewal notices shall be sent by mail deposited in the post office with postage prepaid, addressed to the last mailing address shown on the Division's automated license system.

(3) In accordance with Subsection 58-1-301.7(1), each licensee is required to maintain a current mailing address with the Division. In accordance with Subsection 58-1-301.7(2), mailing to the last mailing address furnished to the Division constitutes legal notice.

(4) If a licensee has authorized the Division to send a renewal notice by email, a renewal notice may be sent by email to the last email address shown on the Division's automated license system. If selected as the exclusive method of receipt of renewal notices, such mailing shall constitute legal notice. It shall be the duty and responsibility of each licensee who authorizes the Division to send a renewal notice by email to maintain a current email address with the Division.

(5) Renewal notices shall provide that the renewal requirements are outlined in the online renewal process and that each licensee is required to document or certify that the licensee meets the renewal requirements prior to renewal.

(6) Renewal notices shall advise each licensee that a license that is not renewed prior to the expiration date shown on the license automatically expires and that any continued practice without a license constitutes a criminal offense under Subsection 58-1-501(1)(a).

(7) Licensees licensed during the last ~~four~~ 12 months of a renewal cycle shall be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their license.

KEY: diversion programs, licensing, occupational licensing, supervision

Date of Enactment or Last Substantive Amendment: [July 26, 2011]2012

Notice of Continuation: January 5, 2012

Authorizing, and Implemented or Interpreted Law: 58-1-106(1) (a); 58-1-308; 58-1-501(4)

Commerce, Real Estate **R162-2c** Utah Residential Mortgage Practices and Licensing Rules

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 36079
FILED: 04/16/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to modify existing rules in order to comport with ongoing modifications to the Nationwide Mortgage Licensing System (NMLS) database, to add specificity in existing rules governing supervision of mortgage offices and employees, recordkeeping, and experience requirements for individuals applying for lending manager licensure, to delete existing provisions regarding division certification of continuing education courses and instructors, to modify the hour requirement for the Utah-specific mortgage loan originator prelicensing course, to specify circumstances under which an individual may act as a loan processor, and to provide rules governing employee incentive programs, as mandated by H.B. 191 (2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: Throughout, language is modified to provide that a person licensed as a lending manager may act for a sponsoring entity as a principal lending manager, an associate lending manager, or a branch lending manager without obtaining a new license each time the individual changes roles. Throughout,

references to the mortgage loan originator prelicensing course are changed to reflect a 15-hour course rather than a 40-hour course. In Section R162-2c-102, definitions are provided for the term "incentive program" and for the acronym "LM," standing for lending manager. In Section R162-2c-201 licensing procedures for all license types are modified to state that an applicant must evidence financial responsibility, authorize the NMLS to provide the individual's credit report to the division, and record with the NMLS a mailing address if mail cannot be delivered to the individual's home address. Additionally, education requirements for a lending manager license are revised to eliminate the Utah-specific mortgage loan originator prelicensing course. New provisions require that an applicant for a lending manager license demonstrate experience as a mortgage loan originator, both through years of experience and through points awarded for actual origination work, with limited provisions for substituting alternate work related to loan origination. In Section R162-2c-203, existing provisions regarding certification of continuing education courses and instructors are deleted, as the NMLS now handles these certifications without involvement from the states. Language is added to clarify that any mortgage office from which Utah loans are originated is required to have a lending manager on site to supervise origination activities. In Section R162-2c-209, language is added to specify that an individual who holds a loan originator license may act as a loan processor, even if the license is not sponsored by a licensed entity. A new section, Section R162-2c-301b, is added regarding incentive programs. A licensed entity may pay a sponsored mortgage loan originator for bringing business to the company, so long as the entity observes limits as to amount paid (no more than \$300 per payment) and frequency of payment (no more than 3 times per year), and ensures that a person being paid has not acted in a manner that would trigger the licensing requirement of Subsection 61-2c-102(1)(h). In Section R162-2c-301, a new provision requires a licensed entity to maintain in its records the name and contact information for the borrower in each transaction. New sections, Sections R162-2c-501a and R162-2c-501b, specify the types of professional activities that may be substituted for loan origination work in order to satisfy the experience requirement for licensure as a lending manager. Throughout, nonsubstantive changes are made to correct internal references and citations as needed due to these rule amendments as well as amendments made to the mortgage statute in the 2012 General Legislative Session.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2c-103(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** For the most part, these amendments modify existing provisions to accommodate the NMLS functionality or lack thereof. The division already has budget and staff in place to administer and enforce these provisions, and it is not anticipated that the proposed amendments will have any effect on those resources. One of the new sections adds specificity regarding how the lending manager experience requirement will be demonstrated and

calculated. The division currently reviews each lending manager application individually for compliance with the experience requirement. It is anticipated that the specific rules and tables provided by these amendments will make this review more efficient. Therefore, no fiscal impact to the state budget is anticipated.

◆ **LOCAL GOVERNMENTS:** Local governments are not required to comply with or enforce the mortgage rules. Therefore, no fiscal impact to local government is anticipated.

◆ **SMALL BUSINESSES:** Small businesses are currently required to pay a fee in NMLS in order to reassign an employee's role from, for example, an associate lending manager to a branch lending manager. By creating a single license of lending manager, these businesses will be relieved of that cost. Small businesses that choose to implement an incentive program might experience some costs in modifying their employment contracts to specify the means and methodology by which incentive payments will be made and calculated. However, the rule does not require a small business to implement an incentive program; therefore, any associated costs are optional and avoidable. Otherwise, the proposed amendments are not anticipated to impose a cost or provide a savings to a small business, as they are clarifications of existing provisions. They do not create new obligations or fees.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** An individual is currently required to pay a fee in NMLS in order to reassign the individual's role from, for example, an associate lending manager to a branch lending manager. By creating a single license of lending manager, these individuals will be relieved of that cost. An individual applying for a lending manager license will no longer have to take and pay for the Utah mortgage loan originator prelicensing course. Otherwise, the proposed amendments are not anticipated to impose a cost or provide a savings to affected persons, as they are clarifications of existing provisions. They do not create new obligations or fees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Affected persons are required under the current rules to comply with the substance of the amendments that are proposed regarding requirements that are associated with fees (i.e., taking prelicensing education and applying for licensure). These amendments do not change those fees, nor is it anticipated that affected persons will need to hire staff, implement new software programs, or make any expenditures in order to comply. As previously mentioned, an affected person who wishes to implement an incentive program might experience costs in modifying employment contracts and monitoring payments. However, implementing an incentive program is not required.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As indicated in the rule summary, this filing comports existing provisions with amendments to federal provisions and provides rules regarding incentive programs as required by statutory amendments passed in the 2012 Utah Legislative

Session. The filing also reworks and clarifies existing requirements. No fiscal impact to businesses is anticipated beyond those already considered in passage of recent statutory amendments.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2012

AUTHORIZED BY: Jonathan Stewart, Director

R162. Commerce, Real Estate.

R162-2c. Utah Residential Mortgage Practices and Licensing Rules.

R162-2c-102. Definitions.

(1) The acronym "ALM" stands for associate lending manager.

~~[(2)](2) "Branch lending manager" means the person assigned to oversee a branch office. As of November 1, 2010:~~

~~(a) a branch office registering in the nationwide database or renewing its registration shall identify an ALM to serve as the branch lending manager; and~~

~~(b) the individual identified by the branch office must be qualified for licensure as a PLM.~~

~~[(3)](2) The acronym "BLM" stands for branch lending manager.~~

~~[(4)](3) "Certification" means authorization from the division to:~~

~~(a) establish and operate a school that provides courses for Utah-specific preclicensing education or continuing education; or~~

~~(b) function as an instructor for courses approved for Utah-specific preclicensing education or continuing education.~~

~~[(5)](4) "Credit hour" means 50 minutes of instruction within a 60-minute time period, allowing for a ten-minute break.~~

~~[(6)](5) "Control person" [means any individual identified by an entity within the nationwide database as being primarily responsible for directing the management or policies of a company and may be:~~

~~(a) a manager;~~

~~(b) a managing partner;~~

~~(c) a director;~~

~~(d) an executive officer; or~~

~~(e) an individual who performs a function similar to an individual listed in this Subsection (6)] is defined in Section 61-2c-102(1)(p).~~

~~[(7)](6) "Expired license" means a license that is not renewed according to applicable deadlines, but is eligible to be reinstated.~~

~~[(8)](7) "Individual applicant" means any individual who applies to obtain or renew a license to practice as a mortgage loan originator [principal lending manager, branch lending manager, or associate] or lending manager.~~

~~(8) "Incentive program" means a program through which a licensed entity may, pursuant to Subsection R162-2c-301b, pay a licensed mortgage loan originator who is sponsored by the entity for bringing business into the entity.~~

~~(9) "Instruction method" means the forum through which the instructor and student interact and may be:~~

~~(a) classroom: traditional instruction where instructors and students are located in the same physical location;~~

~~(b) classroom equivalent: an instructor-led course where the instructor and students may be in two or more physical locations; or~~

~~(c) online: instructor and student interact through an online classroom.~~

~~(10) "Instructor applicant" means any individual who applies to obtain or renew certification as an instructor of Utah-specific pre-licensing or continuing education courses.~~

~~[(11)](11) "Mortgage entity" means any entity that:~~

~~(a) engages in the business of residential mortgage lending;~~

~~(b) is required to be licensed under Section 61-2c-201; and~~

~~(c) operates under a business name or other trade name that is registered with the Division of Corporations and Commercial Code.~~

~~[(12)(a)](11)(a) "Lending manager" [means a person who holds a license as a principal lending manager, associate lending manager, or branch lending manager] is defined in Section 61-2c-102(1)(aa).~~

~~(b) "Lending manager license" includes:~~

~~(i) a principal lending manager license;~~

~~(ii) an associate lending manager license; and~~

~~(iii) a branch lending manager license.~~

~~(12) The acronym "LM" stands for lending manger and includes the following licensing designations:~~

~~(a) principal lending manager;~~

~~(b) associate lending manager; and~~

~~(c) branch lending manager.~~

~~(13) "Mortgage entity" means any entity that:~~

~~(a) engages in the business of residential mortgage lending;~~

~~(b) is required to be licensed under Section 61-2c-201; and~~

~~(c) operates under a business name or other trade name that is registered with the Division of Corporations and Commercial Code.~~

~~[(13)](14) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry.~~

~~[(14)](15) The acronym "NMLS" stands for Nationwide Mortgage Licensing System.~~

~~[(15)](16)~~ "Other trade name" means any assumed business name under which an entity does business.

~~[(16)](17)~~ "Personal information" means a person's first name or first initial and last name, combined with any one or more of the following data elements relating to that person when either the name or data element is unencrypted or not protected by another method that renders the data unreadable or unusable:

- (a) Social Security number;
- (b) financial account number, or credit or debit card number; or
- (c) driver license number or state identification card number.

~~[(17)](18)~~ The acronym "PLM" stands for principal lending manager.

~~[(18)](19)~~ "Qualifying individual" means the PLM, managing principal, or qualified person who is identified on the MU1 form in the nationwide database as the person in charge of an entity.

~~[(19)](20)~~ "Reapplication" or "reapply" refers to a request for licensure that is submitted after the deadline for reinstatement expires and the license has become terminated.

~~[(20)](21)~~ "Reinstatement" or "reinstatement" refers to a request for a licensure that is submitted after the applicable December 31 license expiration date passes and by or before February 28 of the following calendar year.

~~[(21)](22)~~ As used in Subsection R162-2c-201, "relevant information" includes:

- (a) court dockets;
- (b) charging documents;
- (c) orders;
- (d) consent agreements; and
- (e) any other information the division may require.

~~[(22)](23)~~ "Restricted license" means any license that is issued subject to a definite period of suspension or terms of probation.

~~[(23)](24)~~ "Safeguard" means to prevent unauthorized access, use, disclosure, or dissemination.

~~[(24)](25)~~ "School" means

- (a) any college or university accredited by a regional accrediting agency that is recognized by the United States Department of Education;
- (b) any community college;
- (c) any vocational-technical school;
- (d) any state or federal agency or commission;
- (e) any nationally recognized mortgage organization that has been approved by the commission;
- (f) any Utah mortgage organization that has been approved by the commission;
- (g) any local mortgage organization that has been approved by the commission; or
- (h) any proprietary mortgage education school that has been approved by the commission.

~~[(25)](26)~~ "School applicant" means a director or owner of a school who applies to obtain or renew a school's certification.

~~[(26)](27)~~ "Terminated license" means a license that was not renewed or reinstated according to applicable deadlines.

R162-2c-201. Licensing and Registration Procedures.

- (1) Mortgage loan originator.

(a) To obtain a Utah license to practice as a mortgage loan originator, an individual who is not currently and validly licensed in any state shall:

- (i) evidence good moral character pursuant to R162-2c-202(1);
- (ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);
- ~~(iii) evidence financial responsibility pursuant to R162-2c-202(3);~~

~~[(iii)](iv)~~ obtain a unique identifier through the nationwide database;

~~[(iv)](v)~~ successfully complete, within the 12-month period prior to the date of application, ~~[40]~~15 hours of Utah-specific pre-licensing education as approved by the division;

~~[(v)](A)](vi)(A)~~ successfully complete 20 hours of pre-licensing education as approved by the nationwide database according to the nationwide database outline for national course curriculum; or

(B) if the individual previously passed the 20-hour national course, obtained a license, and thereafter allowed the license to expire, successfully complete continuing education:

- (I) approved by the nationwide database; and
- (II) in the number of hours that would have been required to renew the expired license in the year in which the individual allowed the license to expire;

~~[(vi)](vii)~~ take and pass the examinations that meet the requirements of Section 61-2c-204.1(4) and that:

- (A) are approved and administered through the nationwide database; and
- (B) consist of a national component and a Utah-specific state component;

~~[(vii)](viii)~~ request licensure as a mortgage loan originator through the nationwide database;

~~[(viii)](ix)~~ authorize a criminal background check and submit fingerprints through the nationwide database;

~~(x)~~ authorize the nationwide database to provide the individual's credit report to the division for review;

~~[(ix)](xi)~~ provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

~~(xii)~~ record with the nationwide database a mailing address, if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);

~~[(x)](xiii)~~ complete, sign, and submit to the division a social security verification form as provided by the division; and

~~[(xiii)](xiv)~~ pay all fees through the nationwide database as required by the division and by the nationwide database.

(b) To obtain a Utah license to practice as a mortgage loan originator, an individual who is currently and validly licensed in another state shall:

- (i) evidence good moral character pursuant to R162-2c-202(1);
- (ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);
- ~~(iii) evidence financial responsibility pursuant to R162-2c-202(3);~~

~~[(iii)(A)](iv)(A)~~ successfully complete, within the 12-month period prior to the date of application, ~~[40]~~15 hours of Utah-specific mortgage loan originator prelicensing education; and

(B) take and pass the Utah-specific state examination component;

~~[(iv)](v)~~ provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

~~(vi)~~ record with the nationwide database a mailing address, if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);

~~[(v)](vii)~~ request licensure as a mortgage loan originator through the nationwide database;

~~[(vi)](viii)~~ authorize a criminal background check through the nationwide database;

~~(ix)~~ authorize the nationwide database to provide the individual's credit report to the division for review;

~~[(vii)](x)~~ complete, sign, and submit to the division a social security verification form as provided by the division; and

~~[(viii)](xi)~~ pay all fees through the nationwide database as required by the division and by the nationwide database.

(2) ~~[Principal lending]~~Lending manager. To obtain a Utah license to practice as ~~[a PLM]~~an LM, an individual shall:

~~[(a)]~~ qualify as a mortgage loan originator through the nationwide database;

~~[(b)](a)~~ evidence good moral character pursuant to R162-2c-202(1);

~~[(c)](b)~~ evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

~~(c)~~ evidence financial responsibility pursuant to R162-2c-202(3);

~~(d)~~ provide to the division:

~~(i)~~ the individual's unique identifier as assigned through the nationwide database; and

~~(ii)~~ evidence that the individual has taken and passed:

~~(A)~~ the 20-hour national mortgage loan originator prelicensing course; and

~~(B)~~ the mortgage loan originator examinations that:

~~(I)~~ meet the requirements of Section 61-2c-204.1(4);

~~(II)~~ are approved and administered through the nationwide database; and

~~(III)~~ consist of a national component and a Utah-specific state component;

~~[(d)](c)~~ obtain approval from the division to take the Utah-specific ~~[PLM]~~LM prelicensing education by evidencing that the applicant has~~[- within the five years preceding the date of application, had three years of full-time active experience as a mortgage loan originator]~~ satisfied, during the five-year period preceding the date of application, the experience requirement of Section 61-2c-206(1)(d) through:

~~(i)(A)~~ three years full-time experience originating first-lien residential mortgages pursuant to Section 61-2c-102(1)(ee)(i)(A);

~~(I)~~ under a license issued by a state regulatory agency; or

~~(II)~~ as an employee of a depository institution; and

~~(B)~~ evidence of having originated a minimum of 45 first-lien residential mortgages; or

~~(ii)(A)(I)~~ two years full-time experience as described in this Subsection (2)(c)(i)(A); and

~~(II)~~ additional full-time experience per the equivalency calculation in Subsection R162-2c-501a; and

~~(B)(I)~~ evidence of having originated a minimum of 30 first-lien residential mortgages; and

~~(II)~~ up to 15 additional points according to the experience points schedule in Subsection R162-2c-501b;

~~[(e)](f)~~ within the 12-month period preceding the date of application, successfully complete 40 hours of Utah-specific PLM prelicensing education as certified by the division;

~~[(f)(i)](g)~~ ~~[if currently licensed in Utah as a mortgage loan originator, -]take and pass a [principal-]lending manager examination as approved by the commission;[- or~~

~~(ii) if not currently licensed in Utah as a mortgage loan originator, take and pass:~~

~~(A) the Utah-specific state examination component; and~~

~~(B) a principal lending manager examination as approved by the commission;]~~

~~[(g)](h)~~ provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

~~(i)~~ record with the nationwide database a mailing address, if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);

~~[(h)](j)(i)~~ register in the nationwide database by selecting the "~~principal-~~lending manager" license type and completing the associated MU4 form; and

~~(ii)~~ designate in the nationwide database whether the individual will be acting for the sponsoring entity as:

~~(A) the principal lending manager;~~

~~(B) an associate lending manager; or~~

~~(C) a branch lending manager;~~

~~(k)~~ authorize a criminal background check and submit fingerprints through the nationwide database;

~~(l)~~ authorize the nationwide database to provide the individual's credit report to the division for review;

~~[(j)](m)~~ complete, sign, and submit to the division a social security verification form as provided by the division; and

~~[(j)](n)~~ pay all fees through the nationwide database as required by the division and by the nationwide database.

~~[(3)]~~ Associate lending manager. To obtain a Utah license to practice as an ALM, an individual shall:

~~(a) comply with this Subsection (2)(a) through (g);~~

~~(b) register in the nationwide database by selecting the "associate lending manager" license type and completing the associated MU4 form; and~~

~~(c) pay all fees through the nationwide database as required by the division and by the nationwide database.~~

~~[(4)](3)~~ Mortgage entity.

~~(a)~~ To obtain a Utah license to operate as a mortgage entity, a person shall:

~~(i)~~ establish that all control persons meet the requirements for moral character pursuant to R162-2c-202(1);

~~(ii)~~ establish that all control persons meet the requirements for competency pursuant to R162-2c-202(2);

(iii) register any other trade name with the Division of Corporations and Commercial Code;

(iv) register the entity in the nationwide database by:

(A) submitting an MU1 form that includes:

(I) all required identifying information;

(II) the name of the PLM who, pursuant to Subsection R162-2c-301a(3)(a)(iv), will serve as the entity's qualifying individual;

(III) the name of any LM who, pursuant to Subsection R162-2c-301a(3)(a)(iv), will serve as a branch lending manager;

(HH)(IV) the name of any individuals who may serve as control persons;

(IV)(V) the entity's registered agent; and

(V)(VI) any other trade name under which the entity will operate; and

(B) creating a sponsorship through the nationwide database that identifies the mortgage loan originator(s) sponsored by the entity;

(v) register any branch office operating from a different location than the entity;

(vi) pay all fees through the nationwide database as required by the division and by the nationwide database;

(vii) provide to the division proof that any assumed business name or other trade name is registered with the Division of Corporations and Commercial Code;

(viii) provide to the division all court documents related to any criminal proceeding not disclosed through a previous application or renewal and involving any control person;

(ix) provide to the division complete documentation of any action taken by a regulatory agency against:

(A) the entity itself; or

(B) any control person; and

(C) not disclosed through a previous application or renewal; and

(x) provide to the division a notarized letter on company letterhead, signed by the owner or president of the entity, authorizing the PLM to use the entity's name.

(b) Restrictions on entity name. No license may be issued by the division to an entity that proposes to operate under a name that closely resembles the name of another entity licensee, or that the division determines might otherwise be confusing or misleading to the public.

(S)(4) Branch office.

(a) To register a branch office with the division, a person shall:

(i) obtain a Utah entity license for the entity under which the branch office will be registered;

(ii) submit to the nationwide database an MU3 form that includes:

(A) all required identifying information; and

(B) the name of the [ALM]LM who will serve as the branch lending manager;

(iii) create a sponsorship through the nationwide database that identifies the mortgage loan originator(s) who will work from the branch office; and

(iv) pay all fees through the nationwide database as required by the division and by the nationwide database.

(b) A person who registers another trade name and operates under that trade name from an address that is different

from the address of the entity shall register the other trade name as a branch office pursuant to this Subsection [(S)(4)].

(c)(i) A PLM may not simultaneously serve as a BLM if Subsection R162-2c-301a(3)(a)(iv)(B) applies.

(ii) An individual may not serve as the BLM for more than one branch at any given time.

[(F)(5)] Licenses not transferable.

(a) A licensee shall not transfer the licensee's license to any other person.

(b) A licensee shall not allow any other person to work under the licensee's license.

(c) If a change in corporate structure of a licensed entity creates a separate and unique legal entity, that entity shall obtain a unique license, and shall not operate under any existing license.

[(F)(6)] Expiration of test results.

(a) Scores for the mortgage loan originator licensing examination shall be valid for five years.

(b) Scores for the [PLM]LM exam shall be valid for 90 days.

[(F)(7)] Incomplete [PLM or ALM]LM application.

(a) The division may grant a 30-day extension of the 90-day application window upon a finding that:

(i) an applicant has made a good faith attempt to submit a completed application; but

(ii) requires more time to provide missing documents or to obtain additional information.

(b) If the applicant does not supply the required documents or information within the 30-day extension, the division may deny the application as incomplete.

[(F)(8)] Nonrefundable fees. All fees are nonrefundable, regardless of whether an application is granted or denied.

[(F)(9)] Other trade names.

(a) The division shall not approve a license for any person operating under an assumed business name that poses a reasonable likelihood of misleading the public into thinking that the person is:

(i) endorsed by the division, the state government, or the federal government;

(ii) an agency of the state or federal government; or

(iii) not engaged in the business of residential mortgage loans.

(b) A mortgage entity that operates under another trade name shall register the other trade name by including it on the MU1 form and obtaining the required registration.

R162-2c-203. Utah-Specific Education Certification.

(1) School certification.

(a) A school offering Utah-specific education shall certify with the division before providing any instruction.

(b) To certify, a school applicant shall prepare and supply the following information to the division:

(i) contact information, including:

(A) name, phone number, and address of the physical facility;

(B) name, phone number, and address of any school director;

(C) name, phone number, and address of any school owner; and

(D) an e-mail address where correspondence will be received by the school;

(ii) evidence that all school directors and owners meet the moral character requirements outlined in R162-2c-202(1) and the competency requirements outlined in R162-2c-202(2);

(iii) school description, including:

(A) type of school; and

(B) description of the school's physical facilities;

(iv) list of courses offered;

(v) proof that each course has been certified by the division;

(vi) list of the instructor(s), including any guest lecturer(s), who will be teaching each course;

(vii) proof that each instructor:

(A) has been certified by the division; or

(B) ~~is qualified as a guest lecturer; or~~

~~(C)]is exempt from certification under Subsection 203(5)~~
(f);

(viii) schedule of courses offered, including the days, times, and locations of classes;

(ix) statement of attendance requirements as provided to students;

(x) refund policy as provided to students;

(xi) disclaimer as provided to students; and

(xii) criminal history disclosure statement as provided to students.

(c) Minimum standards.

(i) The course schedule may not provide or allow for more than eight credit hours per student per day.

(ii) The attendance statement shall require that each student attend at least 90% of the scheduled class time.

(iii) The disclaimer shall adhere to the following requirements:

(A) be typed in all capital letters at least 1/4 inch high; and

(B) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the mortgage entities that may be soliciting for licensees at this school."

(iv) The criminal history disclosure statement shall:

(A) be provided to students while they are still eligible for a full refund; and

(B) clearly inform the student that upon application with the nationwide database, the student will be required to:

(I) accurately disclose the student's criminal history according to the licensing questionnaire provided by the nationwide database and authorized by the division; and

(II) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;

(C) clearly inform the student that the division will consider the applicant's criminal history pursuant to R162-2c-202(1) in making a decision on the application; and

(D) include a section for the student's attestation that the student has read and understood the disclosure.

(d) Within ~~[15 calendar]~~ten days after the occurrence of any material change in the information outlined in Subsection (1), the school shall provide to the division written notice of that change.

(e) A school certification expires 24 months from the date of issuance and must be renewed before the expiration date in order for the school to remain in operation. To renew, a school applicant shall:

(i) complete a renewal application as provided by the division; and

(ii) pay a nonrefundable renewal fee.

(2) Utah-specific course certification.

(a) A school providing a Utah-specific course shall certify the course with the division before offering the course to students.

(b) Application shall be made at least 30 days prior to the date on which a course requiring certification is proposed to begin.

(c) To certify a course, a school applicant shall prepare and supply the following information:

(i) instruction method;

(ii) outline of the course, including:

(A) a list of subjects covered in the course;

(B) reference to the approved course outline for each subject covered;

(C) length of the course in terms of hours spent in classroom instruction;

(D) number of course hours allocated for each subject;

(E) at least three learning objectives for every hour of classroom time;

(F) instruction format for each subject; i.e, lecture or media presentation;

(G) name and credentials of any guest lecturer; and

(H) list of topic(s) and session(s) taught by any guest lecturer;

(iii) a list of the titles, authors, and publishers of all required textbooks;

(iv) copies of any workbook used in conjunction with a non-lecture method of instruction;

(v) the number of quizzes and examinations; and

(vi) the grading system, including methods of testing and standards of grading.

(d) Minimum standards.

(i) All texts, workbooks, supplement pamphlets and other materials shall be appropriate, current, accurate, and applicable to the required course outline.

(ii) The course shall cover all of the topics set forth in the associated outline.

(iii) The lecture method shall be used for at least 50% of course instruction unless the division gives special approval otherwise.

(iv) A school applicant that uses a non-lecture method for any portion of course instruction shall provide to the student:

(A) an accompanying workbook as approved by the division for the student to complete during the instruction; and

(B) a certified instructor available within 48 hours of the non-lecture instruction to answer student questions.

(v) The division shall not approve an online education course unless:

(A) there is a method to ensure that the enrolled student is the person who actually completes the course;

(B) the time spent in actual instruction is equivalent to the credit hours awarded for the course; and

(C) there is a method to ensure that the student comprehends the material.

(3) Course expiration and renewal.

~~(a) A certification for a [40-hour]15-hour Utah-specific prelicensing course expires two years from the date of certification.~~

~~(b) As of January 1, 2010, a 20-hour Utah-specific prelicensing course certified by the division shall be deemed expired, regardless of any expiration date printed on the certification.~~

~~(c)(i) A division approved continuing education course:~~

~~(A) shall expire on the expiration date printed on the certificate; or~~

~~(B) if the course is due to expire on December 31, 2010, the expiration date shall be extended to February 28, 2011.~~

~~(ii) To renew a division approved continuing education course, a school applicant shall, within six months following the expiration date:~~

~~(A) complete a renewal form as provided by the division; and~~

~~(B) pay a nonrefundable renewal fee.~~

~~(iii) To certify a continuing education course that has been expired for more than six months, a school applicant shall resubmit it as if it were a new course.~~

~~(iv) After a continuing education course has been renewed three times, a school applicant shall submit it for certification as if it were a new course.~~

~~(d) The division shall cease reviewing and certifying courses for continuing education on December 30, 2010.~~

~~(e) As of January 1, 2011, any division approved continuing education course, regardless of when offered or completed, may not be used to satisfy requirements for the 2011 renewal.~~

(4) Education committee.

(a) The commission may appoint an education committee to:

(i) assist the division and the commission in approving course topics; and

(ii) make recommendations to the division and the commission about:

(A) whether a particular course topic is relevant to residential mortgage principles and practices; and

(B) whether a particular course topic would tend to enhance the competency and professionalism of licensees.

(b) The division and the commission may accept or reject the education committee's recommendation on any course topic.

(5) Instructor certification.

(a) Except as provided in this Subsection (5)(f), an instructor shall certify with the division before teaching a Utah-specific course.

(b) Application shall be made at least 30 days prior to the date on which the instructor proposes to begin teaching.

(c) To certify as an instructor of mortgage loan originator prelicensing courses, an individual shall provide evidence of:

(i) a high school diploma or its equivalent;

(ii)(A) at least five years of experience in the residential mortgage industry within the past ten years; or

(B) successful completion of appropriate college-level courses specific to the topic proposed to be taught;

(iii)(A) a minimum of twelve months of full-time teaching experience;

(B) part-time teaching experience that equates to twelve months of full-time teaching experience; or

(C) participation in instructor development workshops totaling at least two days in length; and

(iv) having passed, within the six-month period preceding the date of application, the principal lending manager licensing examination.

(d) To certify as an instructor of PLM prelicensing courses, an individual shall:

(i) meet the general requirements of this Subsection 5(c); and

(ii) meet the specific requirements for any of the following courses the individual proposes to teach.

(A) Management of a Residential Mortgage Loan Office: at least two years practical experience in managing an office engaged in the business of residential mortgage loans.

(B) Mortgage Lending Law: two years practical experience in the field of real estate law; and either:

(I) current active membership in the Utah Bar Association; or

(II) degree from an American Bar Association accredited law school.

(C) Advanced Appraisal:

(I) at least two years practical experience in appraising; and

(II) current state-certified appraiser license.

(D) Advanced Finance:

(I) at least two years practical experience in real estate finance; and

(II) association with a lending institution as a loan originator.

(e) To ~~certify~~act as an instructor of continuing education courses, an individual shall ~~demonstrate:~~

~~(i) knowledge of the subject matter of the course proposed to be taught, as evidenced by:~~

~~(A) at least three years of experience in a profession, trade, or technical occupation in a field directly related to the course;~~

~~(B) a bachelor or higher degree in the field of real estate, business, law, finance, or other academic area directly related to the course; or~~

~~(C) a combination of experience and education acceptable to the division; and~~

~~(ii) ability to effectively communicate the subject matter, as evidenced by:~~

~~(A) a state teaching certificate;~~

~~(B) successful completion of college courses acceptable to the division in the field of education;~~

~~(C) a professional teaching designation from the National Association of Mortgage Brokers, the Real Estate Educators Association, the Mortgage Bankers Association of America, or a similar association; or~~

~~(D) other evidence acceptable to the division that the applicant has the ability to teach in schools, seminars, or equivalent settings]~~certify through the nationwide database.

(f) The following instructors are not required to be certified by the division:

(i) a guest lecturer who:

(A) is an expert in the field on which instruction is given;

(B) provides to the division a resume or similar documentation evidencing satisfactory knowledge, background, qualifications, and expertise; and

(C) teaches no more than 20% of the course hours;

(ii) a college or university faculty member who evidences academic training, industry experience, or other qualifications acceptable to the division;

(iii) an individual who:

(A) evidences academic training, industry experience, or other qualifications satisfactory to the division; and

(B) receives approval from the commission; and

(iv) a division employee.

(g) Renewal.

(i) An instructor certification for Utah-specific prelicensing education expires 24 months from the date of issuance and shall be renewed before the expiration date.

(ii) To renew an instructor certification for Utah-specific prelicensing education, an applicant shall submit to the division:

(A) evidence of having taught at least 20 hours of classroom instruction in a certified mortgage education course during the preceding two years;

(B) evidence of having attended an instructor development workshop sponsored by the division during the preceding two years; and

(C) a renewal fee as required by the division.

~~[(ii)](iii) [An]To renew an instructor certification for [division approved]continuing education, an individual [expires 24 months from the date of issuance and shall be renewed before the expiration date. To renew, an applicant shall submit to the division:~~

~~(A) evidence of having taught at least one class in the subject area for which renewal is sought within the year preceding the date of application; or~~

~~(B)(1) written explanation for why the instructor has not taught a class in the subject area within the past year; and~~

~~(H) documentation to evidence that the applicant maintains the required expertise in the subject matter; and~~

~~(C) a renewal fee as required by the division.~~

~~(iii) An instructor certification issued by the division on or before December 31, 2010 for continuing education shall expire December 31, 2010.~~

~~(iv) The division shall cease certifying instructors for continuing education on December 30, 2010.~~

~~(v) As of January 1, 2011, any instructor proposing to teach a continuing education course]shall certify through the nationwide database.~~

(h) Reinstatement.

(i) An instructor who is certified by the division may reinstate an expired certification within 30 days of expiration by:

(A) complying with this Subsection (5)(g)[as applicable to the type of course taught]; and

(B) paying an additional non-refundable late fee.

(ii) Until six months following the date of expiration, an instructor who is certified by the division may reinstate a certification that has been expired more than 30 days by:

(A) complying with this Subsection (5)(g)[as applicable to the type of course taught];

(B) paying an additional non-refundable late fee; and

(C) completing six classroom hours of education related to residential mortgages or teaching techniques.

(6)(a) The division may monitor schools and instructors for:

(i) adherence to course content;

(ii) quality of instruction and instructional materials; and

(iii) fulfillment of affirmative duties as outlined in R162-2c-301a(5)(a) and R162-2c-301a(6)(a)[and R162-2c-301(7)(a)].

(b) To monitor schools and instructors, the division may:

(i) collect and review evaluation forms; or

(ii) assign an evaluator to attend a course and make a report to the division.

R162-2c-204. License Renewal, Reinstatement, and Reapplication.

(1) Deadlines.

(a) License renewal.

(i) To renew on time, a person who holds an active license as of October 31 shall renew by December 31 of the same calendar year.

(ii)(A) A person who obtains a license on or after November 1 shall renew by December 31 of the following calendar year.

(B) A person who is not required to renew in the first year of licensure pursuant to this Subsection (1)(a)(ii)(A) shall nevertheless complete, prior to December 31 of the first year of licensure, continuing education as required for renewal pursuant to Subsection R162-2c-204(3)(a) if the individual did not complete the mortgage loan originator national pre-licensing education during the calendar year.

(b) Reinstatement. The deadline to reinstate a license that expires on December 31 is February 28 of the year following the date of expiration.

(c) After the reinstatement deadline passes, a person shall reapply for licensure pursuant to Subsection R162-2c-204(3)(c).

(2) Qualification for renewal.

(a) Character.

(i) Individuals applying to renew or reinstate a license shall evidence that they maintain good moral character, honesty, integrity, and truthfulness as required for initial licensure.

(ii) An individual applying for a renewed license may not have:

(A) a felony that resulted in a conviction or plea agreement during the renewal period; or

(B) a finding of fraud, misrepresentation, or deceit entered against the applicant by a court of competent jurisdiction or a government agency and occurring within the renewal period.

(iii) The division may deny an individual applicant a renewed license upon evidence, as outlined in Subsection R162-2c-202(1)(b), of circumstances that reflect negatively on the applicant's character, honesty, integrity, or truthfulness and that:

(A) occurred during the renewal period; or

(B) were not disclosed and considered in a previous application or renewal.

(iv) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standards for character, honesty, integrity, and truthfulness required of individual applicants.

(b) Competency.

(i) Individual applicants and control persons shall evidence that they maintain the competency required for initial licensure.

(ii) The division may deny an individual applicant a renewed license upon evidence, as outlined in Subsection R162-2c-202(2), of circumstances that reflect negatively on the applicant's competency and that:

(A) occurred during the renewal period; or

(B) were not disclosed and considered in a previous application or renewal.

(iii) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standard for competency required of individual applicants.

(3) Education requirements for renewal, reinstatement, and reapplication.

(a) License renewal.

(i) Except as provided in this Subsection (3)(a)(ii), an individual who holds an active license as of January 1 of the calendar year shall complete, within the calendar year in which the individual's license is scheduled to expire, eight hours of continuing education:

(A) approved through the nationwide database;

(B) consisting of:

(I) three hours federal laws and regulations;

(II) two hours ethics (fraud, consumer protection, fair lending issues);

(III) two hours training related to lending standards for non-traditional mortgage products; and

(IV) one hour undefined instruction on mortgage origination; and

(C) non-duplicative of courses taken in the same or preceding renewal period.

(ii) An individual who completes the mortgage loan originator national pre-licensing education between January 1 and December 31 of the calendar year is exempt from continuing education for the renewal period ending December 31 of the same calendar year.

(b) Reinstatement. To reinstate an expired mortgage loan originator or lending manager license, an individual shall, by February 28 of the calendar year following the date on which the license expired, complete eight hours of continuing education:

(i) in topics listed in this Subsection (3)(a)(i); and

(ii)(A) approved by the nationwide database as "continuing education" if completed prior to the date of expiration; or

(B) approved by the nationwide database as "late continuing education" if completed between the date of expiration and the deadline for reinstatement.

(c) Reapplication.

(i) To reapply for licensure after the reinstatement deadline passes and by or before December 31 of the calendar year following the date on which the license expired, an individual shall complete the continuing education requirement outlined in this Subsection (3)(b).

(ii) To reapply for licensure after the deadline described in this Subsection (3)(c)(i) passes, an individual shall:

(A) complete eight hours of continuing education:

(I) in topics listed in this Subsection (3)(a)(i); and

(II) approved by the nationwide database as "late continuing education"; and

(B) within the 12-month period preceding the date of reapplication, take and pass:

(I) the ~~40-hour~~15-hour Utah-specific mortgage loan originator pre-licensing education, if the terminated license was a mortgage loan originator license; or

(II) the 40-hour Utah-specific principal lending manager pre-licensing education and associated examination, if the terminated license was a lending manager license.

(4) Renewal, reinstatement, and reapplication procedures.

(a) An individual licensee shall:

(i) evidence having completed education as required by Subsection R162-2c-204(3);

(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database; and

(iii) submit through the nationwide database:

(A) a request for renewal, if renewing or reinstating a license; or

(B) a request for a new license, if reapplying; and

(iv) pay all fees as required by the division and by the nationwide database, including all applicable late fees.

(b) An entity licensee shall:

(i) submit through the nationwide database a request for renewal;

(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database;

(iii) renew the registration of any branch office or other trade name registered under the entity license; and

(iv) pay through the nationwide database all fees, including all applicable late fees, required by the division and by the nationwide database.

R162-2c-209. Sponsorship.

(1) A mortgage loan originator who is sponsored by an entity may operate and advertise under the name of:

(a) the entity;

(b) a branch office registered under the license of the entity; or

(c) another trade name registered under the license of the entity.

(2) A mortgage loan originator who operates or advertises under a name other than that of the entity by which the mortgage loan originator is sponsored:

(a) shall exercise due diligence to verify that the name being used is properly registered under the entity license; and

(b) shall not be immune from discipline if the individual conducts the business of residential mortgage loans on behalf of more than one entity, in violation of Section 61-2c-209(4)(b)(iii).

(3) An individual who holds a license as a mortgage loan originator may perform loan processing activities regardless of whether:

(a) the individual's license is sponsored by a licensed entity at the time the loan processing activities are performed; or

(b) the individual is employed by a licensed entity.

R162-2c-301a. Unprofessional Conduct.

(1) Mortgage loan originator.

(a) Affirmative duties. A mortgage loan originator who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator shall:

(i) solicit business and market products solely in the name of the mortgage loan originator's sponsoring entity;

(ii) conduct the business of residential mortgage loans solely in the name of the mortgage loan originator's sponsoring entity;

(iii) remit to any third party service provider the fee(s) that have been collected from a borrower on behalf of the third party service provider, including:

(A) appraisal fees;

(B) inspection fees;

(C) credit reporting fees; and

(D) insurance premiums;

(iv) turn all records over to the sponsoring entity for proper retention and disposal; ~~and~~

(v) comply with a division request for information within 10 business days of the date of the request; ~~and~~

~~(vi) retain certificates to prove completion of continuing education requirements for at least two years from the date of renewal].~~

(b) Prohibited conduct. A mortgage loan originator who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator may not:

(i) charge for services not actually performed;

(ii) require a borrower to pay more for third party services than the actual cost of those services;

(iii) withhold, without reasonable justification, payment owed to a third party service provider in connection with the business of residential mortgage loans;

(iv) alter an appraisal of real property; or

(v) unless acting under a valid real estate license and not under a mortgage license, perform any act that requires a real estate license under Title 61, Chapter 2f, including:

(A) providing a buyer or seller of real estate with a comparative market analysis;

(B) assisting a buyer or seller to determine the offering price or sales price of real estate;

(C) representing or assisting a buyer or seller of real estate in negotiations concerning a possible sale of real estate;

(D) advertising the sale of real estate by use of any advertising medium;

(E) preparing, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property; or

(F) altering, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property.

(c) A mortgage loan originator does not engage in an activity requiring a real estate license where the mortgage loan originator:

(i) offers advice about the consequences that the terms of a purchase agreement might have on the terms and availability of various mortgage products;

(ii) owns real property that the mortgage loan originator offers "for sale by owner"; or

(iii) advertises mortgage loan services in cooperation with a "for sale by owner" seller where the advertising clearly identifies:

(A) the owner's contact information;

(B) the owner's role;

(C) the mortgage loan originator's contact information;

and

(D) the specific mortgage-related services that the mortgage loan originator may provide to a buyer; or

(iv) advertises in conjunction with a real estate brokerage where the advertising clearly identifies the:

(A) contact information for the brokerage;

(B) role of the brokerage;

(C) mortgage loan originator's contact information; and

(D) specific mortgage-related services that the mortgage loan originator may provide to a buyer.

(2) ~~[PLM]~~Lending manager.

(a) Affirmative duties. A ~~[PLM]~~lending manager who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. ~~[A PLM shall:]~~

(b) An LM who is designated in the nationwide database as the principal lending manager of an entity shall:

(i) be accountable for the affirmative duties outlined in Subsection (1)(a);

(ii) provide to all sponsored mortgage loan originators and unlicensed staff specific written policies as to their affirmative duties and prohibited activities, as established by:

(A) federal law governing residential mortgage lending;

(B) state law governing residential mortgage lending and including the Utah Residential Mortgage Practices Act; and

(C) administrative rules promulgated by the division under authority of the Utah Residential Mortgage Practices Act;

(iii) exercise reasonable supervision over all sponsored mortgage loan originators and over all unlicensed staff by:

(A) directing the details and means of their work activities;

(B) requiring that they read and agree to comply with the Utah Residential Mortgage Practices Act and the rules promulgated thereunder;

(C) requiring that they conduct all residential mortgage loan business in the name of the sponsoring entity; and

(D) prohibiting unlicensed staff from engaging in any activity that requires licensure;

(iv) establish and enforce written policies and procedures for ensuring the independent judgment of any underwriter employed by the PLM's sponsoring entity;

(v) establish and follow procedures for responding to all consumer complaints;

(vi) personally review any complaint relating to conduct by a sponsored mortgage loan originator or unlicensed staff member that might constitute a violation of federal law, state law, or division administrative rules;

(vii) establish and maintain a quality control plan that:

- (A) complies with HUD/FHA requirements;
- (B) complies with Freddie Mac and Fannie Mae requirements; or
- (C) includes, at a minimum, procedures for:
 - (I) performing pre-closing and post-closing audits of at least ten percent of all loan files; and
 - (II) taking corrective action for problems identified through the audit process; and
 - (viii) review for compliance with applicable federal and state laws all advertising and marketing materials and methods used by:

- (A) the PLM's sponsoring entity; and
- (B) the entity's sponsored mortgage loan originators[-];

and

~~[(b) A PLM who hires ALM(s) as needed to assist in accomplishing the required affirmative duties shall:~~

- ~~(i)(ix)(A) actively supervise: [-any such ALM; and]~~
 - ~~(I) any ALM sponsored by the entity; and~~
 - ~~(II) any BLM who is assigned to oversee the mortgage loan origination activities of a branch office; and~~
- ~~[(ii)(B) remain personally responsible and accountable for adequate supervision of all sponsored mortgage loan originators, [and] unlicensed staff, and entity operations throughout all locations.~~

~~[(c) A PLM who manages an entity that operates a branch office shall:~~

- ~~(i) actively supervise the BLM who manages the branch office; and~~
- ~~(ii) remain personally responsible and accountable for adequate supervision of:~~
 - ~~(A) mortgage loan originators sponsored by the branch office;~~
 - ~~(B) unlicensed staff working at the branch office; and~~
 - ~~(C) operations and transactions conducted by the branch office.~~

~~[(c) An LM who is designated as a branch lending manager in the nationwide database shall:~~

- ~~(i) work from the branch office the LM is assigned to manage;~~
- ~~(ii) personally oversee all mortgage loan origination activities conducted through the branch office; and~~
- ~~(iii) personally supervise all mortgage loan originators and unlicensed staff affiliated with the branch office.~~

(d) Prohibited conduct. ~~[A PLM]~~An LM who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. ~~[A PLM]~~An LM may not engage in any activity that is prohibited for a mortgage loan originator or a mortgage entity.

~~[(e) A BLM:~~

- ~~(i) shall be subject to the same affirmative duties as a PLM; and~~
- ~~(ii) may not engage in any activity that is prohibited for a mortgage loan originator or a mortgage entity.~~

~~]~~ (3) Mortgage entity.

(a) Affirmative duties. A mortgage entity that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage entity shall:

(i) remit to any third party service provider the fee(s) that have been collected from a borrower on behalf of the third party service provider, including:

- (A) appraisal fees;
- (B) inspection fees;
- (C) credit reporting fees; and
- (D) insurance premiums;

(ii) retain and dispose of records according to R162-2c-302; and

(iii) comply with a division request for information within 10 business days of the date of the request[-];

(iv)(A) notify the division of the location from which the entity's PLM will work; and

(B) if the entity originates Utah loans from a location where the PLM is not present to oversee and supervise activities related to the business of residential mortgage loans, assign a separate LM to serve as the BLM per Section 61-2c-102(1)(e); and

(v) if using an incentive program, strictly comply with Subsection R162-2c-301b.

(b) Prohibited conduct. A mortgage entity shall be subject to discipline under Sections 61-2c-401 through 405 if:

(i) any sponsored mortgage loan originator or PLM engages in any prohibited conduct; or

(ii) any unlicensed employee performs an activity for which licensure is required.

(4) Reporting unprofessional conduct.

(a) The division shall report in the nationwide database any final disciplinary action taken against a licensee for unprofessional conduct.

~~(b) [The division may report in the nationwide database a complaint that the division has assigned for investigation.~~

~~(e)]A licensee may challenge the information entered by the division into the nationwide database pursuant to Section 63G-2-603.~~

(5) School.

(a) Affirmative duties. A school that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A school shall:

(i) within 15 calendar days of any material change in the information outlined in R162-2c-203(1)(b), provide to the division written notice of the change;

(ii) with regard to the criminal history disclosure required under R162-2c-203(1)(b)(xii),

(A) obtain each student's signature before allowing the student to participate in course instruction;

(B) retain each signed criminal history disclosure for a minimum of two years; and

(C) make any signed criminal history disclosure available to the division upon request;

(iii) maintain a record of each student's attendance for a minimum of five years after enrollment;

(iv) upon request of the division, substantiate any claim made in advertising materials;

(v) maintain a high quality of instruction;

(vi) adhere to all state laws and regulations regarding school and instructor certification;

(vii) provide the instructor(s) for each course with the required course content outline;

(viii) require instructors to adhere to the approved course content;

(ix)(A) at the conclusion of each class, require each student to complete a standard evaluation form as provided by the division; and

(B) return the completed evaluation forms to the division in a sealed envelope within 10 days of the last class session; and

(x) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. A school that engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A school may not:

(i) accept payment from a student without first providing to that student the information outlined in R162-2c-203(1)(b)(ix) through (xii);

(ii) continue to operate after the expiration date of the school certification and without renewing;

(iii) continue to offer a course after its expiration date and without renewing;

(iv) allow an instructor whose instructor certification has expired to continue teaching;

(v) allow an individual student to earn more than eight credit hours of education in a single day;

(vi) award credit to a student who has not complied with the minimum attendance requirements;

(vii) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course;

(viii) give valuable consideration to a person licensed with the division under Section 61-2c for referring students to the school;

(ix) accept valuable consideration from a person licensed with the division under Section 61-2c for referring students to a licensed mortgage entity;

(x) allow licensed mortgage entities to solicit prospective mortgage loan originators at the school during class time or during the 10-minute break that is permitted during each hour of instruction;

(xi) require a student to attend any program organized for the purpose of solicitation;

(xii) make a misrepresentation in its advertising;

(xiii) advertise in any manner that denigrates the mortgage profession;

(xiv) advertise in any manner that disparages a competitor's services or methods of operation;

(xv) advertise or teach any course that has not been certified by the division;

(xvi) advertise a course with language that indicates division approval is pending or otherwise forthcoming; or

(xvii) attempt by any means to obtain or to use in its educational offerings the questions from any mortgage examination unless the questions have been dropped from the current bank of exam questions.

(6) Instructor.

(a) Affirmative duties. An instructor who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. An instructor shall:

(i) adhere to the approved outline for any course taught;

(ii)(A) at the conclusion of each class, require each student to complete a standard evaluation form as provided by the division; and

(B) return the completed evaluation forms to the division in a sealed envelope within 10 days of the last class session; and

(iii) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. An instructor who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. An instructor may not:

(i) continue to teach any course after the instructor's certification has expired and without renewing the instructor's certification; or

(ii) continue to teach any course after the course has expired and without renewing the course certification.

R162-2c-301b Employee Incentive Program.

(1)(a) Under this Subsection R162-2c-301b, a licensed entity may pay an incentive to a mortgage loan originator who is sponsored by the entity and licensed in:

(i) Utah; or

(ii) another state.

(b) A licensed entity may not pay an incentive to an unlicensed employee.

(2) A PLM or entity that uses an incentive program shall:

(a) prior to paying any incentive to an individual, specifically describe in the individual's contract for employment:

(i) the methodology by which any incentive will be calculated, including the limitation specified in Subsection (2)(b); and

(ii) the circumstances under which an incentive will be paid, including the limitation specified in this Subsection (2)(c); and

(b) limit the dollar amount or value of any single incentive to \$300 or less;

(c) limit the sponsored mortgage loan originator to receiving no more than three incentive payments in a calendar year; and

(d)(i) keep complete records of all incentive payments made, including:

(A) borrower name;

(B) property address;

(C) transaction closing date;

(D) date of incentive payment;

(E) name of employee receiving incentive payment; and

(F) amount paid; and

(ii) make such records available to the division for audit or inspection upon request.

(3) Before paying an incentive to a mortgage loan originator who is not licensed in Utah, the PLM or entity shall ensure that the individual did not:

(a) solicit or advertise to the client regarding financing for a Utah property; or

(b) perform any other activity that constitutes the business of residential mortgage loans pursuant to Section 61-2c-102(1)(h).

R162-2c-302. Requirements for Record Retention and Disposal.

(1) Record Retention.

(a) An entity licensed under the Utah Residential Mortgage Practices Act shall maintain and safeguard for the period set forth in Section 61-2c-302 the following records:

- (i) application forms;
- (ii) disclosure forms;
- (iii) truth-in-lending forms;
- (iv) credit reports and the explanations therefor;
- (v) conversation logs;
- (vi) verifications of employment, paycheck stubs, and tax returns;

returns;

(vii) proof of legal residency, if applicable;

(viii) appraisals, appraisal addenda, and records of communications between the appraiser and the registrant, licensee, and lender;

- (ix) underwriter denials;
- (x) notices of adverse action;
- (xi) loan approval; ~~and~~

(xii) name and contact information for the borrower in the transaction; and

~~(xii)~~(xiii) all other records required by underwriters involved with the transaction or provided to a lender.

(b) Records may be maintained electronically if the storage system complies with Title 46 Chapter 04, Utah Uniform Electronic Transactions Act.

(c) A licensed entity shall make all records available to the division pursuant to Section 61-2c-302(3).

(d) An individual who terminates sponsorship with an entity shall turn over to the entity any records in the individual's possession at the time of termination.

(2) Record Disposal. A person who disposes of records at the end of the retention period shall destroy personal information by shredding, erasing, or otherwise making the information indecipherable.

(3) Responsible Party.

(a) If a licensed entity is actively engaged in the business of residential mortgage loans, the PLM is responsible for proper retention, maintenance, safeguarding, and disposal of records.

(b) If a licensed entity ceases doing business in Utah, the control person(s) as of its last day of operation are responsible for proper retention, maintenance, safeguarding, and disposal of records.

R162-2c-401. Administrative Proceedings.

(1) Request for agency action.

(a) If completed in full and submitted in compliance with the rules promulgated by the division, the following shall be deemed a request for agency action under Utah Administrative Procedures Act, Section 63G-4-102, et seq.:

- (i) an original or renewal application for a license;
- (ii) an original or renewal application for a school certification;
- (iii) an original or renewal application for a course certification; and
- (iv) an original or renewal application for an instructor certification.

(b) Any other request for agency action shall:

- (i) be in writing;
- (ii) be signed by the requestor; and

(iii) comply with Utah Administrative Procedures Act, Section 63G-4-201(3).

(c) The following shall not be deemed a request for agency action under Utah Administrative Procedures Act, Section 63G-4-102, et seq., even if submitted in compliance with this Subsection (1)(b):

- (i) a complaint against a licensee; and
- (ii) a request that the division commence an investigation or a disciplinary action against a licensee.

(2) Formal adjudicative proceedings. An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted as a formal adjudicative proceeding.

(3) Informal adjudicative proceedings.

(a) All adjudicative proceedings as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as informal adjudicative proceedings. These informal proceedings shall include:

(i) a proceeding on an original or renewal application for a license;

(ii) a proceeding on an original or renewal application for a school, instructor, or course certification; and

(iii) except as provided in Section 63G-4-502, a proceeding for disciplinary action commenced by the division pursuant to Section 63G-4-201(2) following investigation of a complaint.

(b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Residential Mortgage Practices and Licensing Act or by these rules.

(4) Hearings not allowed. A hearing may not be held in the following informal adjudicative proceedings:

(a) the issuance of an original or renewed license when the application has been approved by the division;

(b) the issuance of an original or renewed school certification, instructor certification, or course certification when the application has been approved by the division;

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

(d) the denial of an application for an original or renewed license on the ground that it is incomplete;

(e) the denial of an application for an original or renewed school, instructor, or course certification on the ground that it does not comply with the requirements stated in these rules; or

(f) a proceeding on an application for an exemption from a continuing education requirement.

(5) Hearings required. A hearing before the commission shall be held in the following circumstances:

(a) a proceeding commenced by the division for disciplinary action pursuant to Section 61-2c-402 and Section 63G-4-201(2);

(b) an appeal of a division order denying or restricting a license; and

(c) an application that presents unusual circumstances such that the division determines that the application should be heard by the commission.

(6) Procedures for hearings in informal adjudicative proceedings.

(a) The division director shall be the presiding officer for any informal adjudicative proceeding unless the matter has been delegated to the chairperson of the commission or an administrative law judge.

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

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

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

(iii) the rules promulgated by the division.

(c) Except as provided in Subsection 7(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

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

(e) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first class postage pre-paid delivery, mail to the address last provided to the division pursuant to Section 61-2c-106 or Subsection R162-2c-201, as applicable, written notice of the date, time, and place scheduled for the hearing.

(f) Formal discovery is prohibited.

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

(i) on its own behalf; or

(ii) on behalf of a party where:

(A) the party makes a written request;

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

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

(h) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.

(i) The division shall adhere to Title 63G, Chapter 2, Government Records Access and Management Act in addressing a request for information obtained by the division through an investigation.

(j) The division may decline to provide a party with information that it has previously provided to that party.

(k) Intervention is prohibited.

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

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

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

(m) Upon filing a proper entry of appearance with the division pursuant to R151-4-110(1)(a), an attorney may represent a respondent.

(7) Additional procedures for disciplinary proceedings.

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

(i) a notice of agency action;

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

(iii) a witness list, if applicable; and

(iv) an exhibit list, if applicable.

(b) Answer.

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

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

(iii) Any answer shall be filed with the division within thirty days after the mailing date of the notice of agency action and petition.

(c) Witness and exhibit lists.

(i) The division shall provide its witness and exhibit list to the respondent at the time it mails its notice of hearing.

(ii) The respondent shall provide its witness and exhibit list to the division no later than thirty days after the mailing date of the division's notice of agency action and petition.

(iii) Any witness list shall contain:

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

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

(iv) Any exhibit list:

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

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

(d) Pre-hearing motions.

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

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

R162-2c-501a. Optional Experience Equivalency Calculation.

(1) Thirty months of full-time experience in the following activities shall be considered equivalent to one year of experience as a first-lien residential mortgage loan originator:

(a) loan underwriter;

(b) mortgage loan manager;

(c) loan processor;

(d) certified mortgage preclicensing instructor; and

(e) second-lien residential loan originator.

(2) An applicant who wishes to receive experience credit under this Subsection R162-2c-501a, but who cannot demonstrate experience equivalent to a full year of first-lien residential mortgage loan origination shall:

(a) be awarded experience credit as deemed appropriate by the division; and

(b) complete the experience requirement through additional experience as a first-lien residential mortgage loan originator, as determined by the division.

R162-2c-501b. Optional Experience Points Table.

TABLE
APPENDIX 3 - OPTIONAL EXPERIENCE TABLE

Professional activity	possible points
(1) Loan underwriter	0.5 pt/month
(2) Mortgage loan manager	0.5 pt/month
(3) Loan processor	0.5 pt/month
(4) Certified mortgage prelicensing instructor	0.5 pt/month
(5) Second-lien residential loan originator	0.5 pt/month

KEY: residential mortgage, loan origination, licensing, enforcement

Date of Enactment or Last Substantive Amendment: [~~October 11, 2011~~]2012

Authorizing, and Implemented or Interpreted Law: 61-2c-103(3); 61-2c-402(4)(a)

Commerce, Real Estate
R162-57a
Timeshare and Camp Resort Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36078

FILED: 04/16/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to modify existing provisions that place an undue burden on the industry, and to specify a circumstance under which a developer is required to amend a project registration.

SUMMARY OF THE RULE OR CHANGE: In Section R162-57a-5, the notification requirement is modified so that the filing of a civil lawsuit no longer triggers a notice requirement. Rather, the notice requirement is triggered by a finding of fraud, misrepresentation, or deceit in a judicial or administrative proceeding. Also in Section R162-57a-5, language is added to require a developer to amend a project registration upon a court's certifying a class in a class-action lawsuit against the developer. In Section R162-57a-11, the disclosure requirement is modified so that a developer is not required to provide the complete property report to a prospective purchaser at the beginning of a direct sales presentation. At that point, the developer must provide notice of the right to rescind; the full property report may then be provided at any time prior to the purchaser's signing a sales contract. In Section R162-57a-13, the requirement to re-disclose the rescission right is modified. Rather than requiring re-disclosure in any circumstance where the developer is contacted by a purchaser during the rescission period, the requirement is limited so that it applies only when the developer is contacted by a purchaser who expresses a desire to terminate the contract.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 57-19-11 and Section 57-19-13 and Section 57-19-3 and Subsection 57-19-9(4)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The proposed amendments rework existing provisions to provide clarity and to make compliance more reasonable for industry professionals. The Division already has adequate staff and budget to administer and enforce the existing provisions, and it is not anticipated that the amendments change those provisions in any way that would require the state to create additional mechanisms for oversight. As such, no fiscal impact to the state budget is anticipated.

◆ **LOCAL GOVERNMENTS:** Local governments are not required to comply with the timeshare and camp resort rules, nor do they enforce them. Therefore, no fiscal impact to local government is anticipated.

◆ **SMALL BUSINESSES:** The proposed amendments are intended to make it easier for developers (both small and large) to comply. Feedback from the industry indicates that the rules currently in place are over burdensome and that developers are experiencing costs in order to comply. These costs would include duplication of property reports so that they may be provided to every prospective purchaser at the outset of a direct sales presentation, even though many of the prospective purchasers will not choose to enter into a contract. By more finely tuning these requirements, it is anticipated that developers will see meaningful savings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments will affect developers. Where no other persons will be affected, no fiscal impact is anticipated to persons other than developers is anticipated. Fiscal impact to developers is analyzed above with regards to small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As discussed above under "small businesses", these rule amendments are intended to make compliance with existing provisions less costly. Therefore, it is anticipated that developers may realize a cost savings. No new costs or compliance burdens are being imposed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As indicated in the rule summary, this filing reworks and clarifies existing requirements, resulting in a potential cost savings to developers. No other fiscal impact to businesses is anticipated.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2012

AUTHORIZED BY: Jonathan Stewart, Director

R162. Commerce, Real Estate.**R162-57a. Timeshare and Camp Resort Rules.****R162-57a-5. Project Registration.**

(1) Registration required.

(a) A person may not engage in the marketing of interests unless:

(i) the project is properly registered with the division pursuant to Section 57-19 et seq. and these rules; and

(ii) each individual who will engage in marketing is registered as salesperson pursuant to Section 57-19 et seq. and these rules.

(b)(i) A project is not considered registered until the developer seeking registration obtains from the division:

(A) a complete property report, approved by the division; and

(B) an order of registration.

(ii) A salesperson is not considered registered until the individual receives a registration from the division.

(c) Absent the issuance of a property report or registration, acceptance by the division of a registration fee does not authorize a person to engage in the marketing of interests.

(2) Registration procedure. A developer shall submit all information required under Subsection (3) to the division:

(a) through the ATR; or

(b) if the developer obtains advance permission from the division, directly to the division.

(3) Required Information. A developer shall submit to the division:

(a) property report pursuant to Section 57-19-11 and Subsection R162-57a-11;

(b) as to each officer, partner, director, and owner of the developer:

(i) as applicable, documentation of any disciplinary or adverse licensing action taken against a professional license held by the individual in any jurisdiction;

(ii)(A) a statement of the type and extent of any financial interest the individual has in the project; and

(B) an explanation of any options the individual may exercise to acquire additional financial interest in the project;

(iii) as applicable, court records from any criminal proceeding taken against the individual in any jurisdiction, regardless of whether the proceeding was resolved by:

(A) conviction;

(B) plea in abeyance;

(C) diversion agreement;

(D) sentence of confinement; or

(E) dismissal; and

(iv) as applicable, documentation of any bankruptcy filing by:

(A) the individual; or

(B) an entity in which the individual has held:

(I) an ownership interest; or

(II) a position as a manager, officer, or director;

(c) evidence that the developer is registered in good standing with the Utah Division of Corporations;

(d) corporate resolution naming a resident agent to act on behalf of the developer;

(e) copy of the current articles of incorporation or other instrument creating the developer entity;

(f) copy of the current bylaws of the developer entity;

(g)(i) states or jurisdictions in which the developer has filed an application for registration or similar document;

(ii) copy of the property report or other disclosure document required to be given to purchasers by any jurisdiction in which the project is registered or the developer is otherwise authorized to market interests;

(iii) full documentation of any adverse order, judgment, or decree entered in connection with the project by any regulatory authority in any jurisdiction;

(h) name of any salesperson who will market the project;

(i) name of the individual who will be responsible for directly supervising the salesperson(s) marketing the project;

(j) legal description of the property upon which the project is located;

(k) statement, generated or updated within the 30-day period preceding the date of application, of the condition of the title to the property upon which the project is located, including encumbrances;

(l)(i) copy of any instrument by which the developer acquired interest in the project; or

(ii) if the developer does not hold fee title to the property, evidence that the developer is legally entitled to use the property, as follows:

(A) if the property is situated within Utah:

(I) a title opinion from a title insurer licensed in Utah; or

(II) an opinion letter from an independent, third party attorney actively licensed in Utah;

(B) if the property is situated outside of Utah, an opinion letter from an independent, third party attorney who is actively licensed to practice in the jurisdiction where the property is situated; and

(C) if the property is located in a jurisdiction such as a foreign country where property title opinions are issued by parties other than title companies and attorneys, other evidence of title as specified and approved by the director;

(m) copy of any instrument creating a lien, easement, restriction, or other encumbrance affecting the project, including any recording data, but redacted as to the consideration paid upon acquisition of the project;

(n) statement of the zoning and other governmental regulations affecting the use of the project;

(o) existing and proposed taxes or special assessments that affect the project;

(p)(i) copies of the instruments that will be delivered to a purchaser to evidence the purchaser's interest in the project; and

(ii) copies of the contracts and other agreements that a purchaser will be required to agree to or sign;

(q) topographic map and accompanying statement describing the general topography and physical characteristics of the project, including:

- (i) terrain;
- (ii) soil conditions;
- (iii) flood control; and
- (iv) climate;

(r) copy of any:

(i) recorded declaration of condominium;
 (ii) recorded covenants, conditions, and restrictions (CCRs); and
 (iii) instrument governing the project and incorporating all covenants of the grantor or lessor;

(s) copy of any plan to create an association for project owners;

(t) narrative description of the promotional plan for the disposition of the project;

(u) statement disclosing any inducement that will be offered in connection with the marketing of the project;

(v) map showing:

(i) the location of the interests and other improvements on the property;
 (ii) the relation of the project to existing streets, roads, and other off-site improvements; and
 (iii) the relation of the project to factors that might negatively impact the quiet enjoyment of an interest;

(w)(i) statement of improvements and amenities to be installed that have not been completed;

(ii) schedule for completion;

(iii) evidence that the developer has obtained all necessary permits; and

(iv) if the city or county in which the property is located does not require means of assurance that all improvements and amenities referred to in the application will be completed, copies of:

(A) escrow or trust agreements;

(B) performance bonds; or

(C) other documentation to evidence that adequate financing is available and arrangements have been made for the installation of all streets, sewers, electricity, gas, water, telephone, drainage, and other improvements;

(x)(i) provisions for maintenance to both existing and planned improvements and amenities; and

(ii) estimated cost of such maintenance to purchasers;

(y) description of any corrective work that must be performed on or relating to the project before particular interests are suitable for use;

(z) completed application as required by the division; and

(aa) a nonrefundable registration fee.

(4) The director may waive production of an item required pursuant to Subsection (3) if the developer shows that the item is not necessary to fulfill the purposes of Section 56-19 et seq.

(5) Consolidation.

(a) An application for consolidation shall be prepared and submitted in the same format as an application for initial registration.

(b) Where there is no change in the information submitted by the developer for the initial registration, the

documents required by Subsection (3) may be incorporated by reference to documents on file with the division.

(c) An incomplete application for consolidation shall be treated as provided in Subsection (6).

(d) New inventory added to a project through consolidation is subject to inspection by the division.

(6) Notice of defect.

(a) If an application is incomplete, or otherwise fails to comply with Section 57-19 et seq. or these rules, the director shall send a notice of defect to the developer or the developer's legal representative specifying:

(i) what additional information is required to cure the defect; and

(ii) the deadline by which the division must receive the additional information.

(b) After receipt of a notice of defect, the developer may not offer units to the public:

(i) until the defect is cured and a registration obtained; or

(ii) without obtaining a temporary permit pursuant to Section 57-19-6(3) and Subsection (8).

(c)(i) If the additional information is not received by the division by the deadline specified in the notice of defect, the director may deny the registration.

(ii) An order of denial may be appealed pursuant to Section 57-19-17.

(7) Standards for approval.

(a) The director may not approve an application for registration of a project unless:

(i) the documents submitted pursuant to Subsection (3) meet the requirements of Section 57-19 et seq. and these rules; and

(ii) the developer demonstrates the ability to convey or cause to be conveyed the interests offered for disposition.

(b) The division may not issue a project registration to a developer that has an officer, partner, director, or owner who has:

(i) been prosecuted for a felony that resulted in a:

(A) conviction within the five-year period preceding the date of application;

(B) plea agreement within the five-year period preceding the date of application; or

(C) jail or prison release date falling within the five-year period preceding the date of application; or

(ii) been prosecuted for a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in a:

(A) conviction within the three-year period preceding the date of application; or

(B) jail or prison release date falling within the three-year period preceding the date of application.

(c) If the director determines that a registration application and supporting documentation meet the criteria for registration, the division shall issue:

(i) an order of registration designating the form of the property report that the developer is required to provide to a prospective purchaser pursuant to Section 57-19-11;

(ii) a property report cover sheet, which the developer shall attach to the property report as its first page; and

(iii) a receipt for property report, which the developer shall attach to the property report as its last page.

(8) Temporary permit.

(a) To apply for a temporary permit, a person shall:

(i) make application by submitting a written request to the director;

(ii) comply with Section 57-19-6(3); and

(iii) pay all fees required for registration.

(b) A temporary permit issued by the director is valid for a period of 30 days from the date of issue.

(c) A temporary permit may not be renewed.

(9) Notification of changes.

(a) A developer whose project is registered under Section 57-19 et seq. shall report to the division within 10 business days any change in:

(i) the developer's contact information;

(ii) the disclosures required under Section 57-19-11;

(iii) the information provided under this Subsection (3), including changes in salespersons employed or contracted to market interests in the project;

(iv)(A) the bankruptcy of an entity controlled or owned by the developer that engages in the marketing of interests; and

(B) if the developer is an individual, the filing of a personal bankruptcy;

(v) the suspension, revocation, surrender, cancellation, or denial of a professional license or professional registration issued to the developer, whether the license or registration is issued by this state or another jurisdiction;

(vi) the entry of a cease and desist order, a temporary or permanent injunction, or a regulatory action:

(A) against the developer by a court or a government agency; and

(B) based on:

(I) conduct or a practice involving the marketing of interests; or

(II) conduct involving fraud, misrepresentation, or deceit;

and

(vii) a finding of fraud, misrepresentation, or deceit entered against the developer in a judicial or administrative proceeding instituted by a purchaser [against the developer] and arising out of or relating to:

(A) the advertising or sale of an interest;

(B) disclosures required under Section 57-19-11; or

(C) rescission rights;

~~(D) fraud; or~~

~~(E) misrepresentation of interests represented by the registration].~~

(b) If a deadline for notification falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

(10) Amendment and supplement to initial registration.

(a) To submit an amendment to a registration, a developer shall:

(i) complete an amendment filing through the ATR; or

(ii) obtain prior permission from the division to submit the information by mail.

(b) To submit a supplement to a registration, a developer shall:

(i) complete a courtesy filing through the ATR; or

(ii) obtain prior permission from the division to submit the information by mail.

(c) Pursuant to Section 57-19-8(4), the certification of a class in a class-action lawsuit against a developer on the basis of the

developer's advertising, selling, or managing a project or interest is considered to have a material adverse effect on a project and, therefore, must be disclosed through amendment.

R162-57a-11. Disclosure Required.

(1) The disclosures required by Section 57-19-11 and submitted to the division as part of the application for project registration shall be:

(a)(i) reproduced on good quality white paper 8-1/2 by 11 inches in size;

(ii) typed in a font no smaller than 10-point type, except that financial statements or other statistical or tabular matter may be set in type as small as 8-point type; and

(iii) organized into reasonably short paragraphs or sections with appropriate captions or headings to identify each paragraph or section; or

(b) if acceptable to the director, approved by another state.

(2)(a) Upon approving the developer's disclosures, the division shall supply to the developer:

(i) a cover sheet, which the developer shall use as the first page of the property report; and

(ii) a receipt for property report, which the developer shall use as the last page of property report.

(b)(i) The developer shall provide a copy of the complete property report, reproduced in a manner that allows all text to remain visible and legible, not obscured by shading or watermarks, to each prospective purchaser prior to requiring the prospective purchaser to sign a contract for purchase of an interest.

(ii) The developer shall provide a notice of the purchaser's right to cancel described in Section 57-19-12, reproduced in a manner that allows all text to remain visible and legible, not obscured by shading or watermarks, to each prospective purchaser:

~~[(+)](A)~~ at the beginning of a direct sales presentation; or

~~[(+)](B)~~ if the prospective purchaser does not attend a direct sales presentation, at the same time the developer obtains the prospective purchaser's personal information.

R162-57a-13. Unprofessional Conduct.

(1) Developer.

(a) Affirmative duties. A developer or an individual designated by the developer shall:

(i) actively supervise project salesperson(s) to ensure compliance with Section 57-19 et seq. and these rules;

(ii) provide the complete property report to each prospective purchaser;

(iii) obtain a signed receipt for property report from a prospective purchaser prior to:

(A) executing a purchase agreement; or

(B) receiving any item of value toward the purchase of an interest; and

~~(iv)(A)~~ clearly inform a purchaser of the purchaser's right to rescind the agreement if, during the rescission period mandated by Section 57-19-12, the purchaser ~~[contacts:]~~expresses a desire to terminate a contract or agreement entered into by the purchaser; and

~~(B)~~ ensure compliance with this Subsection (iv)(A) by:

~~(I)~~ all subsidiaries of the developer;

~~(II)~~ all persons affiliated with the developer; and

~~(III) all persons affiliated with a subsidiary of the developer~~

~~[(A) the developer;~~

~~(B) a subsidiary of the developer; or~~

~~(C) a person affiliated with the developer or a subsidiary of the developer].~~

(b) Prohibited conduct. A developer is subject to discipline if the developer or an affiliated person:

(i) makes a misrepresentation or material omission in a document submitted to the division; or

(ii) fails to comply with an order of the division.

(2) Salesperson. A salesperson shall comply with:

(a) Section 57-19 et seq.;

(b) these rules; and

(c) this Subsection (1)(a)(ii)-(iv).

KEY: timeshare, camp resort, registration, professional conduct

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

Authorizing, and Implemented or Interpreted Law: 57-19-3; 57-19-5 through 57-19-26

Education, Administration **R277-104** USOE ADA Complaint Procedure

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 36067

FILED: 04/16/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the repeal and reenactment of this rule is to make significant changes to the standards and procedures for ADA complaints consistent with Utah State Office of Education (USOE) and Utah State Office of Rehabilitation (USOR) requirements for ADA complaints procedures.

SUMMARY OF THE RULE OR CHANGE: The reenacted rule provides significant changes to the rule that include combining the USOE and USOR ADA complaint procedures into one rule, changing language to address only individuals other than USOE and USOR employees (e.g., invitees, visitors, other government employees). USOE and USOR employee ADA complaints will be addressed by the Department of Human Resource Management.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 28 CFR 35.107

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated cost or savings to the state budget. The USOE and USOR are and

have been obligated to follow federal law concerning ADA complaint procedures.

◆ **LOCAL GOVERNMENTS:** There are no anticipated cost or savings to local government. This rule applies to ADA complaints at the state level.

◆ **SMALL BUSINESSES:** There are no anticipated cost or savings to small businesses. The provisions under this rule do not apply to businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. The USOE and USOR are and have been obligated to follow federal law concerning ADA complaints.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The USOE and USOR will continue to comply with federal law concerning ADA complaints.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2012

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

R277. Education, Administration.

~~[R277-104. USOE ADA Complaint Procedure.~~

~~R277-104-1. Definitions.~~

~~A. "ADA" means the Americans with Disabilities Act, 42 U.S.C. 12201, which provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by this or any such entity.~~

~~B. "The ADA Coordinator" means the designee of the State Board of Education, who has responsibility for investigating and providing prompt and equitable resolution of complaints filed~~

by qualified individuals with disabilities in accordance with the Americans with Disabilities Act, or provisions of this rule.

C. "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

- _____ (1) Office of Planning and Budget;
- _____ (2) Department of Human Resource Management;
- _____ (3) Division of Risk Management;
- _____ (4) Division of Facilities Construction Management; and
- _____ (5) Office of the Attorney General.

D. "Disability" means, with respect to an individual disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment. The definition of "disability" specifically excludes: transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs.

E. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

F. "Individual with a disability" (hereinafter individual) means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the USOE or the State Board of Education, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.

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

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

R277-104-2. Authority and Purpose.

A. This rule is authorized pursuant to 28 CFR 35.107, 1992 edition, which adopts, defines, and publishes complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans with Disabilities Act, 28 CFR 35, 1992 edition.

B. The purpose of this rule is to establish a USOE procedure for filing complaints under the federal ADA law, provide an appeals procedure, and for appropriate classification of the records of complaints and appeals.

C. No qualified individual with a disability, by reason of such disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of the USOE, or be subjected to discrimination by the USOE.

R277-104-3. Filing of Complaints.

A. The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but not later than 60 days from the date of the alleged act of discrimination. However, any complaint alleging an act of discrimination occurring between January 26, 1992 and the effective date of this rule may be filed within 60 days of the effective date of this rule.

B. The complaint shall be filed with the USOE's ADA Coordinator in writing or in another accessible format suitable to the individual.

C. Each complaint shall:

- _____ (1) include the individual's name and address;
- _____ (2) include the nature and extent of the individual's disability;
- _____ (3) describe the USOE's alleged discriminatory action in sufficient detail to inform the USOE of the nature and date of the alleged violation;
- _____ (4) describe the action and accommodation desired; and
- _____ (5) be signed by the individual or by his legal representative.

D. Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

R277-104-4. Investigation of Complaint.

A. The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Section 3(C) of this rule if it is not made available by the individual.

B. When conducting the investigation, the coordinator may seek assistance from the USOE's legal, human resource and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve an expenditure of funds which is not absorbable within the USOE's budget and would require appropriation authority, facility modifications, or reclassification or reallocation in grade, the coordinator shall consult with the ADA State Coordinating Committee.

R277-104-5. Issuance of Decision.

A. Within 30 working days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing or in another acceptable suitable format stating what action, if any, shall be taken on the complaint.

B. If the coordinator is unable to reach a decision within the 30 working day period, he shall notify the individual with a disability in writing or by another acceptable suitable format why the decision is being delayed and what additional time is needed to reach a decision.

R277-104-6. Appeals.

A. The individual may appeal the decision of the ADA coordinator by filing an appeal within 10 working days from the receipt of the decision.

B. The appeal shall be filed in writing with the Superintendent.

C. The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the Superintendent or designee.

D. The appeal shall describe in sufficient detail why the coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

~~E. The Superintendent shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making any decision that would involve the Superintendent to direct an expenditure of funds which is not absorbable and would require appropriation authority, facility modifications, or reclassification or reallocation in grade, he shall also consult with the State ADA Coordinating Committee.~~

~~F. The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another accessible suitable format to the individual.~~

~~G. If the Superintendent is unable to reach a decision within the ten working day period, he shall notify the individual in writing or by another acceptable suitable format why the decision is being delayed and the additional time needed to reach a decision.~~

R277-104-7. Classification of Records.

~~The record of each complaint and appeal, and all written records produced or received as part of such actions, shall be classified as protected as defined under Section 63G-2-305, until the ADA coordinator or Superintendent issues the decision at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63G-2-302, or controlled as defined in Section 63G-2-304. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the coordinator or Superintendent shall be classified as public information.~~

R277-104-8. Relationship to Other Laws.

~~This rule does not prohibit or limit the use of remedies available to the individuals under the State Anti-Discrimination Complaint Procedures, Section 67-19-32; the Federal ADA Complaint Procedures (28 CFR Subpart F, beginning with Part 35.170, 1992 edition); or any other Utah state or federal law that provided equal or greater protection for the rights of individuals with disabilities.]~~

R277-104. ADA Complaint Procedure.

R277-104-1. Definitions.

A. "ADA" means the Americans with Disabilities Act, 42 U.S.C. 12201, which provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by this or any such entity.

B. "The ADA Coordinator" means the designee of the Superintendent, who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities who are not USOE or USOR employees in accordance with the Americans with Disabilities Act, or provisions of this rule.

C. "Days" means calendar days.

D. "Disability" means, with respect to an individual disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual

consistent with the Americans with Disabilities Act, 42 U.S.C. 12201.

E. "Executive Director" means the Executive Director of the Utah State Office of Rehabilitation.

F. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

G. "Individual with a disability" (hereinafter individual) means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities. This rule is directed at non-employees, including all types and periods of employment, of the Board, the USOE or the USOR.

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

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

J. "USOR" means the Utah State Office of Rehabilitation.

R277-104-2. Authority and Purpose.

A. This rule is authorized pursuant to 28 CFR 35.107, which adopts, defines, and publishes complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans with Disabilities Act, as amended.

B. The purpose of this rule is to establish USOE and USOR procedures for non-USOE, non-USOR and non-Board employees to file complaints under the federal ADA law and to provide appropriate classification of the records of complaints and appeals.

C. No qualified individual with a disability, by reason of such disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of the USOE or USOR, or be subjected to discrimination by the USOE or USOR.

R277-104-3. Filing of Complaints.

A. The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but not later than 30 days from the date of the alleged act of discrimination.

B. The complaint shall be filed with the USOE's ADA Coordinator in writing or in another format reasonable for the individual and the USOE or USOR.

C. Each complaint shall:

(1) include the individual's name and address;

(2) include the nature and extent of the individual's disability;

(3) describe the USOE's or USOR's alleged discriminatory action in sufficient detail to inform the USOE or USOR of the nature and date of the alleged violation;

(4) describe the action and accommodation desired; and

(5) be signed by the individual or by his legal representative.

R277-104-4. Investigation of Complaint.

A. The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Section 3(C) of this rule if it is not made available by the individual.

B. When conducting the investigation, the coordinator may seek assistance from the USOE's and USOR's legal, human resource, budget, and State Risk Management staff in determining what action, if any, shall be taken on the complaint.

R277-104-5. ADA Coordinator Recommendation.

A. Within 30 days, the ADA Coordinator shall make a recommendation outlining what action, if any, shall be taken by the USOE or USOR on the complaint to the Superintendent, Executive Director, or both depending upon the circumstances of the complaint.

B. If the ADA Coordinator does not make a recommendation to the Superintendent within 30 days, the ADA Coordinator shall notify both the complainant and the Superintendent that the decision is delayed and provide a date certain for the investigation recommendation to be provided.

R277-104-6. Superintendent or the Executive Director or Both Review and Decision.

A. The Superintendent shall review the recommendation of the ADA Coordinator and make a final decision about action to be taken, if any, by the USOE or USOR.

B. The Superintendent shall provide a written decision to the complainant no more than 10 working days from the receipt of the ADA Coordinator's recommendation.

C. In making the decision, the Superintendent shall consult with the Executive Director if necessary and may discuss the investigation with the ADA Coordinator or other USOE or USOR employees, may gather additional information and interview other individuals with relevant information or expertise and shall give appropriate deference to the ADA Coordinator's fact finding and review of information.

D. The Superintendent's decision is the final USOE and USOR administrative decision regarding the complaint.

(1) If the complaint and recommendation is solely about USOR services or facilities, the Superintendent shall consult with the Executive Director in making the decision.

(2) If the complaint and decision include USOE actions or facilities only, the Superintendent shall make the final administrative decision.

R277-104-7. Classification of Records.

A. The investigative record of each complaint and all written records produced or received as part of such investigations, recommendations, or actions, shall be classified as protected under Section 63G-2-305, until the Superintendent issues the decision.

B. Any portions of the record which pertain to individual's medical condition shall remain classified as private, as defined under Section 63G-2-302, or controlled, as defined in Section 63G-2-304. All other information gathered as part of the complaint record shall be classified as protected information.

C. The final written decision of the Superintendent shall be public information.

R277-104-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to the individuals under Section 67-19-32; the Federal ADA Complaint Procedures (28 CFR Subpart F, beginning with Part 35.170, 1992 edition); or any other Utah state or federal law

that provides equal or greater protection for the rights of individuals with disabilities.

KEY: complaints, disabled persons

Date of Enactment or Last Substantive Amendment: [1993]2012

Notice of Continuation: June 2, 2008

Authorizing, and Implemented or Interpreted Law: [28-CFR-35; 28 CFR 35.107]; 42 U.S.C. 12201; 63G-2-305; 63G-2-302; 63G-2-304; 67-19-32]

Education, Administration
R277-419-7
Student Identification and Tracking

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36069

FILED: 04/16/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R277-419-7 is amended to provide specific language emphasizing that every student that enters a school within the Utah public education system is immediately assigned a unique student identifier.

SUMMARY OF THE RULE OR CHANGE: The amendment provides new and amended language to Section R277-419-7 regarding unique identifiers for students.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated cost or savings to the state budget. The new and amended language is provided to emphasize assignment of a unique identifier for students who enter a school within the Utah public education system. The requirement will be satisfied within existing budgets.

◆ **LOCAL GOVERNMENTS:** There are no anticipated cost or savings to local government. Unique student identifier numbers are currently assigned. The new and amended language emphasizes the requirement.

◆ **SMALL BUSINESSES:** There are no anticipated cost or savings to small businesses. This rule and the amendments to this rule do not apply to businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. The new and amended language emphasizes the requirement to assign unique student identifiers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Unique student identifier numbers are currently assigned. The new and amended language emphasizes the requirement.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2012

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

R277. Education, Administration.

R277-419. Pupil Accounting.

R277-419-7. Student Identification and Tracking.

A[~~(+)~~]. Pursuant to Section 53A-1-603.5, LEAs shall:

(1) use the SSID system maintained by the USOE to assign every ~~[public school]~~ student enrolled in a program under the direction of the Board or in a program or a school that is supported by public school funding a unique student identifier~~[-and]~~.

(a) The number shall be assigned to a student upon enrollment into a public school program or a public school-funded program.

(b) The number shall not be the student's social security number or contain any personally identifiable information about the student.

(2) ~~[shall]~~ display the SSID on student transcripts exchanged with LEAs and Utah public institutions of higher education.

B(1) LEAs shall require all students to provide their legal first, middle, and last names at the time of registration to ensure that the correct SSID follows students who transfer among LEAs.

(2)(a) Names shall be transcribed from the student's birth certificate or other reliable proof of the student's identity and age, consistent with Section 53A-11-503;

(b) The direct transcription of student names from birth certificates or other reliable proof of student identity and age shall be the student's legal name for purposes of maintaining school records; and

(c) Schools or school districts may modify the order of student names, provide for nicknames, or allow for different surnames, consistent with court documents or parent preferences, so long as legal names are maintained on student records and used in transmitting student information to the USOE.

C. The USOE and LEAs shall track students and maintain data using students' legal names.

D. If there is a compelling need to protect a student by using an alias, the LEA should exercise discretion in recording the name of the student.

~~[E. The SSID shall be an arbitrary number and may not contain any personally identifying information about the student.]~~

KEY: education finance, school enrollment

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

Notice of Continuation: October 5, 2007

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

Education, Administration
R277-420
Aiding Financially Distressed School
Districts

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36070

FILED: 04/16/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule had not been substantively amended since 1987. The rule is amended to provide updated terminology.

SUMMARY OF THE RULE OR CHANGE: The changes to the rule provide updated terminology in the definitions, eligibility, and procedures for making interfund transfers.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-19-105 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 are only to update terminology which do not involve a cost or savings.

♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The changes are only to update terminology which do not involve a cost or savings.

♦ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. The changes apply to public education and do not affect businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. The changes are only to update terminology which do not involve a cost or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The changes update terminology only--no compliance costs required.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2012

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

R277. Education, Administration.

R277-420. Aiding Financially Distressed School Districts.

R277-420-1. Definitions.

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

[D]B. "Interfund transfer" means a transaction which withdraws money from one fund and places it in another without recourse. Interfund transfers are regulated by statute and Board rules. Interfund transfers do not include interfund loans in which money is temporarily withdrawn from a fund with full obligation for repayment during the fiscal year.

C. "School district," for purposes of this rule, means school district under the direction of the local board of education.

[E]D. "State Superintendent" means the State Superintendent of Public Instruction.

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

[E]E. "Without recourse" means there is no obligation to return withdrawn money to the fund from which it was transferred.

R277-420-2. Authority and Purpose.

A. This rule is authorized by Section 53A-19-105[~~U.C.A. 1953~~](5) which requires the Board to develop standards for

defining and aiding financially distressed school districts, and Section 53A-1-401(3)[~~U.C.A. 1953~~] which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify the eligibility requirements for and the procedures for nonrecurring or nonroutine interfund transfers for financially distressed school districts.

R277-420-3. Eligibility.

To qualify as a financially distressed school district, a school district shall meet all of the following requirements:

A. Have a deficit of three percent or more in its year end unappropriated maintenance and operation fund balance following a reduction for any amount in an undistributed reserve.

B. Be unable to meet its financial obligations in a timely manner.

C. Be unable to reduce the maintenance and operation deficit by twenty-five percent in its budget for the next year.

D. Have made reasonable, local efforts to eliminate the deficit.

E. Be financially incapable of meeting statewide educational standards adopted by the Board.

F. Have a deficit resulting from circumstances not subject to administrative decisions. This judgment shall be made [~~on the basis of~~]following an on-site visit and consultation with the school district and local school board by USOE staff.

R277-420-4. Procedures for Making Interfund Transfers.

A. A local school [~~district~~]board applying to qualify for an interfund transfer under this rule shall request that the USOE visit the school district, conduct an audit, and assist the local school board and district staff in developing a plan to eliminate the deficit.

B. The school district [~~must~~]shall meet the eligibility requirements of R277-420-3 and be approved as a financially distressed school district by the Board or its designee.

C. A school district designated as financially distressed may make nonrecurring or nonroutine interfund transfers to the maintenance and operation fund upon the approval of the Board or its designee.

D. The interfund transfer [~~must~~]shall be [~~set up~~]established by the school district under the direction of the local school board in an undistributed reserve account [~~in accordance~~]consistent with Section 53A-19-103[~~U.C.A. 1953~~].

KEY: education finance

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

Notice of Continuation: October 5, 2007

Authorizing, and Implemented or Interpreted Law: 53A-19-105; 53A-1-401(3); 53A-19-103

Education, Administration

R277-483-4

Identification of Persistently Dangerous Schools

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36071

FILED: 04/16/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule had not been substantively amended since 2003. Changes are necessary to remove outdated language.

SUMMARY OF THE RULE OR CHANGE: The amendments remove outdated language in Section R277-483-4.

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. Outdated language is removed from Section R277-483-4 which does not result in cost or savings.

♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. Outdated language is removed from Section R277-483-4 which does not result in cost or savings.

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

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. Outdated language is removed from Section R277-483-4 which does not result in cost or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Outdated language is removed from Section R277-483-4 which does not result in no compliance costs.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2012

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

R277. Education, Administration.**R277-483. Persistently Dangerous Schools.****R277-483-4. Identification of Persistently Dangerous Schools.**

A. [~~For the 2003-04 and 2004-05 school years, a~~]A school that reports data showing three percent or more of its studentbody has been expelled for violent criminal offenses, as defined under R277-483-1H and federal gun-free schools violations, as defined under R277-483-1E, shall be required to provide data to the USOE for the previous two school years documenting the number and type of student expulsions. If the documentation shows that more than three percent of the school's studentbody for both years in question was expelled for offenses designated in R277-483-1E or R277-483-1H or both, the school shall be designated a persistently dangerous school for the upcoming school year under this rule.

B. Following review of data collected under R277-483-3 and application of the criteria of this rule, the USOE shall recommend to the Board a list of persistently dangerous schools no later than July 1 of each school year [~~beginning with the 2003-2004 school year~~].

C. The Board shall review the list of recommended persistently dangerous schools. The board shall designate persistently dangerous schools at a regular open Board meeting in July or August of each year.

D. A school, working with the local board, shall be removed by the Board from the list on an annual basis if:

(1) the school provides evidence and information to the Board's satisfaction that proves that the school no longer meets the qualifying criteria of this rule and

(2) the school presents evidence to the Board of regular and consistent training of students, staff, and community about school safety, harassment, bullying, and problem solving.

KEY: expelled, persistently dangerous schools, school choice

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

Notice of Continuation: March 3, 2008

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); Title IX, Part E, Subpart 2, Section 9532

Education, Administration
R277-486
Professional Staff Cost Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36072

FILED: 04/16/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule had not been substantively amended since 2004. The rule is amended to include updated terminology.

SUMMARY OF THE RULE OR CHANGE: The amendments to this rule provide updated terminology in the definitions, authority and purpose, acceptable experience, mapping degree summary data to statutory formula, and data sources sections of the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-17a-107(2)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The amendments provide updated terminology which result in no cost or savings.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The amendments provide updated terminology which result in no cost or savings.

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

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The amendments provide updated terminology which result in no cost or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The amendments provide updated terminology which result in no compliance costs.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2012

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

R277. Education, Administration.**R277-486. Professional Staff Cost Program.****R277-486-1. Definitions.**

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

B. "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.

C. "ESEA" means the Elementary and Secondary Education Act, also known as the No Child Left Behind Act, P.L. 107-110, Title I, Part A, Subpart 1, Sec. 1119, January 8, 2002.

D. "FTE" means full time equivalent.

E. ~~["Local Education Agency (LEA)" means any organizational unit of the public education system existing under state law as either a traditional school district or a charter school authorized under Section 53A-1a-502.]~~ "LEA" means a local education agency, including local school boards/public school districts, and charter schools.

F. "National Board certified educator" means an educator who has been certified by the National Board for Professional Teaching Standards (NBPTS) by successfully completing a three-year process that may include national content-area assessment, an extensive portfolio, and assessment of video-taped classroom teaching experience.

G. "USOE" means Utah State Office of Education.

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

R277-486-2. 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-17a-107(2) which authorizes the Board to adopt a rule to require a certain percentage of a ~~district's~~ LEA's professional staff to be licensed in the area in which the teacher teaches in order for the ~~district~~ LEA to receive full funding under the state statutory formula, and by 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 satisfy statutory or federal regulatory percentages of licensed staff and support LEAs in

recruiting and retaining highly educated and experienced educators for instructional, administrative and other types of professional employment in public schools.

R277-486-3. Eligibility to Receive WPUs for Professional Staff.

A. LEAs shall receive WPUs in accordance with the formula provided in Section 53A-17a-107(1)(a):

(1) only for those educators who hold at least a bachelors degree; and

(2) only to the extent that such educators are qualified to work in the area to which they are assigned consistent with R277-520. For example, an educator who is employed full time but is appropriately qualified in only 75% of his assignments would count for only 0.75 FTEs in the calculation of WPUs.

(3) In order to receive full (100%) funding, an LEA shall have an appropriately qualified educator in every assignment.

B. An educator who is identified as qualified under R277-520 is not necessarily highly qualified for ESEA purposes.

C. LEAs shall not receive WPUs for interns in their second or subsequent years nor for paraprofessionals in any assignment.

R277-486-4. Acceptable Experience.

A. Educator experience for purposes of this rule shall be measured in one-year increments.

B. An educator shall be credited by the USOE, for purposes of the professional staff cost calculation, with one year of experience for every school year in which he is employed at least half-time (0.5 FTE) in an instructional or administrative position in any public school in the State of Utah or in any regionally accredited:

- (1) public school outside of the State of Utah;
- (2) private school; or
- (3) institution of higher education.

C. To obtain credit under Subsection B(1) through (3), the LEA which employs the educator shall submit to the USOE acceptable documentation verifying such experience, including documentation of the school's or institution's regional accreditation.

D. Employment in a prekindergarten position shall not be acceptable for this purpose, unless the educator is or was employed in a special education position in an accredited school.

E. Unpaid volunteer service, paid consulting, employment in non-instructional or non-administrative positions in a school setting, and ~~[time as]~~ a school internship shall not be acceptable experience under this rule.

F. Documentation of an educator's experience in a private school or institution of higher education may be required by USOE staff to determine relevance of experience.

R277-486-5. Acceptable Training.

Acceptable training under this rule may include:

A. Any degree at the bachelors level or above or credit beyond the current degree from a:

(1) regionally accredited institution of higher education; or

(2) postsecondary degree-granting institution accredited by any of the national accrediting agencies recognized by the United States Department of Education.

B. Any professional development activity consistent with R277-501 and approved in writing by the USOE.

R277-486-6. Mapping Degree Summary Data to Statutory Formula.

A. To ensure consistency in applying data from CACTUS to the formula, the following mapping of the relevant two-digit CACTUS Degree Summary codes to the five columns of the Professional Staff Cost formula table in Section 53A-17a-107(1)(a) shall be used:

- (1) 03 = Bachelor's Degree;
- (2) 04 or 05 = Bachelors + 30 quarter hours or 20 semester hours;
- (3) 06 = Master's Degree;
- (4) 07 or 08 = Master's Degree + 45 quarter hours or 30 semester hours;
- (5) 09 = Doctorate.

B. An ~~[district]~~LEA shall be credited for an individual with National Board certification at the doctorate level.

R277-486-7. Data Sources.

A. For LEAs that were in operation in the prior year, data shall be used from June 30 update of CACTUS as required by R277-484-3~~(e)]~~C.

B. For LEAs that were not in operation in the prior year, data shall be used from November 1 update of CACTUS as required by R277-484-3~~(f)]~~L.

KEY: professional staff

Date of Enactment or Last Substantive Amendment: ~~January 15, 2004]~~2012

Notice of Continuation: January 5, 2009

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-17a-107(3); 53A-1-401(3)

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

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 36073
FILED: 04/16/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to update definitions and terminology. The amendments also allow competency-based license holders (usually in charter schools) to move from Level 1 to Levels 2 or 3, giving their specific licenses greater longevity, though they would still be specific to the local education agency (LEA) requesting and documenting the license holders' qualifications.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule provide new and amended terminology and allow for competency-based license holders to advance to levels 2 and 3 competency-based licenses.

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. The amendments provide greater flexibility for LEAs and adequate protection for the integrity of an educator.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. These procedures will be managed within existing budgets.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This rule and the amendments apply to public education and do not affect businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs to persons other than small businesses, businesses, or local government entities. Allowing educators to earn Level 2 and Level 3 licenses through a competency rather than a course-taking route may save individuals money.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. There may be savings because educators will be allowed to earn Level 2 and 3 licenses through a competency rather than a course-taking route.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2012

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. "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.

[F]G. "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 an [school district/charter school]LEA 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]H. "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]I. "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]J. "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]K. "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]L. "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.

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

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

[N]O. "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]P. "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]Q. "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]R. "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]S. "USOE" means the Utah State Office of Education.

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.

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 an ~~[school district]~~LEA 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 an educator under a competency-based license or 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 as an educator or paraeducator;
- (ii) The applicant's experience has been successful based on documentation from the ~~[school/school district]~~LEA; and
- (iii) The USOE and employing LEA has approved the applicant's experience in lieu of pedagogy course(s).

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

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

(h) The ~~[school district]~~LEA shall assess the license applicant's disposition as a teacher following a minimum one school year full-time teaching experience. The ~~[district]~~LEA 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]~~LEA.

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

(b) An employing ~~[school district/charter school]~~LEA, 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]~~LEA shall assign a trained mentor to work with the applicant for licensing by competency.

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

(f) The ~~[school district/charter school]~~LEA 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]~~LEA 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 and satisfactory, the USOE shall recommend the applicant for a Level 1 educator license.

(5) USOE ARL candidates under R277-503-4[B]C(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.

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

(1) An ~~[local board/charter school board]~~LEA may apply to the Board for a ~~[school district/charter school specific]~~Level 1 competency-based license to fill a position in the ~~[school district/charter school]~~LEA. The application shall demonstrate that other licensing routes for the applicant are untenable or unreasonable.

(2) The employing ~~[school district/charter school]~~LEA shall request a ~~[school district/charter school specific]~~Level 1 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]~~Level 1 competency-based license from the ~~[local board/charter school board]~~LEA 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]~~Level 1 competency-based license from the ~~[local board/charter school board]~~LEA 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]~~LEA.

(5) Following receipt of documentation and consistent with Section 53A-6-104.5(2), the USOE shall approve a ~~[district/charter school specific]~~Level 1 competency-based license.

(6) If an individual with a ~~[district/charter school specific]~~Level 1 competency-based license leaves the ~~[district]~~LEA before the end of the employment period, the ~~[district]~~LEA shall notify the USOE Licensing Section regarding the end-of-employment date.

(7) The individual's ~~[district/charter school specific]~~Level 1 competency-based license shall be valid only in the ~~[district/charter school]~~LEA 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]~~Level 1 competency-based license shall prominently state the name of the ~~[school district/charter school]~~LEA followed by ~~[DISTRICT/CHARTER SCHOOL SPECIFIC COMPETENCY-BASED LICENSE]LEVEL 1 - LEA SPECIFIC - COMPETENCY-BASED LICENSE~~.

(9) An ~~[school district/charter school]~~LEA 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) A Level 1 competency-based license is equivalent to the Level 1 license as described in R277-500 and R277-502 as to length and professional development expectations and subject to the same renewal procedures except that an individual may renew a

Level 1 competency-based license despite the limitations of R277-504-3D.

(11) A Level 2 competency-based license may be issued to a Level 1 competency-based license holder if that individual successfully completes the Entry years Enhancement program as detailed in R277-522.

(12) A Level 2 competency-based license is equivalent to the Level 2 license as described in R277-500 and R277-502 as to length and professional development expectations.

(13) A Level 3 competency-based license may be issued to a Level 2 competency-based license holder if that individual holds a doctorate in education or in a field related to a content unit of the public education system from an accredited institution.

(14) A Level 3 competency-based license is equivalent to the Level 3 license as described in R277-500 and R277-502 as to length and professional development expectations.

(1[0]5) 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~~]LEA specific license.

(1[+]6) 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~~]LEA. 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~~]LEA-sponsored endorsement program which includes content knowledge and content-specific pedagogical knowledge approved by the USOE.

(a) The university or [~~school-district~~]LEA 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~~]LEA and USOE authorization.

KEY: teachers, alternative licensing

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

Notice of Continuation: March 15, 2012

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

Education, Administration R277-520-6 Eminence

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 36074
FILED: 04/16/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to allow for an extended eminence letter of authorization with adequate documentation in specific circumstances.

SUMMARY OF THE RULE OR CHANGE: The changes to Section R277-520-6 provide new and revised language providing for an extended eminence letter of authorization in specific circumstances.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-6-104(2)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The new and revised language provides for an extended eminence letter of authorization and updated terminology which do not result in a cost or savings.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The new and revised language provides for an extended eminence letter of authorization and 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 and the amendments relate to public education and do not affect businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs to persons other than small businesses, businesses, or local government entities. The new and revised language provides for an extended

eminence letter of authorization and updated terminology which do not result in a cost. There may be savings for individuals who would, but for this rule, be required to complete higher education course work to become fully licensed educators. An extended letter of authorization allows an individual, even without a bachelors degree, to be considered a licensed educator.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The new and amended language provide for an extended eminence letter of authorization and updated terminology which result in no compliance costs.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2012

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

R277. Education, Administration.

**R277-520. Appropriate Licensing and Assignment of Teachers.
R277-520-6. Eminence.**

A. The purpose of an eminence authorization is to allow individuals with exceptional training or expertise, consistent with R277-520-1G, 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 except as provided in R277-520-6C.

~~_____ C. Teachers working under an eminence authorization shall never be considered highly qualified.~~

~~_____ C. In identified circumstances, teachers with an eminence authorization may teach more than 37 percent of the regular instructional load. An eminence authorization may be approved by the Board if:~~

~~_____ (1) the LEA can find no other qualified individual to fill the position, then:~~

~~_____ (a) the LEA shall submit the following documented information to the USOE annually:~~

~~_____ (i) description;~~

~~_____ (ii) recruitment efforts;~~

~~_____ (iii) the qualifications of all applicants; and~~

~~_____ (iv) the LEA's rationale for hiring the individual.~~

~~_____ (b) the USOE shall review the information within 15 days of receipt.~~

~~_____ (c) the USOE shall notify the individual and the LEA if the USOE approves the documented information.~~

~~_____ (d) the LEA shall submit a request for a Letter of Authorization to the Board for the individual through normal administrative procedures; or~~

~~_____ (2) An individual has exceptional skills, expertise, and experience that make him the primary candidate for the position, then:~~

~~_____ (a) the LEA shall submit the following documented information to the USOE annually:~~

~~_____ (i) information about the position;~~

~~_____ (ii) the individual's expertise, and experience; and~~

~~_____ (iii) the LEA's rationale for hiring the individual.~~

~~_____ (b) the USOE shall review the information within 15 days of receipt.~~

~~_____ (c) the USOE shall notify the individual and the LEA if the USOE approves the documented information.~~

~~_____ (d) the LEA shall submit a request for a Letter of Authorization to the Board for the individual through normal administrative procedures.~~

~~D. [Local boards]LEAs 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]LEA.~~

~~E. The [local board of education]LEA that employs the teacher with an eminence authorization shall determine the amount and type of professional development required of the teacher.~~

~~F. An [local board of education]LEA 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.~~

KEY: educator, license, assignment

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

Notice of Continuation: July 1, 2010

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-6-104(2)(a)

Education, Administration
R277-700
 The Elementary and Secondary School
 Core Curriculum

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 36075
 FILED: 04/16/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide language that allows for flexibility in old and new courses while transitioning from the current secondary mathematics courses to the new secondary mathematics courses which are aligned to the Utah Core Standards, and updated terminology throughout the rule.

SUMMARY OF THE RULE OR CHANGE: The amended rule provides for new and revised definitions, new language regarding new mathematics courses in the high school requirements, greater local education agency (LEA) flexibility for middle school students identified as mathematically gifted, and updated terminology throughout the rule.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. New and revised mathematics courses with flexibility for transition and middle school students will be handled with existing resources.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. New and revised mathematics courses with flexibility for transition and middle school students will be handled with existing resources.

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

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. New and revised mathematics courses with flexibility for transition and younger students will not result in cost or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. New and revised mathematics courses with flexibility for transition and younger students will not result in a compliance costs.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2012

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

R277. Education, Administration.

R277-700. The Elementary and Secondary School Core Curriculum.

R277-700-1. Definitions.

A. "Accredited" means evaluated and approved under the Standards for Accreditation of the Northwest Accreditation Commission or the accreditation standards of the Board, available from the USOE Accreditation Specialist.

B. "Applied courses" means public school courses or classes that apply the concepts of Core subjects. Courses may be offered through Career and Technical Education or other areas of the curriculum.

C. "Basic skills course" means a subject which requires mastery of specific functions, including skills that prepare students for the future, and was identified as a course to be assessed under Section 53A-1-602.

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

E. "Career and Technical Education(CTE)" means organized educational programs or courses which directly or indirectly prepare students for employment, or for additional preparation leading to employment, in occupations, where entry requirements generally do not require a baccalaureate or advanced degree.

F. "Core [~~Curriculum content s~~]Standard" means a [~~—broad~~] statement of what students enrolled in public schools are expected to know and be able to do at specific grade levels or following completion of identified courses.

~~H. "Core Curriculum objective" means a focused description of what students enrolled in public schools are expected to know and do at the completion of instruction.~~

[F]G. "Core subjects" means courses for which there is a declared set of Core ~~[curriculum objectives]~~Standards as approved by the Board.

[G]H. "[~~Core Curriculum e~~]Criterion-referenced test (CRT[s])" means a test to measure performance against a specific standard. The meaning of the scores is not tied to the performance of other students.

[J]I. "Demonstrated competence" means subject mastery as determined by ~~[school district]~~LEA standards and review. ~~[School district F]~~Review may include such methods and documentation as: tests, interviews, peer evaluations, writing samples, reports or portfolios.

[K]J. "Elementary school" for purposes of this rule means grades K-6 in whatever kind of school the grade levels exist.

[L]K. "High school" for purposes of this rule means grades 9-12 in whatever kind of school the grade levels exist.

[M]L. "Individualized Education Program (IEP)" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with the Utah Special Education Rules and Part B of the Individuals with Disabilities Education Act (IDEA).

M. "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.

N. "Life Skills document" means a companion document to the Core curriculum that describes the knowledge, skills, and dispositions essential for all students; the life skills training helps students transfer academic learning into a comprehensive education.

O. "Middle school" for purposes of this rule means grades 7-8 in whatever kind of school the grade levels exist.

P. "SEOP" means student education occupation plan. An SEOP shall include:

(1) a student's education occupation plans (grades 7-12) including job placement when appropriate;

(2) all Board and ~~[local]~~LEA board graduation requirements;

(3) evidence of parent, student, and school representative involvement annually;

(4) attainment of approved workplace skill competencies; and

(5) identification of post secondary goals and approved sequence of courses.

Q. "State Core Curriculum (Core Curriculum)" means ~~[those standards of learning that are essential for all Utah students]~~the courses, content, instructional elements, materials, resources and pedagogy that are used to teach the Core Standards, as well as the ideas, ~~[concepts,]~~knowledge, practice and skills that ~~[provide a foundation on which subsequent learning may be built]~~support the Core Standards, as established by the Board.

~~[R. "Supplemental courses" means public school courses that provide students with the skills to succeed in Core subject areas.~~

[S]R. "USOE" means the Utah State Office of Education.

~~[T. "Utah Basic Skills Competency Test (UBSCT)" means a test to be administered to Utah students beginning in the tenth grade (suspended through at least the 2011-2012 school year) to include, at a minimum, components on English, language arts, reading and mathematics. Utah students shall satisfy the requirements of the UBSCT in addition to school or district~~

~~graduation requirements prior to receiving a basic high school diploma unless exempted consistent with Section 53A-1-603(5) and R277-705-11.~~

R277-700-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution, which places general control and supervision of the public schools under the Board; Section 53A-1-402(1)(b) and (c) which directs the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements; Section 53A-1-402.6 which directs the Board to establish a Core Curriculum in consultation with ~~[local]~~LEA boards and superintendents and directs ~~[local]~~LEA boards to design local programs to help students master the Core Curriculum; and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify the minimum Core Curriculum and Core Standard requirements for the public schools, to give directions to ~~[local boards and school districts]~~LEAs about providing the Core Curriculum and Core Standards for the benefit of students, and to establish responsibility for mastery of Core ~~[Curriculum]~~Standard requirements.

R277-700-3. Core Curriculum and Core Standards ~~and Objectives~~.

A. The Board establishes minimum course description standards and objectives for each course in the required general core, which is commonly referred to as part of the Core Curriculum.

B. Course descriptions for required and elective courses shall be developed cooperatively by ~~[school districts]~~LEAs and the USOE with opportunity for public and parental participation in the development process.

C. The descriptions shall contain mastery criteria for the courses, shall stress mastery of the course material and Core ~~[objectives, s]~~Standards and life skills consistent with the Core Curriculum and Life Skills document. Mastery shall be stressed rather than completion of predetermined time allotments for courses.

D. Implementation of the Core Curriculum and student assessment procedures are the responsibility of ~~[local boards of education]~~LEA boards consistent with state law.

~~[E. This rule shall apply to students in the 2007-2008 graduating class.~~

R277-700-4. Elementary Education Requirements.

A. The Board shall establish Core Standards and a Core Curriculum for elementary schools, grades K-6.

B. Elementary School Education Core ~~[Curriculum Content]~~Subject Area Requirements:

(1) Grades K-2:

(a) Reading/Language Arts;

(b) Mathematics;

(c) Integrated Curriculum.

(2) Grades 3-6:

(a) Reading/Language Arts;

(b) Mathematics;

(c) Science;

(d) Social Studies;

(e) Arts;

- (i) Visual Arts;
- (ii) Music;
- (iii) Dance;
- (iv) Theatre.
- (f) Health Education;
- (g) Physical Education;
- (h) Educational Technology;
- (i) Library Media.

C. It is the responsibility of ~~[the local]~~LEA boards~~[-of education]~~ to provide access to the Core Curriculum to all students.

D. Student mastery of the ~~[general—]~~Core ~~[Curriculum]~~Standards is the responsibility of ~~[local boards of education]~~LEA boards.

E. Informal assessment should occur on a regular basis to ensure continual student progress.

F. Board-approved CRT[?]s shall be used to assess student mastery of the following:

- (1) reading;
- (2) language arts;
- (3) mathematics;
- (4) science~~[in elementary grades 4-6]~~; and
- (5) effectiveness of written expression in ~~[grade 6]~~grades five and eight.

G. Provision for remediation for all elementary students who do not achieve mastery is the responsibility of ~~[local]~~LEA boards~~[-of education]~~.

R277-700-5. Middle School Education Requirements.

A. The Board shall establish Core Standards and a Core Curriculum for middle school education.

B. Students in grades 7-8 shall earn a minimum of 12 units of credit to be properly prepared for instruction in grades 9-12.

C. ~~[Local]~~LEA boards may require additional units of credit.

D. Grades 7-8 Core Curriculum Requirements and units of credit:

- (1) Language Arts (2.0 units of credit);
- (2) Mathematics (2.0 units of credit);
- (3) Science (1.5 units of credit);
- (4) Social Studies (1.5 units of credit);
- (5) The Arts (1.0 units of credit):
 - (a) Visual Arts;
 - (b) Music;
 - (c) Dance;
 - (d) Theatre.
- (6) Physical Education (1.0 units of credit);
- (7) Health Education (0.5 units of credit);
- (8) Career and Technical Education, Life, and Careers (1.0 units of credit).

E. Best practices, technology and other instructional media shall be used in middle school curricula to increase the relevance and quality of instruction.

F. Board-approved CRT[?]s shall be used to assess student mastery of the following:

- (1) reading;
- (2) language arts;
- (3) mathematics; and
- (4) science in grades 7 and 8.

R277-700-6. High School Requirements.

A. The Board shall establish Core Standards and a Core Curriculum for students in grades 9-12.

B. Students in grades 9-12 shall earn a minimum of 24 units of credit through course completion or through competency assessment consistent with R277-705 to graduate.

C. Grades 9-12 Core Curriculum credits from courses approved by the Board, as specified:

- (1) Language Arts (4.0 units of credit):
 - (a) Ninth grade level (1.0 unit of credit);
 - (b) Tenth grade level (1.0 unit of credit);
 - (c) Eleventh grade level (1.0 unit of credit); and
 - (d) Twelfth grade level (1.0) Unit of credit) consisting of

applied or advanced language arts credit from the list of Board-approved courses using the following criteria and consistent with the student's SEOP:

- (i) courses are within the field/discipline of language arts with a significant portion of instruction aligned to language arts content, principles, knowledge, and skills; and
- (ii) courses provide instruction that leads to student understanding of the nature and disposition of language arts; and
- (iii) courses apply the fundamental concepts and skills of language arts; and
- (iv) courses provide developmentally appropriate content; and
- (v) courses develop skills in reading, writing, listening, speaking, and presentation;

(2) Mathematics (3.0 units of credit) met minimally through successful completion of a combination of the foundation or foundation honors courses, Algebra 1, Geometry, Algebra 2, Secondary Mathematics I, Secondary Mathematics II, Secondary Mathematics III as determined in the student's SEOP. After the 2014-2015 school year Mathematics (3.0 units of credit) shall be met minimally through successful completion of the foundation or foundation honors courses Secondary Mathematics I, Secondary Mathematics II, and Secondary Mathematics III.

(a) Students may opt out of Algebra 2 or Secondary Mathematics III with written parent/legal guardian request. If an opt out is requested, the third math credit shall come from the advanced and applied courses on the Board-approved mathematics list.

~~[(b) If credit for a foundation course is earned before ninth grade, the student shall still earn 3.0 units of credit by taking other courses from the foundation, advanced and applied Board-approved mathematics list consistent with the student's SEOP and the following criteria:~~

- ~~(i) courses are within the field/discipline of mathematics with a significant portion of instruction aligned to mathematics content, principles, knowledge, and skills; and~~
- ~~(ii) courses provide instruction that leads to student understanding of the nature and disposition of mathematics; and~~
- ~~(iii) courses apply the fundamental concepts and skills of mathematics; and~~
- ~~(iv) courses provide developmentally appropriate content; and~~
- ~~(v) courses include the five process skills of mathematics: problem solving, reasoning, communication, connections, and representation.~~

] _____ (b) 7th and 8th grade students may earn credit for a mathematics foundation course before ninth grade, consistent with the student's SEOP and if at least one of the following criteria is met:

_____ (i) the student is identified as gifted in mathematics on at least two different USOE-approved assessments;

_____ (ii) the student is dual enrolled at the middle school/junior high school and the high school;

_____ (iii) the student qualifies for promotion one or two grade levels above the student's age group and is placed in 9th grade;

_____ (iv) the student takes the USOE competency test in the summer prior to 9th grade and earns high school graduation credit for the courses.

_____ (c) Other students who successfully complete a foundation course before ninth grade shall still earn 3.0 units of credit by taking the other foundation courses and an additional course from the advanced and applied Board-approved mathematics list consistent with the student's SEOP and the following criteria:

_____ (i) courses are within the field/discipline of mathematics with a significant portion of instruction aligned to mathematics content, principles, knowledge, and skills;

_____ (ii) courses provide instruction that lead to student understanding of the nature and disposition of mathematics;

_____ (iii) courses apply the fundamental concepts and skills of mathematics;

_____ (iv) courses provide developmentally appropriate content; and

_____ (v) courses include the five process skills of mathematics: problem solving, reasoning, communication, connections, and representation.

_____ (c) Students who are gifted and students who are advanced may also:

_____ (i) Take the honors courses at the appropriate grade level; and

_____ (ii) Continue taking higher level mathematics courses in sequence through grade 11, resulting in a higher level of mathematics proficiency and increased college and career readiness.

_____ (d) A student who successfully completes a Calculus course has completed mathematics graduation requirements, regardless of the number of mathematics credits earned.

[e] Students should consider taking additional credits during their senior year that align with their postsecondary career or college expectations. Students who desire a four year college degree in a science, technology, engineering or mathematics (STEM) career area should take a calculus course.

(3) Science (3.0 units of credit):

(a) at a minimum, two courses from the four science foundation areas:

(i) Earth Systems Science (1.0 units of credit);

(ii) Biological Science (1.0 units of credit);

(iii) Chemistry (1.0 units of credit);

(iv) Physics (1.0 units of credit); and

(b) one additional unit of credit from the foundation courses or the applied or advanced science list determined by the [local]LEA board and approved by the Board using the following criteria and consistent with the student's SEOP:

(i) courses are within the field/discipline of science with a significant portion of instruction aligned to science content, principles, knowledge, and skills; and

(ii) courses provide instruction that leads to student understanding of the nature and disposition of science; and

(iii) courses apply the fundamental concepts and skills of science; and

(iv) courses provide developmentally appropriate content; and

(v) courses include the areas of physical, natural, or applied sciences; and

(vi) courses develop students' skills in scientific inquiry.

(4) Social Studies (3.0 units of credit):

(a) Geography for Life (0.5 units of credit);

(b) World Civilizations (0.5 units of credit);

(c) U.S. History (1.0 units of credit);

(d) U.S. Government and Citizenship (0.5 units of credit);

(e) General Financial Literacy (0.5 units of credit).

(5) The Arts (1.5 units of credit from any of the following performance areas):

(a) Visual Arts;

(b) Music;

(c) Dance;

(d) Theatre;

(6) Physical and Health Education (2.0 units of credit):

(a) Health (0.5 units of credit);

(b) Participation Skills (0.5 units of credit);

(c) Fitness for Life (0.5 units of credit);

(d) Individualized Lifetime Activities (0.5 units of credit) or team sport/athletic participation (maximum of 0.5 units of credit with school approval).

(7) Career and Technical Education (1.0 units of credit):

(a) Agriculture;

(b) Business;

(c) Family and Consumer Sciences;

(d) Health Science and Technology;

(e) Information Technology;

(f) Marketing;

(g) Technology and Engineering Education;

(h) Trade and Technical Education.

(8) Educational Technology (0.5 units of credit):

(a) Computer Technology (0.5 units of credit for the class by this specific name only); or

(b) successful completion of Board-approved competency examination (credit may be awarded at the discretion of the [school or school district]LEA).

(9) Library Media Skills (integrated into the subject areas).

(10) Electives (6.0 units of [local board approved] credit).

D. Board-approved CRT[?]s shall be used to assess student mastery of the following subjects:

(1) reading;

(2) language arts through grade 11;

(3) mathematics as defined under R277-700-[7]6C(2); and

(4) science as defined under R277-700-[7]6C(3); and

_____ (5) effectiveness of written expression in grade 9].

E. [Local]LEA boards may require students to earn credits for graduation that exceed minimum Board requirements.

F. ~~[E]~~Additional elective course[s] offerings ~~[shall]~~may be established and offered at the discretion of ~~[the local]~~an LEA board.

G. Students with disabilities served by special education programs may have changes made to graduation requirements through individual IEPs to meet unique educational needs. A student's IEP shall document the nature and extent of modifications~~;~~ and substitutions or exemptions made to accommodate a student with disabilities.

H. The Board and USOE may review ~~[local]~~LEA boards' lists of approved courses for compliance with this rule.

I. Graduation requirements may be modified for individual students to achieve an appropriate route to student success when such modifications:

- (1) are consistent with the student's IEP or SEOP or both;
- (2) are maintained in the student's file and include the parent's/guardian's signature; and
- (3) maintain the integrity and rigor expected for high school graduation, as determined by the Board.

R277-700-[8]7. Student Mastery and Assessment of Core ~~[Curriculum]~~Standards ~~and Objectives~~.

A. Student mastery of the Core Curriculum at all levels is the responsibility of ~~[local]~~LEA boards of education.

B. Provisions for remediation of secondary students who do not achieve mastery is the responsibility of ~~[local]~~LEA boards of education under Section 53A-13-104.

C. Students who are found to be deficient in basic skills through U-PASS shall receive remedial assistance according to provisions of Section 53A-1-606(1).

D. If parents object to portions of courses or courses in their entirety under provisions of law (Section 53A-13-101.2) and rule (R277-105), students and parents shall be responsible for the mastery of Core objectives to the satisfaction of the school prior to promotion to the next course or grade level.

E. Students with ~~[D]~~disabilities:

(1) All students with disabilities served by special education programs shall demonstrate mastery of the Core ~~[Curriculum]~~Standards.

(2) If a student's disabling condition precludes the successful demonstration of mastery, the student's IEP team, on a case-by-case basis, may provide accommodations for or modify the mastery demonstration to accommodate the student's disability.

F. Students may demonstrate competency to satisfy course requirements consistent with R277-705-3.

G. All Utah public school students shall participate in state-mandated assessments, as ~~[required by law unless specifically exempted consistent with R277-705-11]~~specified in R277-404.

~~[H. Utah public school students shall participate in the Utah Basic Skills Competency Test, as defined under R277-700-11 unless specifically exempted consistent with R277-705-11.]~~

~~[F]H. [School and school districts]LEAs are ultimately responsible for and shall [submit all required student assessments irrespective of allegations of intentional or unintentional violations of testing security or protocol]comply with all assessment procedures, policies and ethics as described in R277-473.~~

KEY: curricula

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

Notice of Continuation: January 8, 2008

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(b); 53A-1-402.6; 53A-1-401(3)

**Education, Administration
R277-733
Adult Education Programs**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36076

FILED: 04/16/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide procedures pertaining to adult education carryover funds and fund balances, supplemental funds, cash control, the resolution of program audit/monitoring discrepancies, and updated definitions and terminology.

SUMMARY OF THE RULE OR CHANGE: The amendments to this rule provide new and revised definitions, changes to program standards, fiscal procedures, program, curriculum outcomes and student mastery; adult education programs--tuition and fees, allocation of adult education funds, and adult education records and audits.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The changes are provided to ensure adult education program compliance and accountability. There are no costs associated with updating procedures. There will be increased accountability and perhaps savings.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The changes are provided to ensure adult education program compliance and accountability. There are no costs associated with updating procedures and definitions. There may be savings.

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

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other

than small businesses, businesses, or local government entities. The changes will provide adult education program compliance and accountability. There are no costs associated with updating procedures. There may be savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The changes are provided to ensure adult education program compliance and accountability. There are no compliance costs associated with updating procedures.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2012

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

R277. Education, Administration.

R277-733. Adult Education Programs.

R277-733-1. Definitions.

A. "Adult" means an individual 18 years of age or over.

B. "Adult education" means organized educational programs below the collegiate/postsecondary level, other than regular full-time K-12 secondary education programs, provided by [~~school—districts~~]LEAs or nonprofit organizations affording opportunities for individuals having demonstrated both presence and intent to reside within the state of Utah who are out-of-school youth (16 years of age and older) or adults who have or have not graduated from high school, to improve their literacy levels and to further their high school level education.

C. "Adult Basic Education (ABE)" means a program of instruction below the 9.0 academic grade level for adults who lack competency in reading, writing, speaking, problem solving or computation at a level that substantially impairs their ability to find or retain adequate employment that will allow them to become employable, contributing members of society and preparing them for advanced education and training. The instruction is designed to help adults by:

- (1) increasing their independence;
- (2) improving their ability to benefit from occupational training;
- (3) increasing opportunities for more productive and profitable employment; and
- (4) making them better able to meet adult responsibilities.

D. "Adult Education and Family Literacy Act (AEFLA)" means Title II of the Workforce Investment Act (WIA) of 1998 which provides the principle source of federal support for adult basic and literacy education programs for adults who lack basic skills, an Adult Education Secondary Diploma or its equivalency, or proficiency in English.

E. "Adult High School Completion (AHSC)" means a program of academic instruction at the 9.0 grade level or above in Board-approved subjects for eligible adult education students who are seeking an Adult Education Secondary Diploma from an adult education program.

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

G. "Community-Based Organization (CBO)" means a nonprofit organization:

- (1) eligible for and accepting federal AEFLA funds; and
- (2) for the sole purpose of providing adult education services to qualified adult education learners.

(3) All rules and laws that apply to [~~schools/school—districts~~]LEAs shall also apply to CBOs that receive adult education funding.

(4) CBOs:

- (a) apply to the USOE;
- (b) receive adult education funding through a competitive process; and
- (c) receive USOE funding on a reimbursement basis only.

H. "Consumable items" means student workbooks, student packets, computer disks, pencils, papers, notebooks, and other similar personal items for which a student retains ownership during the course of study.

I. "Desk monitoring" means the review of UTopia data to ensure program integrity.

J. "Eligible adult education student" means an individual who provides documentation that his primary and permanent residency is in Utah, and:

- (1) is 17 years of age or older, and whose high school class has graduated; or
- (2) is under 18 years of age and is married; or
- (3) has been adjudicated as an adult; or
- (4) is an out-of-school youth 16 years of age or older who has not graduated from high school.

K. "Enrollee" means an adult student who has 12 or more contact hours in an adult education program during a fiscal/program year, an academic assessment establishing an Entering Functioning Level, has an adult education Student Education Occupation Plan (SEOP) with an established goal, and a defined funding code. Enrollee status is based on the last date that all of the above items are entered into UTopia.

L. "English for Speakers of Other Languages (ESOL)" is an instructional program provided for non-native language speakers.

M. "Fee" means any charge, deposit, rental, or other mandatory payment, however designated, whether in the form of money or goods. Admission fees, transportation charges, and similar payments to third parties are fees if the charges are made in

connection with an activity or function sponsored by or through an adult education program. All fees are subject to approval by the local school board of education or local board of trustees.

N. "General Educational Development (GED) preparation" means a program that provides instruction in five specific subject areas for eligible adult education students who seek a Utah High School Completion Diploma by successfully passing all five GED Tests. ~~[-This definition is effective on July 1, 2009.]~~

O. "General Educational Development (GED) Testing" means the test required under R277-702.

~~[-P. "Latest official census data" means the most current statistical information available used to determine the number of adults who need adult education services, and determined by:~~

- ~~_____ (1) individuals 16 years of age and older; or~~
- ~~_____ (2) individuals 16 years of age and older whose primary language is other than English; or~~
- ~~_____ (3) individuals 16 years of age and older without a high school diploma or its equivalency - ungraduated adults.~~

~~]-P. "LEA" means a local education agency, including local school boards and public school districts.~~

Q. "Measurable outcomes" means indicators of student achievement in adult education programs used for state funding purposes. These outcomes are described in R277-733-[9]10.

R. "Northwest" means the Northwest Accreditation Commission, the regional accrediting association of which Utah is a member.

~~[R]S. "Other eligible adult education student" means an individual 16 to 19 years of age whose high school class has not graduated and is counted in the regular school program who receives instruction in both a traditional and adult education program. The funds generated, weighted pupil unit (WPU) [or]and collected fees[-or both], are pro-rated and credited to the adult education program for attendance in an adult education program.~~

~~[S]I. "Out-of-school youth" means a student 16 years of age or older who has not graduated from high school and is no longer enrolled in a K-12 program of instruction.~~

~~[F]U. "Participant" means an adult education student who does not meet the qualifications of an adult education enrollee.~~

V. "Student education/occupation plan" or "SEOP," for purposes of adult education and this rule, means a plan developed by a student in consultation with adult education program counselors, teachers, and administrators that:

- ~~(1) is initiated at the entrance into an adult education program;~~
- ~~(2) identifies a student's skills and objectives;~~
- ~~(3) maps out a strategy to guide a student's course selection; and~~
- ~~(4) links a student to post-secondary options, including higher education and careers through a transition process defined by the adult education program.~~

~~[H]W. "Teachers of English to Speakers of Other Languages (TESOL)" means a credential for teachers of ESOL.~~

~~[V]X. "Tuition" means the base cost of an adult education program that provides services to adult education students.~~

~~[W]Y. "USOE" means the Utah State Office of Education.~~

~~[X]Z. "Utah High School Completion Diploma" is a diploma issued by the Board and distributed by the GED Testing~~

Centers as agents of the Board to an individual who passes all five subject areas of the GED Tests at a Utah GED Testing Center based on Utah passing standards; measuring the major and lasting outcomes and concepts associated with a traditional four-year high school experience.

~~[Y]AA. "UTopia" means Utah Online Performance Indicators for Adult Education statewide database.~~

~~[Z]BB. "Waiver release form" means a form signed[-at least annually] by an adult education student allowing for release of the student's personal data and student education occupation plan, including social security number and GED scores, for data matching purposes with agencies such as the Department of Workforce Services, higher education, Utah State Office of Rehabilitation and GED Scoring Services. Signed waiver allows a student's education records to be shared with other adult education programs or interested agencies for the purpose of skill development, job training or career planning, or other purposes.~~

R277-733-4. Program Standards.

A. ~~[Local Utah a]~~Adult education programs shall comply with state and federal requirements and Board rules and follow procedures as defined in the Utah Adult Education Policy and Procedures Guide published, updated, and available from the USOE.

B. ~~[Local Utah a]~~Adult education programs shall make reasonable efforts to market and inform prospective students within their geographic areas of the availability of the programs and provide enrollment information.

C. Utah adult education services may be offered to qualifying individuals whose primary residence is located in ~~[a community]~~communities closely bordering Utah not conducive to commuting to the bordering state's closest adult education program. These individuals~~[-if approved by the adult education program in the school district providing the services,]~~ shall not be charged out-of-state Adult Education tuition.

~~[-D. Adult education programs/courses may also be made available to Utah residents who are between the ages of 16 and 18, as determined necessary by local adult education programs.~~

~~[E]D. [Local a]~~Adult education programs shall make reasonable efforts to schedule classes at~~[-local community]~~ sites and times that meet the needs of adult education students.

~~[F]E. Each eligible adult education student shall have a written Student Education Occupation Plan (SEOP) defining the student's goal(s) based upon a complete academic assessment, prior academic achievement, work experience and an established Entering Functioning Level. Annually, the plan shall be reviewed by the student and a designated program official and maintained in the student's file along with a signed data matching/agency sharing waiver release form.~~

~~[G]E. Only courses identified in R277-733-[7]8 [qualify for adult education funds] shall be taught by adult education staff.~~

~~[H]G. [Local a]~~Adult education programs shall establish and maintain a local adult education advisory committee consisting of representation from the Utah Department of Workforce Services, Vocational Office of Rehabilitation, higher education and other interested community members with the responsibility to advocate for exemplary adult education programs through collaboration and partnerships with businesses and other community agencies.

[F]H. The USOE shall evaluate ~~local~~ programs through tri-annual site monitoring visits, monthly desk monitoring, and as needed, additional site visits or both, to assure compliance.

[F]I. Education staff, including program administrators, ~~assigned to provide education services~~ shall be qualified and appropriate for their assignments.

[K]J. The teaching certificate and endorsement held by a staff member of an ~~school district~~ LEA or community-based program shall be important in evaluating the appropriateness of the teacher's assignment, but not controlling. For instance, elementary teachers may teach ~~secondary age~~ adult students who are performing academically at an elementary level in certain subjects. Individuals teaching an adult education high school completion class shall hold a valid Utah elementary or secondary education license and may issue adult education high school completion credits in multiple subjects. Non-licensed individuals providing instruction in ESOL, ABE, GED Test preparation or AHSC classes shall instruct under the supervision of a licensed program employee.

[E]K. Individuals with post-secondary degrees not in possession of a Utah teaching license may be considered for employment solely in an adult education program teaching adult students by obtaining an Alternative Route to License as defined in R277-518, Career and Technical Education Licenses.

[M]L. An [F]individual[s] [with]who has TESOL or ESOL credentials in lieu of a Utah teaching license may be considered for employment solely in an adult education community-based program [teaching adult students following the completion of a student teaching experience in an accredited adult education program]funded to provide ESL services.

R277-733-5. Fiscal Procedures.

A. State funds appropriated for adult education are allocated in accordance with Section 53A-17a-119.

B. No eligible ~~school district~~ LEA shall receive less than its portion of an eight percent base amount of the state appropriation if:

(1) instructional services approved by the USOE have been provided to eligible adult students during the preceding fiscal year; or

(2) the ~~school district~~ LEA is preparing to offer such services--such a preparation period may not exceed two years.

C. Lapsing and nonlapsing funds

(1) Funds appropriated for adult education programs shall be subject to Board accounting, auditing, and budgeting rules and policies.

(2) Ten percent or \$50,000, whichever is less, of [S]state adult education funds [which are] allocated to [school district]LEA adult education programs [and are]not expended in [a]the current fiscal year may be carried over and spent [to]in the next fiscal year with written approval by the USOE.

(3) A request to carry over funds shall be submitted for approval by August 1 annually. Approved carryover amounts shall be detailed in a revised budget submitted to the adult education coordinator no later than October 1 in the year requested.

(4) Excess[—These] funds may be considered in determining the [school district's]LEA's allocation for the next fiscal year.[—Carried over funds shall be expended within the next fiscal year. If funds are not expended, they shall be recaptured by the USOE on February 1 of each program year, and reallocated to

~~other school district adult education programs based on need and effort as determined by the Board consistent with Section 53A-17a-119(3).~~

(5) Annually, fund balances in excess of 10 percent or \$50,000 shall be recaptured by the USOE no later than February 1 and reallocated to LEA adult education programs through the supplemental award process based on need and effort as determined by the Board consistent with Section 53A-17a-119(3).

D. The USOE shall develop uniform forms, deadlines, program reporting and accounting procedures, and guidelines to govern the state (legislative) and federal AEFLA adult education funded programs. The Utah Adult Education Policy and Procedures Guide (updated annually) including forms, procedures and guidelines is available on the USOE adult education website.

R277-733-7. Adult Education Pupil Accounting.

A. An ~~Utah~~ LEA administered adult education program shall receive WPU funding for a student at the rate of 990 clock hours of membership per one weighted pupil (with part-time enrollment pro-rated by the ~~school district~~ LEA) for a student who is a resident of a Utah school district who meets the following criteria:

(1) is at least 16 years of age but less than 19 years of age;

(2) who has not received a high school diploma or a Utah High School Completion Diploma;

(3) who intends to graduate from a K-12 high school; and

(4) who attends an SEOP meeting with his school counselor, school administrator/designee, parent/legal guardian to discuss the appropriateness of the student's participation in adult education[—]; or

~~[B:]~~(5) A student 17 years of age or older, without a high school diploma but whose high school class has graduated, who is a Utah resident, and who intends to graduate from a K-12 high school, may, with parental/guardian consultation and written approval from all parties (if applicable), enroll in the state administered adult education program upon proof of Utah residency. Student attendance up to 990 clock hours of membership is equivalent to 1 FTE per year.

~~[+]~~B. The clock hours of students enrolled part-time shall be prorated.

~~[2]~~C. As an alternative, equivalent WPUs may be generated for competencies mastered on the basis of prior authorization of a school district plan by the USOE.

~~[E]~~D. For purposes of funding in an adult education program, a student can only be a pupil in average daily membership once on any day. If the student's day is part-time in the regular school program and part-time in the adult education program, the student's membership shall be reported on a prorated basis for each program. A student may not be funded for more than one regular WPU for any school year.

~~[D]~~E. An out-of-school youth (minimum age of 16) who has not graduated from high school, may, with parental/guardian written approval (if applicable), school district administrative written approval and proof of Utah residency, enroll in an adult education program:

(1) The WPU shall not be generated by the student's participation in an adult education program.

(2) This student shall be eligible for adult education state funding.

(3) This student shall be presented with information prior to or at the time of enrollment in an adult education program that defines the consequences of the student's decision including the following:

(a) The student may receive an Adult Education Secondary Diploma upon completion of the minimum required Carnegie units of credit as defined by the ~~[local]~~ adult education program; or

(b) The student may earn a Utah High School Completion Diploma upon successful passing of all five GED Tests; or

(c) The student may, at the discretion of the ~~[school district]~~ LEA, return to his regular high school prior to the time his class graduates with the understanding and expectation that all necessary requirements for the traditional K-12 diploma shall be completed, provided that the student:

(i) is released from the adult education program; and

(ii) has not completed the requirements necessary for an Adult Education Secondary Diploma; or

(iii) has not successfully passed all five GED Tests and has not received a Utah High School Completion Diploma.

(4) An out-of-school youth of school age who has received an Adult Education Secondary Diploma is not eligible to return to a K-12 high school.

(5) An out-of-school youth of school age who has received a Utah High School Completion Diploma is not eligible to return to a K-12 high school unless it is required for the provision of a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C., Chapter 33.

(6) An out-of-school youth of school age who has successfully completed an Adult Education Secondary Diploma or a Utah High School Completion Diploma shall be reported as a graduate for K-12 graduation (AYP) outcomes.

(7) An out-of-school youth of school age may be considered eligible to take the GED Test if all requirements as stated in R277-702, Procedures for Utah General Educational Development Certificate, are followed.

R277-733-8. Program, Curriculum, Outcomes and Student Mastery.

A. The Utah Adult Education Program shall offer courses consistent with the Utah Core curriculum under R277-700.

B. The Utah Core curriculum and teaching strategies may be modified or adjusted to meet the individual needs of the adult education student.

C. Written course descriptions for AHSC required and elective courses shall be developed by ~~[school district]~~ LEA adult education programs for all classes taught, consistent with the Utah Core curriculum and Utah adult education curriculum standards, as provided by the USOE.

D. Written course descriptions for GED Test preparation, ESOL and ABE courses shall be developed cooperatively by ~~[school districts]~~ LEAs, CBOs and the USOE based on Utah Core curriculum standards, modified for adult learners.

E. Course descriptions shall contain adult education mastery criteria and shall stress mastery of adult life skill material consistent with Core objective standards and the Core curriculum.

F. Course content mastery shall be stressed rather than completion of predetermined seat time in a classroom.

G. Adult high school completion education is determined by the following prerequisite courses:

(1) ESOL competency AEFLA levels one through six;

(2) ABE competency AEFLA levels one through four.

H. AHSC courses for students seeking an Adult Education Secondary Diploma should meet federal AEFLA AHSC Levels I and II competency requirements with a minimum completion of 24 credits under the direction of a Utah licensed teacher as provided below:

(1) Adult High School Core Courses, as offered consistent with Utah Core objectives:

(a) 24.0 units of credit required through satisfaction of a course of study by demonstrated course competency or ~~[school district]~~ LEA[-] approved competency examination in correlation with the student's SEOP career focus as defined in the following instructional areas[;]:

~~_____~~ (i) Language Arts: 4.0;

~~_____~~ (ii) mathematics: 3.0 individualized mathematics courses to meet the life needs of adult learners;

~~_____~~ (iii) science: 3.0 from the four science foundations of chemistry, biological science, earth science, or physics;

~~_____~~ (iv) social studies: 3.0 including 1.0 in United States history, .50 in United States government and citizenship, .50 in geography, .50 in world civilizations, and .50 general financial literacy;

~~_____~~ (v) arts: 1.50;

~~_____~~ (vi) healthy lifestyles: 2.0 individualized courses meeting the life needs of adult learners that include: .25 to 1.50 health education, .25 to 1.50 individualized fitness for life courses;

~~_____~~ (vii) career and technical education (CTE): 1.00;

~~_____~~ (viii) information technology: .50 computer technology courses or successful completion of school district-approved competency examination; and

~~_____~~ (ix) electives: 6.0 units of credit.

(b) ~~[awarded]~~ approved adult education credit options including continuous professional employment training required for a professional license; or

(c) documented achievement of a trade or skill[;];

~~_____~~ (d) basic or advanced military training;

~~_____~~ ([d]e) apprenticeship, union or registered work credentials;

([e]f) successful[ly] passing score on all five GED Tests; academic credit for successfully passing all five GED Tests may only be applied toward an Adult Education Secondary Diploma if the proposed awarded units of credit were transcribed by June 30, 2009;

(f) transcribed college or university courses as they align to the ~~[following]~~ Core instructional areas[;].

~~_____~~ (i) Language Arts: 4.0;

~~_____~~ (ii) mathematics: 3.0, individualized mathematics courses to meet the life needs of adult learners;

~~_____~~ (iii) science: 3.0, from the four science areas of chemistry, biological science, earth science, or physics;

~~_____~~ (iv) social studies: 2.50, 1.0 in United States history, .50 in United States government and civics, .50 in geography; and .50 in world civilizations;

~~(v) arts: 1.50;~~
~~(vi) healthy lifestyles: 2.0, individualized courses meeting the life needs of adult learners that include: .25 - 1.50 health education, .25 - 1.50 individualized fitness for life courses;~~
~~(vii) career and technical education (CTE): 1.00;~~
~~(viii) general financial literacy: .50;~~
~~(ix) information technology: .50 computer technology courses or successful completion of school district approved competency examination;~~
~~(x) electives: 6.0 units of credit.~~

I. The USOE Adult Education Section and [~~local education~~]LEA programs shall disseminate clear information regarding revised adult education graduation requirements.

J. Adult education students receiving education services in a state prison or jail education program may graduate with an Adult Education Secondary Diploma upon completion of the state required 24.0 units of credit required under R277-700 and satisfied through completed credits or demonstrated course competency or a Utah High School Completion Diploma [~~upon~~]with a successful passing score on all five of the GED Tests consistent with students' SEOP career focus.

K. Adult Education Secondary Diploma graduation requirements may be changed or modified, or both, for adult students with documented disabilities through Individual Education Plans (IEPs) from age 16 [~~up~~]until their 22nd birthday or an adult education SEOP, or both to meet unique educational needs.

L. A student's IEP or adult education SEOP shall document the nature and extent of modifications, substitutions, or exemptions made to accommodate the student's disability(ies).

M. Modified graduation requirements for an individual student[s] shall:

- (1) be consistent with the student's IEP or SEOP, or both;
- (2) be maintained in the student's files;
- (3) maintain the integrity and rigor expected for AHSC graduation.

N. [~~School districts~~]LEAs shall establish policies[~~:~~]
~~(1) allowing or disallowing adult education students participation in graduation activities or ceremonies[; and~~
~~(2) allowing or disallowing adult education students from participating in the Utah Basic Skills Competency Test (UBSCT)].~~

O. An adult education [~~high school completion~~]student may only receive an Adult Education Secondary Diploma earned through a designated Northwest accredited Utah adult education program, as approved by the Board.

P. Adult education programs shall accept credits and grades awarded to students without alteration from other state-[-] recognized adult education programs, schools accredited by [~~the~~] Northwest [~~Accreditation Commission~~]or schools or programs approved by the Board[~~without alteration~~].

Q. Adult education programs may establish reasonable timelines and may require adequate and timely documentation of authenticity for credits and grades submitted from schools or private providers.

R. An [~~school district~~]LEA adult education program is the final decision-making authority for the awarding of credit and grades from non-accredited sources.

S. Adult education programs shall provide [~~a~~ program]instruction that allows students to transition between sites in a seamless manner.

T. An adult education student seeking a Utah High School Completion Diploma shall be offered a course of academic instruction designed to prepare the student to take the GED Tests.

U. A Utah High School Completion Diploma shall be issued by the Board and distributed by the GED testing centers as agents of the Board or directly by the USOE GED administrator. Receipt of the Utah High School Completion Diploma does not entitle a student to a free appropriate public education for a student eligible for special education under IDEA.

V. Upon completion of requirements for a Utah Adult Education Secondary Diploma, or a Utah High School Completion Diploma, adult education students may only continue in an adult education program to improve their basic literacy skills if:

- (1) their academic skills are less than 12.9 grade level in an academic area of reading, math or English; and
- (2) they lack sufficient mastery of basic educational skills to enable them to function effectively in society. The focus of instruction shall be solely literacy and is limited specifically to reading, math or English.

R277-733-9. Adult Education Programs--Tuition and Fees.

A. Any adult may enroll in an adult education class consistent with Section 53A-15-404.

B. Tuition and fees [~~shall~~]may be charged for ABE, GED preparation, AHSC, or ESOL courses in an amount not to exceed \$100 annually per student based on the student's ability to pay as determined by federal free and reduced lunch guidelines, under the Richard B. Russell National School Lunch Act, 42 USC 1751, et seq. The appropriate student fees and tuition shall be determined by the local school board or CBO board of trustees.

C. Adults who are or may attend adult education programs shall be given adequate notice of program tuition and fees through public posting. Any charged tuition or fees shall be set and reviewed annually by the local school board or CBO board of trustees.

D. Adult education tuition and fees shall be waived or students shall be offered appropriate work in lieu of waivers for students who are younger than 18, qualify for fee waivers under R277-407, and their class has not graduated.

E. Tuition may be charged for courses that satisfy requirements outlined in R277-733-8B, when adequate state or local funds are not available.

F. Fees may be charged for consumable and nonconsumable items necessary for adult high school courses that satisfy requirements outlined in R277-733-8B[~~, consistent with the definitions under R277-733-1E and R277-733-1H~~].

G. Fees and tuition charged and collected by adult education programs shall be reasonable and necessary as determined by the local boards of education or boards [~~of~~]of trustees.

H. Collected fees and tuition shall be used specifically to provide additional adult education and literacy services that the program would otherwise be unable to provide.

I. The local program superintendent/chief executive officer and business administrator shall acknowledge by signature as part of the program's grant plan (state or federal, or both) submission and program assurances that all fees and tuition collected and submitted for accounting purposes are:

(1) returned/delegated with the exception of indirect costs to the local adult education program;

(2) used solely and specifically for adult education programming;

(3) not withheld and maintained in a general maintenance and operation fund.

J. All collected fees and tuition generated from the previous fiscal year shall be spent in the adult education program in the ensuing program year and shall not be used by an LEA in calculating carryover fund balance amounts.

K. Collected fees and tuition may not be counted toward meeting federal matching, cost sharing or maintenance of effort requirements related to the ~~local~~ program's award.

L. Annually, local programs shall report to the school district or community-based organization and the USOE all fees and tuition collected from students associated with each funding source.

M. Fees and tuition collected from adult education students shall not be commingled or reported with community education funds or any other public education fund.

R277-733-10. Allocation of Adult Education Funds.

Adult education state funds shall be distributed to ~~school districts~~ LEAs offering adult education programs consistent with percentages defined in adult education policy in the following areas:

A. Base amount distributed equally to each participating school district with a Board-approved adult education plan and budget.

B. Enrollee status students (not participants).

C. Contact hours (instructional and non-instructional) for both enrollee status students and participants.

D. Adult Education Secondary Diplomas or Utah High School Completion Diplomas, whichever is awarded first.

E. Enrollee level gains ~~[ESOL competency levels 1-6, ABE competency levels 1-4, and AHSC competency levels].~~

F. Enrollee adult education ~~completed~~ earned secondary credits.

~~[~~ F. Supplemental support, to be distributed to school districts for special program needs or professional development, as determined by written request and USOE evaluation of need and approval.

~~(1) Any school district with pre-approved carryover adult education funds from the previous fiscal year may negotiate a request for supplemental funding as needed.~~

~~(2) Priority of supplemental funding shall be given to school districts whose initial adult education allocation is less than one percent of the state allotted total, as indicated on the state allocation table.~~

~~]~~ G. Supplemental support, to be distributed to:

(1) LEA adult education programs receiving less than one percent of the state allocation as indicated on the state allocation table that do not have any carryover funds. Applications for supplemental funds are accepted and processed annually between October 15 and October 31. Awarded funds shall be used for special program needs or professional development, as determined by written request and USOE evaluation of need and approval.

(3) Any balance of supplemental funds may be applied for by all remaining eligible ~~school districts~~ LEAs who may or may not have carryover funds for special program needs or professional development, as determined by written request and

USOE evaluation of need and approval between November 1 and March 1 annually.

~~(3) LEA recaptured funds that are greater than allowable carryover amounts shall be added to the available supplemental funds and awarded to adult education programs based on the criteria defined in R277-733-10G(1) and (2).~~

~~[G]~~ H. Adult education federal AEFLA funds shall be distributed based on a competitive application. Second or subsequent year AEFLA funding shall be based on performance criteria established by the USOE, defined in adult education policy.

~~[H]~~ I. Funds, state ~~[flow through]~~ or federal ~~[reimbursement]~~ or both, may be withheld or terminated for noncompliance with:

~~(1) Board rule;~~

~~(2) adult education state policy and procedures or both;~~

~~[and]~~ (3) associated reporting timelines; and

~~(4) program monitoring outcomes,~~ as defined by the USOE.

R277-733-11. Adult Education Records and Audits.

A. Official records ~~[kept]~~ shall be maintained in perpetuity:

(1) To validate student outcomes, ~~local~~ programs shall maintain records for each program site in perpetuity which clearly and accurately show for each student:

~~(1)a~~ (1)a documentation of Utah residency; the student's initial managing program shall maintain documentation of Utah residency in the student's file in perpetuity;

~~(b)~~ (b) documentation of such proof shall be entered in the student's UTopia data record;

(2) copies of:

(a) transcribed grade data including previous report cards, transcripts, work verification, military training, professional licenses, union or registered work credentials;

~~[~~ (b) GED Test Score Report showing successful passing of all five areas of the GED Test;

~~]~~ (c) completed Core followup surveys;

(d) releases of information requesting student record information and releases of student information to other requesting agencies;

(e) special education IEPs for students under the age of 22; and

(f) outside psychological, psychiatric or medical documentation used in determining education programming accommodations; and records of accommodations.

B. To validate student outcomes annually, the student's managing program shall maintain records for each program site which clearly and accurately show for each student:

(1) signed or refusal to sign waiver of ~~[f]~~ release forms;

(2) all assessment protocol sheets (pre- and post-tests) used to determine student's EFL and level gains; and

(3) contact hours (both noninstructional and instructional) documentation.

C. Audits:

(1) To ensure valid and accurate student data, all programs accepting either state or federal adult education funds, or both, shall enter and maintain required student data in the UTopia data system.

(2) Annually, an independent auditor shall be retained by each ~~[school district]~~LEA and CBO to audit student accounting records to verify UTopia data entries in addition to validating the cash controls over collections of student fees.

(3) Reports of accuracy shall be completed and submitted to the ~~[school districts']~~LEAs boards~~[-of education]~~, the CBOs' boards~~[-]~~ of trustees, and as appropriate, the local adult education program director, and the USOE.

(4) The USOE shall receive the final auditor report from each adult education program by September 15 annually.

(5) ~~[Local]~~A program[s] shall prepare and submit to the USOE~~[-a]~~ written corrective action plan for each audit finding by October 15 annually.

(6) USOE adult education staff members are responsible to monitor and assist programs in the resolution of corrective action plans.

(7) A program's failure to resolve audit findings may result in the termination of state and federal funding, or both.

(8) Independent audit reporting dates, forms, and procedures are available in the state of Utah Legal Compliance Audit Guide provided to the school districts and CBOs by the USOE in cooperation with the State Auditor's~~[-]~~ Office and published under the heading of APPC-5.

(9) USOE Adult Education~~[-Services]~~ program staff shall conduct tri-annual program reviews of each adult education program to ensure accuracy of program data and program compliance. Desk monitoring shall be completed ~~[during years when tri-annual reviews are not performed]~~with program directors throughout the program year. Additional informal monitoring or reviews or site visits may be conducted as necessary~~[-and as follows].~~

(10) ~~[As needed, m]~~Monitored programs shall prepare and submit to the USOE a written corrective action plan for each monitoring finding as requested by the USOE.

~~[(11) USOE adult education staff are responsible to monitor and assist programs in the resolution of corrective action plans.~~

~~]~~ ~~[(12)]~~(11) A program's failure to resolve audit findings may result in the termination of state or federal funding or both as provided in R277-114, Corrective Action and Withdrawal or Reduction of Program Funds.

(13) The USOE shall review for cause school district or CBO records and practices for compliance with the law and this rule.

KEY: adult education

Date of Enactment or Last Substantive Amendment: ~~[January 10, 2011]~~2012

Notice of Continuation: October 5, 2007

Authorizing, Implemented, or Interpreted Law: Art X Sec 3; 53A-15-401; 53A-1-402(1); 53A-1-401(3); 53A-1-403.5; 53A-17a-119; 53A-15-404

Education, Rehabilitation
R280-201
USOR ADA Complaint Procedure

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 36068

FILED: 04/16/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is repealed because necessary language regarding USOR ADA complaints procedures is incorporated into Rule R277-104. (DAR NOTE: The proposed repeal and reenactment of Rule R277-104 is under DAR No. 36067 in this issue, May 1, 2012, of the Bulletin.)

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 28 CFR 35 and 28 CFR 35.107 and 42 U.S.C. 12201 and Section 63G-2-302 and Section 63G-2-304 and Section 63G-2-305 and Section 67-19-328

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated cost or savings to the state budget. USOR ADA complaint procedures are incorporated into Rule R277-104.

◆ **LOCAL GOVERNMENTS:** There are no anticipated cost or savings to local government. This rule applies to ADA complaints addressed at the state level.

◆ **SMALL BUSINESSES:** There are no anticipated cost or savings to small businesses. The provisions under this rule do not apply to businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. The USOR is and has been obligated to follow federal law concerning ADA complaints.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The USOR will continue to comply with federal law concerning ADA complaints under Rule R277-104.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2012

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

R280. Education, Rehabilitation.

[R280-201. USOR ADA Complaint Procedure.

R280-201-1. Definitions.

A. "ADA" means the Americans with Disabilities Act, 42 U.S.C. 12201, which provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by this or any such entity:

B. "The ADA Coordinator" means the designee of the State Board of Education, who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities in accordance with the Americans with Disabilities Act, or provisions of this rule.

C. "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

- (1) Office of Planning and Budget;
- (2) Department of Human Resource Management;
- (3) Division of Risk Management;
- (4) Division of Facilities Construction Management; and
- (5) Office of the Attorney General.

D. "Disability" means, with respect to an individual disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment. The definition of "disability" specifically excludes: transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs.

E. "Major life activities" means functions such as eating for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

F. "Individual with a disability" (hereinafter individual) means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the USOR or the State Board of Education, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.

G. "Executive Director" means the Executive Director of the Utah State Office of Rehabilitation.

H. "USOR" means the Utah State Office of Rehabilitation.

R280-201-2. Authority and Purpose.

A. This rule is authorized pursuant to 28 CFR 35.107, 1992 edition, which adopts, defines, and publishes complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans with Disabilities Act, 28 CFR 35, 1992 edition.

B. The purposes of this rule are:

(1) to establish a USOR procedure for filing complaints under the federal ADA law;

(2) provide an appeals procedure;

(3) provide for appropriate classification of the records of complaints and appeals; and

(4) to guarantee at this agency level that no qualified individual with a disability, by reason of such disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of the USOR, or be subjected to discrimination by the USOR.

R280-201-3. Filing of Complaints.

A. The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts; but not later than 60 days from the date of the alleged act of discrimination. However, any complaint alleging an act of discrimination occurring between January 26, 1992 and the effective date of this rule may be filed within 60 days of the effective date of this rule.

B. The complaint shall be filed with the USOR's ADA Coordinator in writing or in another format suitable to the individual.

C. Each complaint shall:

(1) include the individual's name and address;

(2) include the nature and extent of the individual's disability;

(3) describe the USOR's alleged discriminatory action in sufficient detail to inform the USOR of the nature and date of the alleged violation;

(4) describe the action and accommodation desired; and

(5) be signed by the individual or by his legal representative.

D. Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

R280-201-4. Investigation of Complaint.

A. The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Section 3(C) of this rule if it is not made available by the individual.

B. When conducting the investigation, the coordinator may seek assistance from the USOR's legal, human resource and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve an expenditure of funds which is not absorbable within the USOR's budget and would require appropriation authority, facility

~~modifications, or reclassification or reallocation in grade, the coordinator shall consult with the ADA State Coordinating Committee.~~

R280-201-5. Issuance of Decision.

~~_____ A. Within 30 working days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing or in another suitable format stating what action, if any, shall be taken on the complaint.~~

~~_____ B. If the coordinator is unable to reach a decision within the 30 working day period, he shall notify the individual with a disability in writing or by another suitable format why the decision is being delayed and what additional time is needed to reach a decision.~~

R280-201-6. Appeals.

~~_____ A. The individual may appeal the decision of the ADA coordinator by filing an appeal within 10 working days from the receipt of the decision.~~

~~_____ B. The appeal shall be filed in writing with the Executive Director.~~

~~_____ C. The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the Executive Director or designee.~~

~~_____ D. The appeal shall describe in sufficient detail why the coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.~~

~~_____ E. The Executive Director shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making any decision that would involve the Executive Director to direct an expenditure of funds which is not absorbable and would require appropriation authority, facility modifications, or reclassification or reallocation in grade, he shall also consult with the State ADA Coordinating Committee.~~

~~_____ F. The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another suitable format to the individual.~~

~~_____ G. If the Executive Director is unable to reach a decision within the ten working day period, he shall notify the individual in writing or by another suitable format why the decision is being delayed and the additional time needed to reach a decision.~~

R280-201-7. Classification of Records.

~~_____ The record of each complaint and appeal, and all written records produced or received as part of such actions, shall be classified as protected as defined under Section 63G-2-305 until the ADA coordinator or Executive Director issues the decision at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63G-2-302 or controlled as defined in Section 63G-2-304. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the coordinator or Executive Director shall be classified as public information.~~

R280-201-8. Relationship to Other Laws.

~~_____ This rule does not prohibit or limit the use of remedies available to the individuals under the State Anti-Discrimination Complaint Procedures, Section 67-19-32; the Federal ADA Complaint Procedures (28 CFR Subpart F, beginning with Part 35.170, 1992 edition); or any other Utah state or federal law that provides equal or greater protection for the rights of individuals with disabilities.~~

~~**KEY: complaints, disabled persons**~~

~~**Date of Enactment or Last Substantive Amendment: January 5, 1999**~~

~~**Notice of Continuation: January 5, 2009**~~

~~**Authorizing, and Implemented or Interpreted Law: 28 CFR 35; 28 CFR 35.107; 42 U.S.C. 12201; 63G-2-305; 63G-2-302; 63G-2-304; 67-19-328]**~~

Environmental Quality, Environmental
Response and Remediation
R311-401-2
Hazardous Substances Priority List

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36028

FILED: 04/04/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The U.S. Magnesium site is being added to the hazardous substances priority list.

SUMMARY OF THE RULE OR CHANGE: The U.S. Magnesium site is being added to the hazardous substances priority list. EPA added the U.S. Magnesium site to the national priorities list on 11/04/2009. Section 19-6-311 requires the executive director to develop and, as frequently as is necessary, revise the hazardous substance priority list by making a rule that identifies separately national priority list sites.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-311

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no aggregate anticipated costs or savings to the state budget. The U.S. Magnesium site was placed on the national priorities list on 11/04/2009. Therefore, the hazardous substances priority list must be amended to include it pursuant to Section 19-6-311. Adding the site to the hazardous substances priority list merely identifies an action that has already taken place, i.e., the addition of the site to the national priority list. It is anticipated at this time that the responsible party will perform and bear the cost of the necessary response action.

◆ LOCAL GOVERNMENTS: There are no aggregate anticipated costs or savings to local government. The U.S. Magnesium site was placed on the national priorities list on 11/04/2009. Therefore, the hazardous substances priority list must amended to include it pursuant to Section 19-6-311. Adding the site to the hazardous substances priority list merely identifies an action that has already taken place, i.e., the addition of the site to the national priority list. It is anticipated at this time that the responsible party will perform and bear the cost of the necessary response action.

◆ SMALL BUSINESSES: There are no aggregate anticipated costs or savings to small businesses. The U.S. Magnesium site was placed on the national priorities list on 11/04/2009. Therefore, the hazardous substances priority list must amended to include it pursuant to Section 19-6-311. Adding the site to the hazardous substances priority list merely identifies an action that has already taken place, i.e., the addition of the site to the national priority list. It is anticipated at this time that the responsible party will perform and bear the cost of the necessary response action.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no aggregate anticipated costs or savings to other persons. The U.S. Magnesium site was placed on the national priorities list on 11/04/2009. Therefore, the hazardous substances priority list must amended to include it pursuant to Section 19-6-311. Adding the site to the hazardous substances priority list merely identifies an action that has already taken place, i.e., the addition of the site to the national priority list. It is anticipated at this time that the responsible party will perform and bear the cost of the necessary response action. However, the costs that will be borne by the responsible party are not affected by the site's addition to the hazardous substances mitigation list. because among other reasons the site is already on the national priorities list.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None-- It is anticipated at this time that the responsible party will perform and bear the cost of the necessary response action. However, the responsible party would be subject to performing and bearing the necessary costs of the response action regardless of whether the site is added to the hazardous substances mitigation list because among other reasons the site is already on the national priorities list.

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

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:
 ◆ Sandra Allen by phone at 801-536-4122, by FAX at 801-359-8853, or by Internet E-mail at skallen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/15/2012

AUTHORIZED BY: Amanda Smith, Executive Director

R311. Environmental Quality, Environmental Response and Remediation.

R311-401. Utah Hazardous Substances Priority List.

R311-401-2. Hazardous Substances Priority List.

Pursuant to Section 19-6-311 of the Utah Hazardous Substances Mitigation Fund Act the hazardous substances priority list is hereby established as presented below. The listed sites are eligible to be addressed under the authority of Section 19-6-311 et seq. U.C.A. 1953 as amended.

(a) National Priority List Sites. The Federal Register publication dates are indicated below.

TABLE		
SITE NUMBER	SITE NAME	FEDERAL REGISTER PUBLICATION DATE
1	Hill Air Force Base	July 22, 1987
2	Monticello Vicinity Properties	June 10, 1986
3	Ogden Defense Depot	July 22, 1987
4	Portland Cement Sites 2 and 3	June 10, 1986
5	Rose Park Sludge Pit	September 8, 1983
6	Utah Power and Light, American Barrel Sharon Steel	October 4, 1989
7	Sharon Steel	August 30, 1990
8	Tooele Army Depot, North	August 30, 1990
9	Monticello Mill Site	November 21, 1989
10	Midvale Slag	February 11, 1991
11	Wasatch Chemical, Lot 6	February 11, 1991
12	Petrochem Recycling Corp./ Ekotek Plant	October 14, 1992
13	Jacobs Smelter	February 4, 2000
14	Intermountain Waste Oil Refinery	May 11, 2000
15	International Smelting and Refining	July 27, 2000
16	Bountiful/Woods Cross 5th South PCE Plume	September 13, 2001
17	Davenport and Flagstaff Smelters	April 30, 2003
18	Eureka Mills	September 5, 2002
19	Five Points PCE Plume	September 19, 2007
20	U.S. Magnesium	November 4, 2009

(b) Proposed National Priority List Sites. The Federal Register publication dates are indicated below.

TABLE

SITE NUMBER	SITE NAME	FEDERAL REGISTER PUBLICATION DATE
1	Richardson Flat Tailings	February 7, 1992
2	Murray Smelter	January 18, 1994

(c) Scored Sites Reserved.

KEY: hazardous substances, hazardous substances priority list
Date of Enactment or Last Substantive Amendment: [January 2, 2008]2012

Notice of Continuation: April 4, 2012

Authorizing, and Implemented or Interpreted Law: 19-6-311

**Insurance, Title and Escrow
 Commission
 R592-16
 Agency Supervision by Qualifying
 Licensee**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 36065

FILED: 04/13/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish guidelines for agency licensing specifically in regard to Subsection 31A-23a-204(1), in order to ensure that all agencies have a dedicated licensee with a requisite level of experience directly supervising the title and escrow operations of their agency.

SUMMARY OF THE RULE OR CHANGE: This rule establishes guidelines for agency licensing specifically in regard to Subsection 31A-23a-204(1), and ensures that all title agencies have a dedicated licensee with a requisite level of experience directly supervising the title and escrow operations of their agency.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-404

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This rule should have no fiscal impact on the department in costs or savings. It clarifies what is already in the code, clarifying requisite level of experience for the supervisor of an agency.

♦ **LOCAL GOVERNMENTS:** This rule will have no effect on local governments since it deals solely with the relationship

between the department and its licensees, in this case, title agencies and producers.

♦ **SMALL BUSINESSES:** The small agency that does not have a supervisor in-house with the requisite level of experience will need to obtain one. They may be able to designate someone internally or hire someone from outside. The latter, of course, would be more expensive. The exact cost of either of these options, or any others, would be in part dependent upon the experience and expertise of the person.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Large agencies that do not have a supervisor in-house with the requisite level of experience will need to obtain one. They may be able to designate someone within their operation or hire someone from outside. The latter, of course, would be more expensive. The exact cost of either of these options, or any other, would vary from agency to agency.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Agencies that do not have a supervisor in-house with the requisite level of experience will need to obtain one. They may be able to designate someone within their operation or hire someone from outside. The latter, of course, would be more expensive. The exact cost of either of these options, or any other, would vary from agency to agency.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The cost of this rule will vary from agency to agency

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 05/14/2012 09:00 AM, East Building, 420 N State Street, Spruce Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2012

AUTHORIZED BY: Jilene Whitby, Information Specialist

R592. Insurance, Title and Escrow Commission.

R592-16. Agency Supervision by Qualifying Licensee.

R592-16-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-404(2)(a)(ii), (iv) and (b), which direct the Title and Escrow Commission to make rules pertaining to the licensing of a title licensee, standards of conduct for a title insurer, agency or producer, and require the Title and Escrow Commission's concurrence in the issuance and renewal of title licensee licenses.

R592-16-2. Purpose and Scope.

(1) The purpose of this rule is to establish guidelines for agency licensing specifically in regard to the 31A-23a-204(1), in order to ensure that all agencies have a dedicated licensee with a requisite level of experience directly supervising the title and escrow operations of their agency.

(2) This rule applies to all applicants for a title insurance agency license or renewal of a title insurance agency license.

R592-16-3. Definitions.

"Qualifying Licensee" means the individual or individuals designated by the agency under Section 31A-23a-204(1).

R592-16-4. Licensing/Supervision.

(1) The Commission finds that in order to protect the public the Qualifying Licensee shall be:

(a) devoted to only a single agency;

(b) responsible for the direct supervision and oversight of the title and escrow operations of their agency; and

(c) named as the "Qualifying Licensee" for only a single agency.

(2) The Qualifying Licensee may seek an exemption from compliance with this rule, from the Commissioner, with concurrence of the Commission.

R592-16-5. Enforcement Date.

The commissioner will begin enforcing this rule upon the rule's effective date.

R592-16-6. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: title insurance

Date of Enactment or Last Substantive Amendment: 2012

Authorizing, and Implemented or Interpreted Law: 31A-2-404; 31A-23a-204

**Insurance, Title and Escrow
Commission**

R592-17

**Minimum Mandatory Search Standards
and Requirements**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 36080

FILED: 04/16/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish guidelines, pursuant to Subsection 31A-23a-406(8), for title insurance producers conducting searches on real estate located in the state of Utah.

SUMMARY OF THE RULE OR CHANGE: This rule establishes guidelines, pursuant to Subsection 31A-23a-406(8), for title insurance producers conducting searches on real estate located in the state of Utah.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-404 and Section 31A-23a-406

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The rule sets standards of search for real estate located within Utah. The rule may have some fiscal impact on the department's budget if agencies require more of their staff to be licensed as title producers and more of their producers get a search line of authority license so they can do the searches as required by rule. Licensing is handled electronically by a vendor so no additional work will be required of department staff. A new producer license costs \$70 and a search line of authority costs \$25. Currently there are around 80 title agencies licensed in Utah. There is no indication how many, if any, will require additional licensing of their staff as a result of this rule. No form and rate filings will be required.

◆ **LOCAL GOVERNMENTS:** This rule will have no impact on local government since it deals solely with the relationship between the department and their licensees and their customers.

◆ **SMALL BUSINESSES:** This rule affects the way searches are done on real estate located in Utah by title agencies and producers. Almost all title agencies are small businesses. The rule requires that the title search be done by a producer with a title license and search line of authority or that such

person directly supervise a non-licensed individual in this search. It also requires more extensive searches in some situations. The new search standards could cause some agencies to have more of their people licensed and may increase the cost of a search to cover the more extensive searches that will be required. The license to become a new producer will cost \$70 and a search line of authority will cost \$25. Any increased costs for more extensive searches will create revenue for the agency. Since there is no set price for a search industry wide the impact on individual agencies will vary. Some agencies may already be performing the extensive searches in the manner required by the rule and will have no additional expense or income as a result of the rule.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Some individuals or businesses purchasing property in Utah may have to pay a higher search fee if their title producer is required to do a more extensive search as a result of this rule. The cost will vary from agency to agency.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Title agencies may decide to have non-licensed staff licensed, and may require some of their producers to obtain a limited line search license to more easily fulfill the search requirements of this rule. A title producer license is \$70 and a search limited line is \$25 for a two year period. Agencies that are not doing the more extensive searches now and who will need to, they likely will increase the cost of the search to cover the additional time required to do the search. This will mean increased income for the agency and an additional cost to the individual or business purchasing the property. The cost for the search will vary from agency to agency.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The cost of compliance to this rule will differ from agency to agency, depending on their current procedures.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 05/14/2012 09:00 AM, East Building, 420 N State Street, Spruce Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2012

AUTHORIZED BY: Jilene Whitby, Information Specialist

R592. Insurance, Title and Escrow Commission.

R592-17. Minimum Mandatory Search Standards and Requirements.

R592-17-1. Authority.

This rule is promulgated pursuant to Subsection 31A-2-404(2)(a), which directs the Title and Escrow Commission to make rules for the administration of the provisions of Title 31A related to title insurance; and Subsection 31A-23a-406(8) pertaining to minimum mandatory search standards.

R592-17-2. Purpose and Scope.

(1) The purpose of this rule is to establish guidelines, pursuant to 31A-23a-406(8), for title insurance producers conducting searches on real estate located in the state of Utah.

(2) This rule applies to all title insurance licensees.

R592-17-3. Definitions.

"Minimum mandatory search" means a search and examination conducted by:

(1) a person licensed with a title search line of authority in the state of Utah has, for the purpose to issue title commitments, policies, endorsements, guarantees and other insurance products:

(a) inspected the applicable land, title, and other records within the jurisdiction relating to the ownership of the real property; or

(b) directly supervises a non-licensed individual to inspect the applicable land, title, and other records within the jurisdiction relating to the ownership of the real property; and

(2) a person licensed with a title search line of authority in the state of Utah has, for the purpose to issue title commitments, policies, endorsements, guarantees and other insurance products, examined the applicable documents within the chain of title.

R592-17-4. Counter Signature.

Any title commitments, policies, endorsements, guarantees and other insurance products issued by a title insurance licensee shall be countersigned by a title insurance licensee with a title search line of authority in the state of Utah which counter signature certifies that the title insurance licensee has performed a minimum mandatory search.

R592-17-5. Enforcement Date.

The commissioner will begin enforcing this rule upon the rule's effective date.

R592-17-6. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: title insurance

Date of Enactment or Last Substantive Amendment: 2012

Authorizing, and Implemented or Interpreted Law: 31A-2-404; 31A-23a-406

Natural Resources, Water Resources
R653-8
 Flaming Gorge Water Right Assignment

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 36038
 FILED: 04/06/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes the priorities and procedures for assigning Water Right No. 41-3479 (A30414d), owned by the Board of Water Resources, to water users in the Colorado River drainage area. The water right has been transferred and is being put to use. The Board of Water Resources no longer owns or holds title to the water right; therefore this repeal is no longer needed and is repealed.

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 73-10-6

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no cost associated with the repeal of this rule because the water right has already been transferred, with no fee of any kind.
- ◆ **LOCAL GOVERNMENTS:** There is no cost associated with the repeal of this rule because the water right has already been transferred, with no fee of any kind.
- ◆ **SMALL BUSINESSES:** There is no cost associated with the repeal of this rule because the water right has already been transferred, with no fee of any kind.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no cost associated with the repeal of this rule because the water right has already been transferred, with no fee of any kind.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no cost associated with the repeal of this rule because the water right has already been transferred, with no fee of any kind.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The repeal of this rule will have no fiscal impact on any business, public or private organization, or governmental entity.

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

NATURAL RESOURCES
 WATER RESOURCES
 ROOM 310
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Barbara Allen by phone at 801-538-7232, by FAX at 801-538-7279, or by Internet E-mail at barbaraallen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/08/2012

AUTHORIZED BY: Michael Styler, Executive Director

R653. Natural Resources, Water Resources.

~~[R653-8. Flaming Gorge Water Right Assignment.~~

~~R653-8-1. Purpose.~~

~~_____ This rule establishes the priorities and procedures for assigning portions of water right No. 41-3479 (A30414d) owned by the Board of Water Resources. The Board of Water Resources has determined that it is in the best interest of the state to assign portions of this water right to those entities qualifying under the provisions of this rule. Any political subdivision of the state, agency of the federal government, or nonprofit water company may apply as provided herein.~~

~~R653-8-2. Definitions.~~

- ~~_____ (1) "Board" means the Board of Water Resources.~~
- ~~_____ (2) "Division" means the Utah Division of Water Resources.~~
- ~~_____ (3) "Political subdivision" means any county, city, town, improvement district, metropolitan water district, water conservancy district, special service district, or any other entity constituting a political subdivision under the laws of Utah.~~

~~R653-8-3. Priority Policy.~~

~~_____ (1)(a) The Board shall give preference to applications according to the following prioritized order of proposed uses:~~

~~(i) Proposed water uses involving public health, safety, and welfare;~~

~~(ii) Political subdivisions requesting water rights for municipal and industrial water uses required to meet existing or future (approximately 30 years) reasonable requirements;~~

~~(iii) Agricultural water projects providing a significant economic benefit to a local community. Supplemental water supplies for agricultural lands are given priority over full water supplies for new irrigation land; and~~

~~(iv) Applications submitted for a private development located outside the boundaries, or proposed boundaries, of a political subdivision that provides municipal and industrial water service. The application must be accompanied by a letter from the county commission of each county where the proposed place of use is located supporting the proposed development and request for water.~~

~~(b) Notwithstanding the priorities prescribed in Subsection (a), the Board reserves the right to approve or deny any application in the interest of the state or any other prudent or rational basis.~~

~~(2) The Board will not accept applications for:~~

~~(a) a mining or gravel pit operation;~~

~~(b) a private development located within the boundaries of a~~

~~political subdivision that provides water service; or~~

~~(c) a private development located outside the boundaries, or proposed boundaries, of a political subdivision that provides municipal and industrial water service unless the county commission of each county where the proposed place of use is located sends a letter supporting the proposed development and request for water.~~

R653-8-4. Administrative Procedures.

~~(1) The Board will send a public notice announcing it will accept applications for its Flaming Gorge Water Right through July 1, 1998. The Board reserves the right to accept applications after that date if additional water becomes available.~~

~~(2) The Board will not act on any application until division staff has investigated each of the applications received and submitted reports and recommendations to the Board for its consideration. The Board will act on the applications after July 1, 1998.~~

~~(3) Each approved application, except those for political subdivisions, shall be granted for up to a three year completion period, within which time the applicant must complete the project and file the proof of appropriation with the State Engineer.~~

~~(4) Approved applications shall be limited to:~~

~~(a) a diversion amount of water approved under the application by the Board; and~~

~~(b) a depletion amount as determined by division staff in consultation with the State Engineer.~~

~~(5) Upon approval of an application, the Board shall file with the State Engineer a segregation application and the applicant shall file any necessary change application. The applicant shall have no right to use the water until the applications are approved by the State Engineer.~~

~~(6) Prior to the expiration of the completion period set by the Board, the Board may, upon a written request, extend the assignment application by a period of time not to exceed two years.~~

~~(7) Failure to complete the project and file proof with the State Engineer before the end of the completion period set by the Board, shall automatically cause the approved assignment application to lapse and the assigned water right to revert back to the Board.~~

~~KEY: water policy, water development*~~

~~Date of Enactment or Last Substantive Amendment: March 23, 1998 Notice of Continuation: December 4, 2007~~

~~Authorizing, and Implemented or Interpreted Law: 73-10-26]~~

Public Service Commission, Administration **R746-343-4** Approval of an Application

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 36029

FILED: 04/04/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Public Service Commission (PSC) believes the notification provisions of the rule are unnecessarily expensive and burdensome.

SUMMARY OF THE RULE OR CHANGE: Participation in the Relay Utah program is dependent on meeting certain medical and financial need tests. Under the current rule, the Commission must provide written notice to any Relay Utah program applicant whose application is approved. The revised rule would permit oral or written communication of approval. Also, under the current rule, the Commission must notify any Relay Utah program applicant whose application is denied by letter transmitted via certified mail. The proposed revision would allow the denial letter to be transmitted via first class mail. The content of the letter would not change.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-8b-10

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is now a savings to the state budget. The PSC will no longer need to pay \$6 for every applicant denied service. The Commission believes the notification provisions using certified mail are unnecessarily expensive and burdensome.

♦ **LOCAL GOVERNMENTS:** There are no costs or savings to local governments. The PSC will no longer need to send a written notice via certified mail to denied applicants.

♦ **SMALL BUSINESSES:** There are no costs or savings to small businesses. The PSC will no longer need to send a written notice via certified mail to denied applicants.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no costs or savings to the persons other than small businesses, businesses, or local government entities. The PSC will no longer need to send a written notice via certified mail to denied applicants.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. PSC will no longer need to send a written notice via certified mail to denied applicants.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Commission has determined the notice requirements to applicants for the Relay Utah program are unduly costly and time consuming. The proposed revisions will not alter the information provided but will increase the efficiency of program administrators by allowing them to provide notice of approval orally and notice of denial via first class mail.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ David Clark by phone at 801-530-6708, by FAX at 801-530-6796, or by Internet E-mail at drexclark@utah.gov
◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2012

AUTHORIZED BY: David Clark, Legal Counsel

R746. Public Service Commission, Administration.

R746-343. Rule for Deaf, Severely Hearing or Speech Impaired Person.

R746-343-4. Approval of an Application.

- A. Approved Application--
1. When an original application has been approved, the provider shall inform the applicant in writing of:
 - a. when the original application has been approved;
 - b. the location of the distribution center or designated place where the applicant may receive a TDD;
 - c. the date and time of the training session as required in Section R746-343-8.
 2. When the request for a replacement TDD, signal device, or other device has been approved, the provider or the

distribution center shall inform the recipient of the procedure for obtaining a replacement device.

B. Denied Applications--If an original application or replacement request is denied, the provider shall inform the applicant in writing of the reasons for the denial and of applicable procedures for appeal. Denial notices shall be sent by [~~certified~~] mail [~~with return receipt~~]. The notice shall be accompanied by instructions on the review process.

KEY: public assistance, physically handicapped, rates, telecommunications

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

Notice of Continuation: December 13, 2007

Authorizing, and Implemented or Interpreted Law: 54-8b-10

Tax Commission, Administration
R861-1A-16
Utah State Tax Commission
Management Plan Pursuant to Utah
Code Ann. Section 59-1-207

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36061

FILED: 04/12/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment is made as part of the implementation of H.B. 255 (2012 General Session), which allows the commission to waive, reduce, or compromise, upon reasonable cause shown, a penalty imposed by the Motor Vehicle Enforcement Division under Title 41, Chapter 3.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment provides that the commission's delegation of duties does not apply to appeals for waiver of penalties imposed by the Motor Vehicle Enforcement Division under Title 41, Chapter 3.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-1-207

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--Any fiscal impacts were considered in H.B. 255 (2012).
- ◆ LOCAL GOVERNMENTS: None--Any fiscal impacts were considered in H.B. 255 (2012).
- ◆ SMALL BUSINESSES: None--Any fiscal impacts were considered in H.B. 255 (2012).
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Any fiscal impacts were considered in H.B. 255 (2012).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--
The proposed amendment indicates that appeals of penalties imposed under Title 41, Chapter 3, will be heard by the tax commissioners.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This clarification of internal policy has no fiscal impact.

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

TAX COMMISSION
ADMINISTRATION
210 N 1950 W
SALT LAKE CITY, UT 84134-0002
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2012

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R861. Tax Commission, Administration.

R861-1A. Administrative Procedures.

R861-1A-16. Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207.

(1) The executive director reports to the commission. The executive director shall meet with the commission periodically to report on the status and progress of this agreement, update the commission on the affairs of the agency and seek policy guidance. The chairman of the commission shall designate a liaison of the commission to coordinate with the executive director in the execution of this agreement.

(2) The structure of the agency is as follows:

(a) The Office of the Commission, including the commissioners and the following units that report to the commission:

- (i) Internal Audit;
- (ii) Appeals;
- (iii) Economic and Statistical; and
- (iv) Public Information.

(b) The Office of the Executive Director, including the executive director's staff and the following divisions that report to the executive director:

- (i) Administration;
- (ii) Taxpayer Services;
- (iii) Motor Vehicle;
- (iv) Auditing;
- (v) Property Tax;
- (vi) Processing; and
- (vii) Motor Vehicle Enforcement.

(3) The Executive Director shall oversee service agreements from other departments, including the Department of Human Resources and the Department of Technology Services.

(4) The commission hereby delegates full authority for the following functions to the executive director:

(a) general supervision and management of the day to day management of the operations and business of the agency conducted through the Office of the Executive Director and through the divisions set out in Subsection (2)(b);

(b) management of the day to day relationships with the customers of the agency;

(c) all original assessments, including adjustments to audit, assessment, and collection actions, except as provided in Subsections (4)(d) and (5);

(d) in conformance with standards established by the commission, waivers of penalty and interest pursuant to Section 59-1-401 in amounts under \$10,000, or offers in compromise agreements in amounts under \$10,000 [~~in conformance with standards established by the commission~~];

(e) except as provided in Subsection (5)(g), voluntary disclosure agreements with companies, including multilevel marketers;

(f) determination of whether a county or taxing entity has satisfied its statutory obligations with respect to taxes and fees administered by the commission;

(g) human resource management functions, including employee relations, final agency action on employee grievances, and development of internal policies and procedures; and

(h) administration of Title 63G, Chapter 2, Government Records Access and Management Act.

(5) The executive director shall prepare and, upon approval by the commission, implement the following actions, agreements, and documents:

(a) the agency budget;

(b) the strategic plan of the agency;

(c) administrative rules and bulletins;

(d) waivers of penalty and interest in amounts of \$10,000 or more pursuant to Section 59-1-401 as per the waiver of penalty and interest policy;

(e) offer in compromise agreements that abate tax, penalty and interest over \$10,000 as per the offer in compromise policy;

(f) stipulated or negotiated agreements that dispose of matters on appeal; and

(g) voluntary disclosure agreements that meet the following criteria:

(i) the company participating in the agreement is not licensed in Utah and does not collect or remit Utah sales or corporate income tax; and

(ii) the agreement forgives a known past tax liability of \$10,000 or more.

(6) The commission shall retain authority for the following functions:

(a) rulemaking;

(b) adjudicative proceedings;

(c) private letter rulings issued in response to requests from individual taxpayers for guidance on specific facts and circumstances;

(d) internal audit processes;

(e) liaison with the governor's office;
 (i) Correspondence received from the governor's office relating to tax policy will be directed to the Office of the Commission for response. Correspondence received from the governor's office that relates to operating issues of the agency will be directed to the Office of the Executive Director for research and appropriate action. The executive director shall prepare a timely response for the governor with notice to the commission as appropriate.

(ii) The executive director and staff may have other contact with the governor's office upon appropriate notice to the commission; and

(f) liaison with the Legislature.

(i) The commission will set legislative priorities and communicate those priorities to the executive director.

(ii) Under the direction of the executive director, staff may be assigned to assist the commission and the executive director in monitoring legislative meetings and assisting legislators with policy issues relating to the agency.

(7) Correspondence that has been directed to the commission or individual commissioners that relates to matters delegated to the executive director shall be forwarded to a staff member of the Office of the Executive Director for research and appropriate action. A log shall be maintained of all correspondence and periodically the executive director will review with the commission the volume, nature, and resolution of all correspondence from all sources.

(8) The executive director's staff may occasionally act as support staff to the commission for purposes of conducting research or making recommendations on tax issues.

(a) Official communications or assignments from the commission or individual commissioners to the staff reporting to the executive director shall be made through the executive director.

(b) The commissioners and the Office of the Commission staff reserve the right to contact agency staff directly to facilitate a collegial working environment and maintain communications within the agency. These contacts will exclude direct commands, specific policy implementation guidance, or human resource administration.

(9) The commission shall meet with the executive director periodically for the purpose of exchanging information and coordinating operations.

(a) The commission shall discuss with the executive director all policy decisions, appeal decisions or other commission actions that affect the day to day operations of the agency.

(b) The executive director shall keep the commission apprised of significant actions or issues arising in the course of the daily operation of the agency.

(c) When confronted with circumstances that are not covered by established policy or by instances of real or potential conflicts of interest, the executive director shall refer the matter to the commission.

KEY: developmental disabilities, grievance procedures, taxation, disclosure requirements

Date of Enactment or Last Substantive Amendment: [December 8, 2011]2012

Notice of Continuation: January 3, 2012

Authorizing, and Implemented or Interpreted Law: 10-1-405; 41-1a-209; 52-4-207; 59-1-205; 59-1-207; 59-1-210; 59-1-301; 59-1-302.1; 59-1-304; 59-1-401; 59-1-403; 59-1-404; 59-1-405; 59-1-501; 59-1-502.5; 59-1-602; 59-1-611; 59-1-705; 59-1-706; 59-1-1004; 59-1-1404; 59-7-505; 59-10-512; 59-10-532; 59-10-533; 59-10-535; 59-12-107; 59-12-114; 59-12-118; 59-13-206; 59-13-210; 59-13-307; 59-10-544; 59-14-404; 59-2-212; 59-2-701; 59-2-705; 59-2-1003; 59-2-1004; 59-2-1006; 59-2-1007; 59-2-704; 59-2-924; 59-7-517; 63G-3-301; 63G-4-102; 76-8-502; 76-8-503; 59-2-701; 63G-4-201; 63G-4-202; 63G-4-203; 63G-4-204; 63G-4-205 through 63G-4-209; 63G-4-302; 63G-4-401; 63G-4-503; 63G-3-201(2); 68-3-7; 68-3-8.5; 69-2-5; 42 USC 12201; 28 CFR 25.107 1992 Edition

**Tax Commission, Motor Vehicle Enforcement
 R877-23V-7
 Misleading Advertising Pursuant to Utah Code Ann. Section 41-3-210**

**NOTICE OF PROPOSED RULE
 (Amendment)**

DAR FILE NO.: 36062
 FILED: 04/12/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment updates terminology to match the statutory language.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment replaces the terms "automobile" and "vehicle" with the statutorily defined term "motor vehicle." This amendment reflects the Motor Vehicle Enforcement Division's administration of the law.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-3-210

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** None--The proposed rule matches division practice.
- ◆ **LOCAL GOVERNMENTS:** None--The proposed rule matches division practice.
- ◆ **SMALL BUSINESSES:** None--The proposed rule matches division practice.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--The proposed rule matches division practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment clarifies the Motor Vehicle Enforcement Division's long-standing practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This update in terminology does not change agency practice. Therefore there is no fiscal impact.

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

TAX COMMISSION
MOTOR VEHICLE ENFORCEMENT
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2012

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R877. Tax Commission, Motor Vehicle Enforcement.

R877-23V. Motor Vehicle Enforcement.

R877-23V-7. Misleading Advertising Pursuant to Utah Code Ann. Section 41-3-210.

(1)(a) "Advertisement" means any oral, written, graphic, or pictorial statement made that concerns the offering of a motor vehicle for sale or lease.

(b) "Advertisement" includes any statement or representation:

(i) made in a newspaper, magazine, electronic medium, or other publication;

(ii) made on radio or television;

(iii) appearing in any notice, handbill, sign, billboard, banner, poster, display, circular, pamphlet, letter, or other printed material;

(iv) contained in any window sticker or price tag; and

(v) in any oral statement.

(c) "Advertisement" includes the terms "advertise" and "advertising".

(d) "Advertisement" does not include:

(i) a statement made solely for the purpose of obtaining motor vehicle financing or a motor vehicle title; or

(ii) hand written negotiation sheets between a dealer and a customer of the dealer.

(2) Violation of any of the following standards of practice for the advertising and selling of motor vehicles is a violation of Section 41-3-210.

(a) Accuracy. Any advertised statements and offers about a motor vehicle as to year, make, model, type, condition, equipment, price, trade-in-allowance, terms, and so forth, shall be clearly set forth and based upon facts.

(b) Bait. Bait advertising and selling practices may not be used. A motor vehicle advertised at a specific price shall be in

the possession of the advertiser at the address given. It shall be willingly shown, demonstrated and sold. If sold, the advertiser shall, upon request of any prospective purchaser, peace officer, or employee of the division, show sales records of the advertised motor vehicle.

(c)(i)(A) Price. When the price or payment of a motor vehicle is quoted, the motor vehicle shall be clearly identified as to make, year, model and if new or used. Except as provided in Subsection (c)(i)(B), the advertised price must include charges that the customer must pay for the motor vehicle, including freight or destination charges, dealer preparation, and dealer handling.

(B) The following fees are not required to be included in the advertised price that the customer must pay for the motor vehicle:

(I) dealer document fees;

(II) if optional, undercoating or rustproofing fees; and

(III) taxes or fees required by the state or a county, including sales tax, titling and registration fees, safety and emission fees, and waste tire recycling fees.

(ii) In addition to other advertisements, this pertains to price statements such as "\$.... Buys".

(iii) When "list", "sticker", or words of similar import are used in an advertisement, they may refer only to the manufacturer's suggested retail price. If a supplementary price sticker is used, the advertised price must include all items listed on the supplementary sticker.

(iv) If the customer requests and receives a temporary permit, the temporary permit fee need not be included in the advertised price.

(d) Savings and Discount Claims. Because the intrinsic value of a used motor vehicle is difficult to establish, specific claims of savings may not be used in an advertisement. This includes statements such as, "Was priced at \$....., now priced at \$....."

(i) The word "wholesale" may not be used in retail ~~[automobile]~~motor vehicle advertising.

(ii) When ~~[an automotive]~~a motor vehicle advertisement contains an offer of a discount on a new motor vehicle, the amount of the discount must be stated by reference to the manufacturer's suggested retail price of the motor vehicle.

(e) Down Payments. The amount of the down payment may not be stated in a manner that suggests that it is the selling price of the motor vehicle. If an advertisement states "You can buy with no money down", or terms of similar import, the customer must be able to leave the dealership with the motor vehicle without making any outlay of money.

(f) Trade-in Allowance. Statements representing that no other dealer grants greater allowances for trade-ins may not be used. A specific trade-in amount or range of trade-in amounts may not be used in advertising.

(g)(i)(A) Finance. The phrases, "no finance charge", "no carrying charge", or similar expressions may not be used when there is a charge for placing the transaction on a time payment basis. Statements representing or implying that no prospective credit purchaser will be rejected because of inability to qualify for credit, such as "we accept all credit applications", may not be used.

(B) If the amount of the advertised payment changes during the term of the loan, both the payments and the terms of the loan must be disclosed together.

(ii) The phrase "we will pay off your trade no matter what you owe" may not be used.

(h) Unpaid Balance and Repossessions. The term "repossessed" may be used only to describe motor vehicles that have actually been repossessed from a purchaser. Advertisers offering repossessed motor vehicles for sale may be required to offer proof of those repossessions. The unpaid balance shall be the full selling price unless otherwise stated.

(i) Current Used. When a used motor vehicle, as defined by Section 41-3-102, of a current series is advertised, the first line of the advertisement must contain the word "used", "pre-owned", "certified used", "certified pre-owned", or other similar term used to designate a used motor vehicle, or the text must clearly indicate that the motor vehicle offered is used.

(j) Demonstrators, Executives' and Officials' [Cars] Motor Vehicles.

(i) "Demonstrator" means a motor vehicle that has never been sold or leased to a member of the public.

(ii) Demonstrator motor vehicles include motor vehicles used by new motor vehicle dealers or their personnel for demonstrating performance ability but not motor vehicles purchased or leased by dealers or their personnel and used as their personal motor vehicles.

(iii) A demonstrator motor vehicle may be advertised for sale only by a dealer franchised for the sale of that make of new motor vehicle.

(iv) An executive's or official's motor vehicle shall have been used exclusively by an executive of the dealer's franchising manufacturer or distributor, or by an executive of the franchised dealership. These motor vehicles may not have been sold or leased to a member of the public prior to the appearance of the advertisement.

(v) Demonstrator's, executive's and official's motor vehicles shall be clearly and prominently advertised as such. Advertisements shall include the year, make, and model of the motor vehicle offered for sale.

(k) Taxi-cabs, Police, Sheriff, and Highway Patrol Motor Vehicles. Taxi-cabs, police, sheriff, and highway patrol motor vehicles shall be so identified. These motor vehicles may not be described by an ambiguous term such as "commercial".

(l) Mileage Statements. When an advertisement quotes the number of miles or a range of miles a motor vehicle has been driven, the dealer must have written evidence that the motor vehicle has not been operated in excess of the advertised mileage.

(i) The evidence required by this section shall be the properly completed odometer statement required by Section 41-1a-902.

(ii) If a dealer chooses to advertise specific mileage or a range of miles a motor vehicle has been driven, the dealer shall upon request of any prospective purchaser, peace officer, or employee of the division produce all documents in its possession pertaining to that motor vehicle so that the mileage can be readily verified.

(m) Underselling Claims. Unsupported underselling claims may not be used. Underselling claims include the following: "our prices are guaranteed lower than elsewhere", "money refunded if you can duplicate our values", "we guarantee to sell for less", "we sell for less", "we purchase motor vehicles for less so we can sell them for less", "highest trade-in allowance", "we give \$300 more in

trade than any other dealers". Evidence of supported underselling claims must be contained in the advertisement and shall be produced upon request of a prospective purchaser, peace officer, or employee of the division.

(n) Free. "Free" may be used in advertising only when the advertiser is offering a gift that is not conditional on the purchase of any property or service.

(o) Driving Trial. A free driving trial means that the purchaser may drive the motor vehicle during the trial period and return it to the dealer within the specified period and obtain a refund of all moneys, signed agreements, or other considerations deposited and a return of any motor vehicle traded in. The exact terms and conditions of the free driving trial shall be set forth in writing and a copy given to the purchaser at the time of the sale.

(p) Guaranteed. When words such as "guarantee", "warranty", or other terms implying protection are used in advertising, an explanation of the time and coverage of the guarantee or warranty shall be given in clear and concise language. The purchaser shall be provided with a written document stating the specific terms and coverage.

(q) Name Your Own Deal. Statements such as "write your own deal", "name your own price", "name your own monthly payments", "appraise your own motor vehicle", and phrases of similar import may not be used.

(r) Disclosure of Material Facts. Disclosures of material facts that are contained in advertisements and that involve types of motor vehicles and transactions shall be made in a clear and conspicuous manner.

(i) Fine print, and mouse print are not acceptable methods of disclosing material facts.

(ii) The disclosure must be made in a typeface and point size comparable to the smallest typeface and point size of the text used throughout the body of the advertisement.

(iii) An asterisk may be used to give additional information about a word or term, however, asterisks or other reference symbols may not be used as a means of contradicting or substantially changing the meaning of any advertising statements.

(s) Lease. When an advertisement relates to a lease, the advertisement must make it readily apparent that the transaction advertised is a lease.

(i) The word "lease" must appear in a prominent position in the advertisement in a typeface and point size comparable to the largest text used to directly advertise the motor vehicle.

(ii) Statements that do not use the term "lease" do not constitute adequate disclosure of a lease.

(iii) Lease advertisements may not contain the phrase "no down payment" or words of similar import if an outlay of money is required to lease the motor vehicle.

(iv) Lease terms that are not available to the general public may not be included in advertisements directed at the general public.

(v) Limitations and qualifications applicable to the lease terms advertised shall be clearly and conspicuously disclosed.

(t) Electronic Medium Disclosures. A disclosure appearing in any electronic advertising medium must clearly and conspicuously feature all necessary information in a manner that can be read and understood if type is used, or that can be heard and understood if audio is used.

(u) Invoice or Cost. The terms "invoice" or "factory invoice" may be used as long as the dealer is willing to show the factory invoice to the prospective buyer. The term "cost" may not be used.

(v) Rebate Offers. "Rebate", "cash rebate", or similar terms may be used only when it is clearly and conspicuously stated who is offering the rebate.

(w) Buy-down Interest Rates. No buy-down interest rate may be advertised unless the dealer discloses the amount of dealer contribution and states that the contribution by the dealership may increase the negotiated price of the motor vehicle.

(x) Special Status of Dealership. ~~[An automotive]~~ motor vehicle advertisement may not falsely imply that the dealer has a special sponsorship, approval status, affiliation, or connection with the manufacturer that is greater or more direct than any other like dealer.

(y) Price Equaling. An advertisement that expresses a policy of matching or bettering competitor's prices shall fully disclose any conditions that apply and specify the evidence a consumer must present to take advantage of the offer. The evidence requirement may not place an unreasonable burden on the consumer; however, for example requiring the consumer to bring a written offer made to that consumer by an authorized representative of a dealership on a substantially similar motor vehicle would be considered reasonable.

(z) Auction. "Auction" or "auction special" and other terms of similar import may be used only in connection with motor vehicles offered or sold at a bona fide auction.

(aa) Layout and Type Size. The layout, headlines, illustrations, or type size of a printed advertisement and the broadcast words or pictures of radio, television, or electronic medium advertisements may not convey or permit an erroneous or misleading impression as to which motor vehicle or motor vehicles are offered at featured prices.

(i) When an advertisement contains a picture of a motor vehicle along with a quoted price, the motor vehicle pictured must be a similar model with similar options and accessories as the motor vehicle advertised.

(ii) No advertised offer, expression, or display of price, terms, down payment, trade-in allowances, cash difference, savings, or other material terms may be misleading and any necessary qualifications shall be clearly, conspicuously, and accurately set forth to prevent misunderstanding.

(iii) Qualifying terms and phrases shall be clearly, conspicuously, and accurately set forth as follows:

(A) in bold print and in type of a size that is capable of being read without unreasonable extra effort;

(B) in terms that are understandable to the buying public; and

(C) in close proximity to the qualified representation and not separated or buried by asterisk in some other part of the advertisement.

(bb) An advertisement must disclose a salvage or branded title as prominently as the description of the advertised motor vehicle.

KEY: taxation, motor vehicles

Date of Enactment or Last Substantive Amendment: [February 9,]2012

Notice of Continuation: January 3, 2012

Authorizing, and Implemented or Interpreted Law: 41-1a-712; 41-3-105; 41-3-201; 41-3-202; 41-3-210; 41-3-301; 41-3-302; 41-3-305; 41-3-503; 41-3-505; 41-3-506; 41-3-507

Tax Commission, Motor Vehicle Enforcement **R877-23V-22** Reasonable Cause to Waive, Reduce, or Compromise a Penalty Pursuant to Utah Code Ann. Section 41-3-704

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 36063

FILED: 04/12/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed rule is drafted to implement H.B. 255 (2012 General Session). That bill allows the commission to waive, reduce, or compromise, upon reasonable cause shown, a penalty imposed by the Motor Vehicle Enforcement Division (MVED) under Title 41, Chapter 3.

SUMMARY OF THE RULE OR CHANGE: The proposed rule indicates what may constitute reasonable cause to reduce or compromise a penalty imposed under Title 41, Chapter 3; provides that a person seeking to reduce or compromise a penalty must demonstrate that reasonable cause to reduce or compromise the penalty exists and recommend the amount by which the penalty should be reduced or compromised; provides that ignorance of the law or inability to pay do not constitute reasonable cause.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-3-704

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** None--Any fiscal impacts were considered in H.B. 255 (2012).

◆ **LOCAL GOVERNMENTS:** None--Any fiscal impacts were considered in H.B. 255 (2012).

◆ **SMALL BUSINESSES:** None--Any fiscal impacts were considered in H.B. 255 (2012).

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Any fiscal impacts were considered in H.B. 255 (2012).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed rule provides guidance on when a penalty imposed under Title 41, Chapter 3, may be compromised or reduced.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Some businesses that appeal fines imposed by MVED may receive a reduction.

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

TAX COMMISSION
MOTOR VEHICLE ENFORCEMENT
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2012

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R877. Tax Commission, Motor Vehicle Enforcement.

R877-23V. Motor Vehicle Enforcement.

R877-23V-22. Reasonable Cause to Waive, Reduce, or Compromise a Penalty Pursuant to Utah Code Ann. Section 41-3-704.

(1)(a) Reasonable cause to reduce or compromise a penalty imposed by the division under Title 41, Chapter 3 may include a penalty imposed under Section 41-3-702 for a second or subsequent offense that is issued for a violation that occurred before the division notifies the party of the penalty for the initial offense.

(b) A person seeking to reduce or compromise a penalty under Subsection (1)(a) shall:

(i) demonstrate that there is reasonable cause to reduce or compromise the penalty; and

(ii) recommend the amount by which the penalty should be reduced or compromised.

(2) A penalty that is reduced or compromised under Subsection (1) may not be reduced or compromised below the penalty imposed for a first offense for that violation.

(3) Reasonable cause to waive, reduce, or compromise a penalty imposed by the division under Title 41, Chapter 3 does not include:

(a) ignorance of the law; or

(b) inability to pay a penalty imposed.

(4) Nothing in this rule prevents a person from appealing the appropriateness of a penalty imposed by the division under Title 41, Chapter 3.

KEY: taxation, motor vehicles

Date of Enactment or Last Substantive Amendment: [February 9,]2012

Notice of Continuation: January 3, 2012

Authorizing, and Implemented or Interpreted Law: 41-1a-712; 41-3-105; 41-3-201; 41-3-202; 41-3-210; 41-3-301; 41-3-302; 41-3-305; 41-3-503; 41-3-505; 41-3-506; 41-3-507

Tax Commission, Property Tax
R884-24P-68
Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value of \$3,500 or Less Pursuant to Utah Code Ann. Section 59-2-1115

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36064

FILED: 04/12/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-2-1115 provides a property tax exemption for tangible personal property if the total aggregate fair market value of the property is \$3,500 or less per county. Section 59-2-1115 further requires the \$3,500 amount to be increased in accordance with consumer price index increases.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment replaces the amount "\$3,500 or less" from the rule and replaces it with the phrase "at or below the statutorily prescribed amount" to reflect the consumer price index increases required by statute.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-2-1115

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: None--Property tax revenues are local revenues.

♦ LOCAL GOVERNMENTS: None--The amendments more closely conform the rule language to statute.

♦ SMALL BUSINESSES: None--The amendments more closely conform the rule language to statute.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--The amendments more closely conform the rule language to statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The amendments more closely conform the rule language to statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment makes the rule conform with statute so it creates no new fiscal impact.

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

TAX COMMISSION
PROPERTY TAX
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2012

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R884. Tax Commission, Property Tax.

R884-24P. Property Tax.

R884-24P-68. Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value [of \$3,500 or Less] That is At or Below the Statutorily Prescribed Amount Pursuant to Utah Code Ann. Section 59-2-1115.

(1) The purpose of this rule is to provide for the administration of the property tax exemption for a taxpayer whose taxable tangible personal property has a total aggregate fair market value [of \$3,500 or less] that is at or below the statutorily prescribed amount.

(a) Total aggregate fair market value is determined by aggregating the fair market value of all taxable tangible personal property owned by a taxpayer within a county.

(b) If taxable tangible personal property is required to be apportioned among counties, the determination of whether taxable tangible personal property has a total aggregate fair market value [of \$3,500 or less] that is at or below the statutorily prescribed amount shall be made after apportionment.

(2) A taxpayer shall apply for the exemption provided under Section 59-2-1115:

(a) if the county assessor has requested a signed statement from the taxpayer under Section 59-2-306, within the time frame set forth under Section 59-2-306 for filing the signed statement; or

(b) if the county assessor has not requested a signed statement from the taxpayer under Section 59-2-306, within 30 days from the day the taxpayer is requested to indicate whether the taxpayer has [\$3,500 or less of] taxable tangible personal property in the county that is at or below the statutorily prescribed amount.

KEY: taxation, personal property, property tax, appraisals
Date of Enactment or Last Substantive Amendment: [February 9,]2012

Notice of Continuation: January 3, 2012

Authorizing, and Implemented or Interpreted Law: Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-514; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1308.5; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365

Transportation, Operations, Traffic and
Safety
R920-50
Ropeway Operation Safety

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36082

FILED: 04/16/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to incorporate the latest version of ANSI B77.1 as the governing standard for aerial ropeways in Utah.

SUMMARY OF THE RULE OR CHANGE: ANSI B77.1-2011 will replace ANSI B77.1-2006 as the governing standard for aerial ropeways, except Annex F which will be excluded as to existing installations while the interpretation and impacts of the annex are identified. The accepted practice in the ropeway industry is to adopt the newest version of the ANSI B77 standard approximately one year after its publication. The majority of the changes do not impose additional requirements, but have been made to better define the intention of the regulations. The Department is not aware of any aerial ropeways in Utah that will require modification to comply with the new standard. The major changes better define the duties and chain of command concerning lift operations and the documentation of some maintenance items.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-11-102 and Sections 72-11-201 through 72-11-216

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates American National Standard for Passenger Ropeways - Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and Conveyors - Safety Requirements, published by American National Standards Institute, Inc., 10/03/2011

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no anticipated costs or savings to the state budget because the Ropeway Safety Program that implements and enforces the standard will remain the same.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated costs or savings to local government because the new standard does not change local government involvement in ropeway safety.
- ◆ **SMALL BUSINESSES:** There is not anticipated costs or savings to small businesses because the new standard does not change the current level of involvement for small businesses in ropeway safety.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated costs or savings to persons other than small businesses, businesses, or local government entities because the new standard does not address any changes that would involve these entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no significant compliance costs anticipated for ropeway operators to implement this rulemaking proposal. Some ropeway operators may need to revise documentation or training programs to comply with the new standard, but this will vary with each operator. The amount of personnel required to operator a ropeway will remain the same. The carrier inspection already takes place and operators currently keep documentation associated with that. The changes include more specific requirements for the carrier inspection plan and documentation plan.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts on businesses. Some ropeway operators may need to revise documentation or training programs to comply with the new standard, but this will vary with each operator. The amount of personnel required to operate a ropeway will remain the same. The carrier inspection already takes place and operators currently keep documentation associated with that. The changes include more specific requirements for the carrier inspection plan and documentation plan.

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

TRANSPORTATION
OPERATIONS, TRAFFIC AND SAFETY
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:

- ◆ Brian Allen by phone at 801-965-4766, by FAX at 801-965-3845, or by Internet E-mail at brianallen@utah.gov
- ◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cnewman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2012

AUTHORIZED BY: John Njord, Executive Director

R920. Transportation, Operations, Traffic and Safety.**R920-50. Ropeway Operation Safety.****R920-50-2. Authority.**

This rule is authorized by Section 72-11-210 to implement Title 72, Chapter 11, Passenger Ropeway [Safety]Systems Act.

R920-50-3. Definitions.

In addition to terms defined at Section 72-11-102, the following terms are defined:

- (1) "Aerial lift specialist" as used in American National Standards Institute (ANSI) B77.1 sections 3.3.4.1 and 4.3.4.1, means a Ropeway Inspector.
- (2) "Aerial tramway specialist" as used in ANSI B77.1 section 2.3.4.1 means a Ropeway Inspector.
- (3) "Air Space" means the area bounded by vertical planes commencing at a point thirty-five (35) feet from the intersection of the vertical planes of the ropes or cables and ground surface.
- (4) "Annual general inspection" means an inspection of a passenger ropeway made by a Ropeway Inspector to verify preservation of original design integrity and to determine that components and systems of the passenger ropeway are in proper working order and in accordance with this rule.
- (5) "Audible warning devices" means an audible warning device that signals an impending start of the aerial lift.
- (6) "Conveyor specialist" as used in ANSI B77.1 section 7.3.4.1 means a Ropeway Inspector.
- (7) "Dynamic Testing Logs" means a record of the data collected during the dynamic test.
- (8) "Experienced personnel" means an individual who has acquired knowledge and skills through study, training, or experience in ropeway maintenance, operation, or testing.
- (9) "Existing ropeway" means any passenger ropeway that shall have been operated for passengers in excess of one calendar year.
- (10) "Incident inspection" means an inspection of a passenger ropeway incident made by an approved Ropeway Inspector or a qualified engineer at the request of the Committee.
- (11) "Land surveyor" means an individual licensed under Section 58-22-102 as a professional land surveyor.
- (12) "Modification" means any change as defined in ANSI B77.1 Section 1.2.4.4, ANSI B77.2 Section 1.2.4.4, and the replacement of a ropeway component by one that alters the certified

design or construction provided by the passenger ropeway manufacturer or designer.

(13) "New ropeway" means any passenger ropeway that is registered for the first time for passenger operation during its first calendar year of operation.

(14) "Operational inspection" means an inspection of a passenger ropeway made by a Ropeway Inspector to determine compliance with the operation and maintenance requirements of the Governing Standard and with this rule.

(15) "Operating personnel" means persons employed by the operator for the purpose of supervising the operation, or engaged in servicing, checking, inspecting or maintaining the machinery or structures of a ropeway and when specifically on duty for such purpose on that ropeway.

(16) "Passenger" means any person riding a ropeway, other than "operating personnel."

(17) "Passenger Ropeway Incident" means:

(a) Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component that results in bodily injury to any person on, or inside the load or unload zone of, a passenger ropeway;

(b) Any deropement regardless of whether or not the passenger ropeway is evacuated;

(c) Any evacuation of the passenger ropeway other than by prime mover or auxiliary power unit, regardless of cause;

(d) Any fire involving a passenger ropeway component or adjacent structure;

(e) Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component that results in a loss of control of the passenger ropeway as defined in ANSI B77.1 Section X.2.3.1 or ANSI B77.2 Section 2.2.1.7.2;

(f) Any wire rope damage which exceeds the requirement in ANSI B77.1 Section A.4.1.3 or ANSI B77.2 Section 3.4.1.1; and

(g) Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component or its primary connection that has the apparent potential for causing bodily injury to any person, including but not limited to, the following:

(i) Terminal Structure;

(ii) Bullwheel;

(iii) Brake System;

(iv) Tower Structure;

(v) Sheave, Axle, or Sheave Assembly;

(vi) Carrier; and

(vii) Grip.

(18) "Portable Ropeway" means a ropeway expressly designed to be portable, operated without a permanent foundation, and that has a design range of maximum grade.

(19) "Pre-operational inspection" means an inspection made by a Ropeway Inspector prior to the operation of any new or modified passenger ropeway requiring an Acceptance Inspection and Test.

(20) "Qualified engineer" means any engineer who is licensed to practice engineering in the state of Utah and who has been approved by the Committee.

(21) "Qualified personnel" as used in ANSI B77.1 sections 2.1.1.11, 3.1.1.11, 4.1.1.11, 5.1.1.11, 6.1.1.11, and 7.1.1.11 means a qualified engineer.

(22) "Relocated ropeway" means any passenger ropeway moved to a new location.

(23) "Responsible charge" means effective control and direction of the installation or modification of a passenger ropeway.

(24) "Ropeway Inspector" means an engineer licensed to practice engineering in the state of Utah, independent of the ropeway owner, and approved by the Committee to inspect passenger ropeways.

(25) "Structure" means any edifice, including residential and public buildings, or any other structure or equipment that could reasonably be expected to interfere with the safe operation of a ropeway. Ropeway components required for the operation of the ropeway are not structures.

(26) "Surface lift specialist" as used in ANSI B77.1 section 5.3.4.1, means a Ropeway Inspector.

(27) "Tow specialist" as used in ANSI B77.1 section 6.3.4.1 means a Ropeway Inspector.

R920-50-9. Governing Standards.

(1) The governing standards in Utah include "ANSI B77.1, [2006]2011" and "ANSI B77.2, 2004" as modified by rule of the Committee. Use of these standards is authorized by Section 72-11-201.

(2) The Utah Passenger Ropeway Safety Committee reserves the right to modify, add, or delete provisions included in the Governing Standard.

(3) Existing installations need not comply with the new or revised requirements of the Governing Standard and this rule except as set forth in R920-50-11 "Applicable Provisions."

R920-50-10. Revised and Additional Provisions.

The revised and additional provisions of this section shall only apply when referenced in R920-50-11 "Applicable Provisions."

(1) "New installations and relocated installations." ANSI B77.1 Section 1.2.4.3 is modified by the following requirement: New ropeways and relocated ropeways shall comply with the new or revised requirements of the Governing Standard and with these rules at the time of the acceptance test.

(2) "Auxiliary drives." Installations shall meet the requirements for auxiliary drives, as set forth in ANSI B77.1-1992, 2.1.2.1.1, 3.1.2.1.1, 4.1.2.1.1.

(3) "Electronic speed-regulated drives." Installations shall meet the requirements for electronic speed-regulated drives as set forth in ANSI B77.1-1992, 2.2.1.8.2, 3.2.1.8.2, 4.2.1.8.2, 5.2.1.8.2, 6.2.1.8.2.

(4) "Rope position monitoring." Installations shall meet the requirements for rope position monitoring, as set forth in ANSI B77.1-1992, 3.1.3.3.2, paragraph 6.

(5) "Friction type brakes." Installations shall meet the requirements for friction type brakes, as set forth in ANSI B77.1-1992, 2.1.2.5, 3.1.2.5, 4.1.2.5, 5.1.2.5, 6.1.2.5.

(6) "Fire detection." All machine rooms that are in an enclosed structure located adjacent to the rope of the tramway (vaulted) shall have a fire detection system installed in accordance with the National Fire Alarm Code. This system shall initiate a visual and audible alarm monitored at the drive terminal operator station.

(7) "Grips, clips, and carrier testing." Testing shall be completed according to section ANSI B77.1 sections 2.3.4.3, 3.3.4.3, 4.3.4.3, and ANSI B77.2 section 2.3.4.4 except as modified by this rule.

(a) Testing personnel shall be qualified in accordance with American Society for Nondestructive Testing (ASNT) Recommended Practice No. SNT-TC-1A-1992. Testing agency shall provide certification of qualification of personnel performing testing.

(b) Testing agency inspector shall certify to the owner or area operator that the passenger ropeway components tested were non-destructively tested in accordance with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

(c) Sampling size and method of obtaining the sample shall comply with the Governing Standard or the manufacturer's requirement, which ever is more stringent.

(d) Rejection rate and retest procedures shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

(e) Types of inspections to be performed and the procedures to be used shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

(f) Criteria for acceptance/rejection of samples shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

(8) "Wire rope inspection." Inspections shall be performed according to ANSI B77.1 Annex A.4.1 and ANSI B77.2 3.4.1 and shall be performed by a competent inspector defined by the Governing Standard and who is approved by the Committee. The wire rope inspector shall certify to the owner or area operator whether the wire rope in its present condition meets requirements for continued operation.

(9) "Operation and maintenance." All installations shall comply with the Operation and Maintenance requirements of the Governing Standard. These requirements are stated in ANSI B77.1, 2.3, 3.3, 4.3, 5.3, 6.3, 7.3, and ANSI B77.2 2.3.

(10) "Audible warning devices." Requirements for audible warning devices.

(a) Installations shall meet the requirements for audible warning devices as specified by ANSI B77.1, 2.2.10, 3.2.10.

(b) ANSI B77.1 Section 4.2.10 is modified by the following requirement: The aerial lift shall incorporate an audible warning device that signals an impending start of the aerial lift. After the start button is pressed, the device shall sound an audible alarm for a minimum of two seconds before the aerial lift begins to move. The audible device shall be heard inside and outside all terminals and machine rooms above the ambient noise level.

(11) "Conveyor Standards."

(a) Loading and unloading area requirements of ANSI B77.1 section 7.1.1.9 shall also accommodate the use of adaptive devices.

(b) Power units referred to in ANSI B77.1 section 7.1.2.1 may not have reverse capability.

(c) "Power supply cords" referred to in ANSI B77.1 section 7.2.1.5.6 shall be protected from snow grooming, skiers, and other equipment and shall be ground fault protected.

(d) The belt transition entry stop device referred to in ANSI B77.1 section 7.2.3.3 shall include redundant (double)

sensors. Each sensor shall be part of an independent control circuit that can initiate an emergency shutdown of the conveyor. The device shall be so designed and maintained that no single point of failure can cause the entry stop device to malfunction. The device shall not be remotely resettable and shall require the operator to reset the device prior to restarting the conveyor.

(12) "Dynamic Testing Logs." Maintenance logs shall include documentation of the dynamic testing.

(13) "Air Space Requirements." ANSI B77.1-2006, 2.1.1.3, 3.1.1.3, 4.1.1.3, 5.1.1.3, and 6.1.1.3 and ANSI B77.2 section 2.1.1.2 shall also include the following: No structure (temporary or permanent) shall be permitted to encroach into the air space of the ropeway.

(14) "Portable Ropeways." Portable ropeways shall not be considered new ropeways when moved to different locations but remaining under the jurisdiction of the same operator.

(15) "Tows Requirements."

(a) The requirements of ANSI B77.1 section 6.2.3.2.b shall also require the stop gate to extend across the incoming and outgoing rope.

(b) Handle Tows shall have stop gates above and below the rope.

(16) "Existing Installations - Annex F" ANSI B77.1-2011 Section 1.2.4.1 Existing installations is modified by the following: Operation and maintenance is not required to comply with normative Annex F Combustion engine(s) and fuel handling.

R920-50-11. Applicable Provisions.

Installations shall comply with the "Revised and Additional Provisions" of R920-50-10 in the categories listed below, on or before the date specified. These provisions establish the minimum requirement.

(1) The following apply to all ropeways:

(a) New installations and relocated installations R920-50-10(1);

(b) Fire detection R920-50-10(6); effective November 1, 1995;

(c) Wire rope inspection R920-50-10(8); and

(d) Operation and maintenance R920-50-10(9).

(e) Existing Installations - Annex F R920-50-10(16); effective June 7, 2012.

(2) The following provisions apply to an Aerial Tramway:

(a) Auxiliary drives R920-50-10(2); effective November 1, 1994;

(b) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(c) Friction type brakes R920-50-10(5); effective November 1, 1995;

(d) Grips, clips, and carrier testing R920-50-10(7);

(e) Audible warning devices R920-50-10(10); effective November 1, 2001;

(f) Dynamic testing logs R920-50-10(12); and

(g) Air space requirements R920-50-10(13); effective November 1, 2006.

(3) The following provisions apply to a Detachable Grip Aerial Lift:

(a) Auxiliary drives R920-50-10(2); effective November 1, 1994;

(b) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(c) Rope position monitoring R920-50-10(4); effective November 1, 1994;

(d) Friction type brakes R920-50-10(5); effective November 1, 1995;

(e) Grips, clips, and carrier testing R920-50-10(7);

(f) Audible warning devices R920-50-10(10);

(g) Dynamic testing logs R920-50-10(12); and

(h) Air space requirements R920-50-10(13); effective November 1, 2006.

(4) The following provisions apply to a Fixed Grip Aerial Lift:

(a) Auxiliary Drives R920-50-10(2); effective November 1, 1994;

(b) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(c) Friction type brakes R920-50-10(5); effective November 1, 1995;

(d) Grips, clips, and carrier testing R920-50-10(7);

(e) Audible warning devices R920-50-10(10);

(f) Dynamic testing logs R920-50-10(12); and

(g) Air space requirements R920-50-10(13); effective November 1, 2006.

(5) The following provisions apply to a Surface Lift:

(a) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(b) Friction type brakes R920-50-10(5); effective November 1, 1995; and

(c) Air space requirements R920-50-10(13); effective November 1, 2006.

(6) The following provisions apply to a Rope Tow:

(a) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(b) Friction type brakes R920-50-10(5); effective November 1, 1995;

(c) Air space requirements R920-50-10(13); effective November 1, 2006;

(d) Tow requirements R920-50-10(15); and

(e) Portable Ropeways R920-50-10(14).

(7) The following provisions apply to a Conveyor:

(a) Conveyor standards R920-50-10(11); and

(b) Portable Ropeways R920-50-10(14).

R920-50-14. Incidents.

(1) Reporting of Incidents.

(a) Every passenger ropeway incident, as defined in R920-50-3(18) shall be verbally reported to the Committee, or the Committee's appointed representative, as soon as reasonably possible, but no later than twenty-four (24) hours after the time of the incident. A written report shall be delivered to the Committee within five (5) days of the incident.

(b) The reports required by this section are to be maintained for administrative enforcement, licensing and certification purposes only. The reports are "protected" records under the Government Records Management Act, Section 63G-2-30[4]5 and are also governed by Section 63G-2-207.

(2) Suspension of Operations. When a passenger ropeway incident, as defined in R920-50-3(17) (a) or (g), occurs, the owner or area operator of the ropeway shall suspend operation of the ropeway and shall notify the Committee through the Committee's appointed representative. The owner or area operator of the ropeway, with the Committee or the Committee's appointed representative, shall perform a joint incident inspection of the ropeway. The inspection shall precede any authorization to resume public operation of the passenger ropeway.

KEY: transportation safety, tramways, ropeways, tramway permits

Date of Enactment or Last Substantive Amendment: [~~January 10, 2011~~2012]

Notice of Continuation: August 13, 2007

Authorizing, and Implemented or Interpreted Law: 72-11-201 through 72-11-216

End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to remove obsolete rules from the Utah Administrative Code. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **NOTICE**. By filing a Notice, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. **NOTICES** are effective upon filing.

NOTICES are governed by Section 63G-3-305.

Corrections, Administration **R251-305** Visiting at Community Correctional Centers

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36039
FILED: 04/06/2012

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 Section 64-13-17. The purpose of this rule is to provide the Department's rules governing visitation at Community Correctional Centers.

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 communications to the Department of Corrections in support or opposition to this rule to the date of this renewal application.

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 the documentation of rules and conditions of persons who wish to visit with offenders who are housed in Community Correction Centers. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

AUTHORIZED BY: Thomas Patterson, Executive Director

EFFECTIVE: 04/06/2012

Corrections, Administration **R251-306** Sponsors in Community Correctional Centers

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36040
FILED: 04/06/2012

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 Sections 63G-3-201, 64-13-10, and 64-13-17. The purpose of this rule is to provide the Department's policy for sponsors accompanying offenders of Community Correctional Centers into the community and to explain the process of applying to be a sponsor.

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 communications with the Department of Corrections in support or opposition to this rule to the date of this renewal application.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is the policy of the Department that offenders assigned to Centers should be afforded the opportunity to develop or strengthen community support systems and family relationships through the use of sponsors. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 CORRECTIONS
 ADMINISTRATION
 14717 S MINUTEMAN DR
 DRAPER, UT 84020-9549
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

AUTHORIZED BY: Thomas Patterson, Executive Director

EFFECTIVE: 04/06/2012

Corrections, Administration
R251-707
Legal Access

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 36041
 FILED: 04/06/2012

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 Sections 63G-3-201, 64-13-7, 64-13-10, and 64-13-17 which allow the Department to adopt procedures 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: There have been no communications with the Department of Corrections in support or opposition to this rule to the date of this renewal application.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of this rule is to provide the policy and procedures for inmates under the control of the Institutional Operations Division regarding access to courts and counsel. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 CORRECTIONS
 ADMINISTRATION
 14717 S MINUTEMAN DR
 DRAPER, UT 84020-9549
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

AUTHORIZED BY: Thomas Patterson, Executive Director

EFFECTIVE: 04/06/2012

Corrections, Administration
R251-710
Search

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 36042
 FILED: 04/06/2012

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 under Section 64-13-10, and Subsections 64-13-14(1) and 64-13-17(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: There have been no communications with the Department of Corrections in support or opposition to this rule to the date of this renewal application.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of this rule is to provide the Department's policy, procedures, and requirements for conducting searches. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

AUTHORIZED BY: Thomas Patterson, Executive Director

EFFECTIVE: 04/06/2012

Environmental Quality, Air Quality **R307-424**

Permits: Mercury Requirements for Electric Generating Units

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36033
FILED: 04/05/2012

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 19-2-104(1)(a) states that the Air Quality Board may make rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminant source." Subsection 19-2-104(3)(e) states that the Air Quality Board may "prepare and develop a comprehensive plan or plans for the prevention, abatement, and control of air pollution in this state."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This is the first five-year review of this rule. Therefore, the Air Quality Board (AQB) has included the comments the Division of Air Quality (DAQ) received

during the original rulemaking process. AQB has also included DAQ's responses to those comments. Since the rule was enacted on 05/09/2007, DAQ has received no further comments regarding this rule. Comment No. 1: Expressing support for this rule, which limits mercury emissions from electric generating units (EGUs) and creates an offset bank patterned after the successful PM10 offset bank. The comment also acknowledges that the Clean Air Mercury Rule (CAMR), by itself, would not prevent an increase in mercury emissions from EGUs in Utah. (Comment made by Wasatch Clean Air Coalition) Response: DAQ notes the comment and reiterates that its primary concern is to see that mercury emissions are on a downward trend in Utah. Comment No. 2: EPA notes that it is still reviewing the offset provisions of the rule, and is reserving the right to make further comment at some later date. (Comment made by the EPA) Response: Noted. Comment No. 3: Banking of mercury offset credits from tribal land should not be allowed unless a mechanism can be found to prevent the scenario under which such credits could be used to elsewhere in Utah, and subsequently additional generating capacity could be added on tribal land which, independent of DAQ permitting requirements, would require no offset credits. (Comment made by Wasatch Clean Air Coalition) Response: DAQ notes the concern of the commenter and would add that this is a topic about which the agency specifically solicited public input. The State of Utah has no jurisdiction on Tribal lands, and could therefore not ultimately prevent the scenario described above. The AQB does not necessarily believe it to be likely that coal fired power generation would cease to be economically viable, and then subsequently begin again on those Tribal lands. Nevertheless, in the final proposal, the AQB has eliminated the potential for credits to be generated by units outside of the AQB's jurisdiction. The proposed revision to the language is as follows: Section R307-424-3. Offset Requirement: Mercury. Sources meeting the applicability requirements...(1) The permitted increase in...(2) The averaging period...(3) Mercury emission credits must be obtained from an EGU located within the State of Utah, excluding [including] any EGU located on Indian lands within the State. Comment No. 4: Due to the limited ability of Utah's existing facilities to create offset credits, the 1.1 to 1 offset ratio in the proposed rule will substantially increase costs to both existing and proposed facilities. It appears that unburned carbon in Utah coals acts in a similar manner to activated carbon injection (ACI), the most widely anticipated control for mercury emissions. Thus, ACI may not provide much benefit to Utah's EGUs, and further technology may not exist to create the offset credits necessary for permitting additional generating capacity. Furthermore, there is a limited number of units that can potentially generate offset credits by retrofitting with more traditional equipment (fabric filters and sulfur scrubbers.) This could encourage EGUs to locate outside Utah and still impact the state with mercury emissions. Finally (comment received orally), should DAQ propose to retain these offset provisions, the rule should establish a baseline date for the determination of credits. (Comment made by Pacificorp Energy) Response: The AQB recognizes the potentially limited quantity of offset credits for

permitting new EGUs. However, the AQB also anticipates that there will be a significant number of credits generated in the near term due to retrofits, and the AQB is optimistic that advancements in technology will lead to continued opportunity for the generation of credits in the future. Therefore, in the final proposal, the AQB recommends retaining the notion of offsets. The AQB agrees with the suggestion to establish a baseline date, from which point forward one could establish credits to be used in subsequent permitting actions. As such, the following language is proposed in subsection (6) of Section R307-424-3: (6) The quantity of mercury emission reductions to be used for credit will be determined in accordance with 40 CFR part 75, or will be based on the best available data reported to the executive secretary. To the extent that the EGU has been subject to the requirements of part 75, mercury emissions data shall be the average of the 3 highest annual amounts over the most recent 5-year period. Mercury emission reductions made prior to 12/31/1999 shall not be creditable for such purpose. The basis for the selection of this date is that 1999 was the year that the EPA used as a reference for evaluating mercury emissions as part of the CAMR. Comment No. 5: The Department has proposed a rule that takes away the option of choosing cost effective reductions by mandating that facilities in the state meet either an emission limit or a specific degree of reduction. Additional control at one EGU may not be credited toward compliance with the rule at another. This removes the ability to choose the most cost effective method of compliance with the reduction requirements. (Comment made by PacifiCorp Energy) Response: The commenter makes an interesting suggestion, but DAQ remains of the opinion that compliance on a unit-by-unit basis is ultimately more aligned with the goal of reducing mercury emissions for the protection of the public and the environment. Unlike the case with a criteria pollutant, there is in this instance neither a prescribed level of ambient concentration nor a quantitative demonstration of attainment thereof to indicate some margin of safety beyond which a concept such as unit averaging might be acceptable for economic reasons. In the absence of such criteria, DAQ believes it prudent to err on the side of protection. Comment No. 6: There is still a great deal of uncertainty regarding the magnitude of mercury emissions from EGUs. Meeting an emission limit of 6.50×10^{-7} lb/mmbtu or an overall reduction requirement of 90% may not be achievable as contemplated by the proposed rule. This uncertainty is potentially compounded by coal supply issues. While Subsection R307-424-4(3) allows the owner of a facility to petition for a modification to these limits, it is only after the facility is found to be in noncompliance with such, "despite properly operating the unit in conjunction with a baghouse as well as wet or dry flue gas de-sulfurization," that this provision applies. This exposes the facility to potential action by a third party regardless of any regulatory discretion exercised by the Department. Reference to non-compliance for not meeting the target rate should be removed from the rule. It appears that the intent of the proposed rule is to ensure that, at a minimum, mercury emissions are controlled through proper use of flue gas de-sulfurization and a baghouse. The Department should consider removing the 6.50×10^{-7}

lb/mmbtu emission limit from the rule, or at least structuring the rule such that it becomes a target objective rather than an enforceable limit. (Comment made by PacifiCorp Energy) Response: DAQ appreciates the concerns surrounding both the accuracy of measuring mercury concentrations and the variability likely observed throughout an entire year. Nevertheless, the data that is available at this point in time would indicate that the "target objectives" specified in Section R307-424-4 are or will be reasonably achievable. For this reason, the AQB is compelled to include them as enforceable limits. With regard to the concern about third party interference, DAQ believes the commenter has raised a valid point, and is proposing that the following revision appear in the first two lines of paragraph (3.) Additional clarification also appears at the recommendation of staff: Section R307-424-4. Emission Rates. (1) By no later than... (2) Compliance with... (3) Should an EGU be unable to achieve the maximum emission rate or the minimum control efficiency described in [found in noncompliance with] (1) above, despite proper[ly] operation of[ng] the unit in conjunction with a baghouse as well as wet or dry flue gas de-sulfurization, the owner or operator may petition the executive secretary for a modification to the compliance limitation for the unit [limits therein] in accordance with Rule R307-401. Comment No. 7: It may be premature to impose emission limits or control efficiency requirements based upon data that may only represent a snapshot in time. The AQB does not believe that the levels proposed for either of these is attainable on an ongoing annual basis given the variability of both coal quality and facility operations. The CAMR will require continuous emissions monitoring beginning in 2009, and the data collected may reflect emission rates that are significantly different from the estimates made by EPA. DAQ should wait until this data has been collected before making policy decisions of this magnitude. Additionally (comment received orally), the AQB appreciates that DAQ has provided a mechanism by which one could petition the executive secretary for relief from limits established prior to the collection of continuous data. However, we believe the Division should add some specificity concerning this process. In addition to the CEM data, the AQB is concerned that there may be other mitigating factors which might be overlooked in such an instance. (Comment made by IPSC) Response: DAQ understands both the difficulty in attaining a reliable measurement using current techniques as well as, the difference between a few isolated data points and an entire year of continuous data. Nevertheless, the AQB does not feel that it is appropriate to wait four or five years until there is a more reliable data set before taking steps to address mercury emissions in Utah. Based on the data that is available, the AQB believes that the limits that were proposed are achievable with a reasonable margin for compliance. DAQ did consider the possibility that neither condition could be achieved, and for that reason, included the option to petition the executive secretary for an alternate limit. The AQB agrees with the commenter that the rule would benefit from the addition of some pre-defined criteria by which such a petition might be evaluated. As such we are proposing to add the following language in subsections (a) and (b): Section

R307-424-4. Emission Rates. (1) By no later than...(2) Compliance with...(3) Should an EGU be unable to achieve the maximum emission rate or the minimum control efficiency described in [found in noncompliance with] (1) above, despite proper[ly] operation of[ng] the unit in conjunction with a baghouse as well as wet or dry flue gas de-sulfurization, the owner or operator may petition the executive secretary for a modification to the compliance limitation for the unit [limits therein] in accordance with Rule R307-401. (a) Such petition shall be received no later than the date upon which the compliance assessment required under (2)(a) above is due. (b) Any such determination by the executive secretary will be made on a case-by-case basis, taking into consideration energy, environmental and economic impacts and other costs. It will be based on the best information and analytical techniques available. See also response to Comment No. 6 above. Comment No. 8: The Department's cost analysis anticipates that three of Utah's seven affected EGUs would need to retrofit, at a cost of \$50,000,000 each, in order to comply with the rule. However, if monitoring indicates that any of the other four EGUs cannot meet the proposed limits, the cost to utility customers could exceed \$350,000,000. (Comment made by Pacificorp Energy) Response: DAQ stands by its analysis, and would reiterate that the option to petition the executive secretary for an alternate limit makes this scenario unlikely. Comment No. 9: This proposed rule places more restrictions on mercury emissions than the federal CAMR in many ways. Its emission limits are more restrictive than those contained in 40 CFR 60 subpart Da; its deadlines are sooner than Phase II of the CAMR; it includes a potential minimum removal efficiency which may not be consistently attainable; and it includes offset requirements for permitting. Utah State Statute (Section 19-2-106) allows the AQB to put in place rules that are equivalent to similar federal standards: neither less stringent or more stringent. In this case, the proposed rules may be interpreted to be more stringent than the federal rules and would therefore be in violation of State Statute. That said, the Board is not precluded from making more stringent rules when it has obtained written opinion and findings that federal requirements are not sufficiently protective of human health and the environment. However, we do not believe this to be the case in this instance. The AQB are not aware of any hearings or public record concerning the inadequacy of the federal regulations, nor have we seen any data showing how the proposed rules would be more protective than the CAMR. Furthermore, the AQB is not aware of any study regarding mercury impacts from any of the affected sources. Aside from the obvious concerns with the statute itself, the AQB is concerned that EPA may be unable to approve a State plan that was not on sound legal footing. This may have the effect of delaying Utah's participation in the federal trading program. (Comment made by IPSC) Response: DAQ is firstly and foremostly concerned with the health and well being of the public. With respect to mercury, the State Department of Health has issued consumption advisories for fish and ducks inhabiting many areas of the State. Concentrations of methylmercury found in the Great Salt Lake are among the highest recorded anywhere in the nation. There can be no

doubt that mercury concentrations, and therefore, mercury deposition, within the State of Utah are already too high. Improving Utah's watersheds by reducing concentrations of mercury and methylmercury requires a comprehensive effort to prevent mercury emissions from all of the significant source categories. Other source categories that emit mercury in significant amounts already have been regulated here in Utah. As recently as 1990, Medical Waste Incinerators and Municipal Waste Combustors, for example, each accounted (nationally) for as many mercury emissions as are currently attributable to coal-fired EGUs. Subsequent regulation has resulted in emission reductions of roughly 100 tons per year (or 94%.) In 2006, Utah passed legislation to introduce a \$5 bounty on the mercury switches found in cars. The Division of Solid and Hazardous Waste is developing rules to implement this program in July of 2007. Removal of these switches prior to the melting-down of the scrapped vehicles prevents mercury from being released at steel mills like Nucor Steel. Coal-fired EGUs are the next source category to be regulated, but exclusive reliance on a nationwide cap and trade program may not help our State meet this challenge. The federal CAMR offers Utah no guarantee that mercury emissions from coal-fired EGUs will not increase. The mercury emission budgets given the State for both phases of the CAMR are higher than the historical emission rates from these sources. Furthermore, the compliance mechanism inherent in the cap and trade program allows the future emissions of mercury to exceed even these budgets, so long as additional allowances are secured from somewhere else to cover the overage. This offers no relief to the Utah public in terms of excessive concentrations of mercury already present in our watersheds. Subsection 19-2-106(1) limits rules to be no more stringent than corresponding federal regulations. In this case, the federal regulations do not establish a mandatory mercury trading program, but instead leave policy determinations on mercury regulation to the states, with options to determine emission standards and compliance schedules, so long as the state plans lead to compliance with the annual mercury budgets for the appropriate control periods. Finally, revisions to the proposed rule, as a result of other comments, provide adequate opportunity for the owner or operator of an EGU to seek regulatory flexibility if the proposed requirements are technically unfeasible or cost prohibitive. Comment No. 10: The cap and trade approach of the CAMR is, by itself, sufficient to keep mercury emissions within the state specific budget for Utah. There is no need for an overly high minimum efficiency in removal of mercury. Rule R307-424 goes beyond the federal requirements and will potentially and substantially reduce mercury emissions in Utah if adopted. Furthermore, enhancing mercury regulations beyond CAMR can impact unit operating capacity, availability, and economic stability. The AQB recommends that DAQ retract Section R307-424 in its entirety, and instead rely on the CAMR to achieve its goal of nationwide mercury reductions. (Comment made by IPSC) Response: As discussed in the response to the previous comment, DAQ is not convinced that the cap and trade approach of the CAMR is, by itself, sufficient to keep mercury emissions within a level that is protective of the

health and well being of Utah's public. Already there are levels of mercury and methylmercury present in Utah's watersheds that have led to the issuance of fish and duck advisories. Clearly the levels of mercury emissions are already too high, and the CAMR by itself could only add to those emission rates. In order to be protective of public health, mercury emissions will have to be reduced, and these reductions will have to come from all significant source categories. Coal-fired EGUs are but one of these source categories.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is the primary intent of this rule to see that mercury emissions within the state of Utah are set on a downward trend. Rule R307-424 includes state-only provisions that establish minimum performance criteria for existing EGUs and requires offsets for potential increases in mercury emissions. Therefore, this rule should be continued.

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

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 04/05/2012

**Environmental Quality, Environmental
 Response and Remediation
 R311-200
 Underground Storage Tanks:
 Definitions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION
 DAR FILE NO.: 36057
 FILED: 04/10/2012**

**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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Solid and Hazardous Waste Control Board authority to regulate USTs and petroleum storage tanks, and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs.

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 on this rule have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary for continued operation of the Underground Storage Tank program. It contains important definitions that clarify terms used elsewhere in the UST rules. Therefore, this rule should be continued.

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

AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 04/10/2012

**Environmental Quality, Environmental
 Response and Remediation
 R311-201
 Underground Storage Tanks:
 Certification Programs and UST
 Operator Training**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION
 DAR FILE NO.: 36045
 FILED: 04/10/2012**

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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Solid and Hazardous Waste Control Board authority to regulate USTs and petroleum storage tanks, and make rules for the administration of the petroleum storage tank program and certification of UST installers, inspectors, testers, removers, and consultants. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs. Subsection 19-6-402(6)(a)(i) of the UST Act refers to education and experience standards established by Board rule for certified UST consultants. Section 19-1-301 of the Environmental Quality Code requires that the Department of Environmental Quality and its boards comply with procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act (APA), and specifies that procedures for an adjudicative proceeding conducted by an administrative law judge are governed by the Administrative Procedures Act and rules adopted by a board as allowed by Subsection 63G-4-102(6). Section 63G-4-102 of the Administrative Procedures Act states that the APA governs actions by state agencies that determine or limit legal rights and privileges of persons, and governs judicial review of those actions. It allows agencies to enact and follow rules affecting or governing adjudicative proceedings if the rules are enacted according to procedures outlined in Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and if the rules conform to the requirements of the APA. Sections 63G-4-201 through 63G-4-205 of the Administrative Procedures Act allow agencies to enact rules governing certain aspects of adjudicative proceedings, such as: commencement of proceedings, designation of categories of proceedings as formal or informal, and procedures for conducting informal and formal proceedings. Section 63G-4-503 of the Administrative Procedures Act requires an agency to issue rules regarding declaratory 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: Comments on this rule were received during informal and formal public comment periods for a proposed new section (Section R311-201-12) that would require UST operators to be trained and registered. The section was proposed to implement the operator training requirement of the 2005 federal Energy Policy Act. Approximately 25 comments were received. Some commenters were opposed to the proposed section, believing that it would place too great a burden on UST operators, would result in increased costs and too much government regulation, or was unnecessary, since UST operators already monitor their systems. Some commenters requested that an online training option be provided, and others proposed

changes to allow persons other than the designated Class B operator to perform the monthly facility inspections. Other commenters requested specifics on persons who would be allowed to provide training, and proposed limits on the length of training classes and the subjects that would be presented in the classes. Section R311-201-11 (Work Performed by Licensed Engineers or Geologists) was the subject of a legislative nonreauthorization during the 2011 General Legislative Session. It was removed from the UST rules as of 05/01/2011. Comments were received during an informal public comment period for proposed section (Section R311-201-12) to modify the requirements for individuals who contract with UST owner/operators to act as third-party Class B operators. The comments were in favor of the proposed rule, or requested more information on the change. No comments were received on this proposed rule during the formal public comment period.

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 necessary for continued operation of the Underground Storage Tank program. As directed by Subsection 19-6-403(1)(a) of the Utah UST Act, it provides certification requirements for UST installers, removers, testers, inspectors, and consultants. It also provides for training and registration of UST operators, as required by the Energy Policy Act and Subsection 19-6-403(1)(b) of the UST Act. Therefore, this rule should be continued. The proposed rule change regarding training and registration requirements for UST operators (Section R311-201-12) was made effective in 2009. While recognizing that the rule could potentially place an increased burden on UST owner/operators, the rule was necessary to implement a required part of the 2005 federal Energy Policy Act. Where possible, the Division of Environmental Response and Remediation (DERR) attempted to minimize the negative impact and made changes to allow for persons other than the Class B operator to perform the monthly inspections, and has worked with third-party training vendors to ensure that online training options have been made available. It was felt that it was not necessary to include language specifying that online training would be allowed, putting restrictions on length and subject matter of classes, or limiting the fees that trainers could charge for their classes. Such language would restrict the natural market forces that would help keep the training at the lowest cost possible and keep class length within a reasonable time limit. All training classes are reviewed and approved by DERR before classes are given, to ensure that the proper subjects are covered. The section that was not reauthorized by the legislature has not been re-enacted. Requirements for work done by professional engineers and geologists are adequately specified in laws and rules of the Department of Commerce for professional licensing. Division staff responded to questions regarding the third-party Class B operator changes and were able to explain the proposal to the satisfaction of the questioners.

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

AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 04/10/2012

**Environmental Quality, Environmental
 Response and Remediation
 R311-202
 Underground Storage Tank Technical
 Standards**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 36046
 FILED: 04/10/2012

**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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Solid and Hazardous Waste Control Board authority to regulate USTs and petroleum storage tanks, and make rules for administration of the petroleum storage tank program and the adoption of applicable Federal UST regulations. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs.

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 on this rule have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary for the continued

operation of the Underground Storage Tank program. It provides for the incorporation by reference of the federal UST regulations (40 CFR Part 280) and is specifically mandated by Subsection 19-6-403(1)(b) of the Utah UST Act. Therefore, this rule should be continued.

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

AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 04/10/2012

**Environmental Quality, Environmental
 Response and Remediation
 R311-203
 Underground Storage Tanks: Technical
 Standards**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 36047
 FILED: 04/10/2012

**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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Solid and Hazardous Waste Control Board authority to regulate USTs and petroleum storage tanks, and make rules for registration of tanks and administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs. Section 19-6-408 of the UST Act provides for the assessment of an annual underground storage tank registration fee on regulated USTs. Subsection 19-6-411(2)(b) of the UST Act requires the Board to make rules specifying which portions of an underground storage tank installation shall be subject to the permitting fees when less than a full UST system is installed.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Comments were received from stakeholders during an informal comment period in April 2008, when the Division of Environmental Response and Remediation (DERR) proposed a new section (Section R311-203-6) regarding secondary containment for newly-installed underground storage tanks and piping, and notification requirements subsection (Subsection R311-203-2(5)) when UST owner/operators place an alternative fuel into an UST. The secondary containment comments recommended that DERR not provide for an exception to the requirements for new installations that are located more than 1,000 feet from a municipal water supply or potable drinking water well. The alternative fuel comments recommended that DERR provide information on "safe" equipment that could be used with the new fuels, or specify in the rules what equipment is compatible with the new fuels, so retailers would not be required to notify DERR whenever the alternative fuels were used.

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 necessary for continued operation of the Underground Storage Tank program. It clarifies when UST owner/operators and installers must notify on new installations, upgrades, and changes of ownership. It provides for the administration of the registration fee mandated by Section 19-6-408 of the Utah UST Act, the installer permit fees mandated by Section 19-6-411, and the installer notification requirements mandated by Section 19-6-407. It provides clarification of the tank testing requirements in Section 19-6-413 of the UST Act and subparts C (General Operating Requirements) and D (Release Detection) of 40 CFR 280, the federal UST regulations. Therefore, this rule should be continued. The secondary containment comments received were considered, but the final rule that became effective kept the exemption. The exemption would apply only in rare instances, and has little effect on new UST installations. For several years, industry practice has been to install tanks and piping with secondary containment almost exclusively. It was also determined that the exemption should be kept because it is part of the 2005 Energy Policy Act, and Utah's rule should not be more stringent than the Federal law. The comments on alternative fuels were thought to be unworkable. It would be nearly impossible to specify what equipment was determined to be compatible, and it would put the DERR in a position of possibly being held liable for a release or other situation caused by incompatibility of fuels and equipment. It was determined that the 30-day advance notice requirement would be taken out of the proposed rule, and the rule would require notice only if a tank was to store an alternative fuel with percentages of alternative components greater than current standards.

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

AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 04/10/2012

**Environmental Quality, Environmental
 Response and Remediation
 R311-204
 Underground Storage Tanks: Closure
 and Remediation**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 36048
 FILED: 04/10/2012

**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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Solid and Hazardous Waste Control Board authority to regulate USTs and petroleum storage tanks, and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs. Section 19-6-402 of the UST Act provides definitions for terms pertinent to the underground storage tank program, including "Certified underground storage tank consultant", and refers to consultant education and experience standards established by the Board.

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 on this rule have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary for continued operation of the Underground Storage Tank program. It specifies the requirements for UST closure plans, specifies labeling requirements and acceptable disposal methods for USTs that have been removed, and specifies when remedial activities may take place without the supervision of a certified UST consultant. Therefore, this rule should be continued.

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

AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 04/10/2012

**Environmental Quality, Environmental
 Response and Remediation
 R311-205
 Underground Storage Tanks: Site
 Assessment Protocol**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 36049
 FILED: 04/10/2012

**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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Solid and Hazardous Waste Control Board authority to regulate USTs and petroleum storage tanks, and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs. Section 19-6-413 of the UST Act refers to requirements set by rule for tightness tests performed as part of the application to receive a UST certificate of compliance.

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 on this rule have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary for continued operation of the Underground Storage Tank program. It specifies the requirements for site assessments for UST closures, and specifies tank testing and site check requirements for tanks that will be covered by the Petroleum Storage Tank Trust Fund after a period of non-participation. Therefore, this rule should be continued.

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

AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 04/10/2012

**Environmental Quality, Environmental
 Response and Remediation
 R311-206
 Underground Storage Tanks: Financial
 Assurance Mechanisms**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 36050
 FILED: 04/10/2012

**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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Solid and Hazardous Waste Control Board authority to regulate

USTs and petroleum storage tanks, and make rules for administration of the petroleum storage tank program, including format and required information regarding records to be kept by tank owner/operators who are participating in the Petroleum Storage Tank Trust Fund, and voluntary participation in the Fund of above-ground petroleum storage tanks and unregulated underground tanks. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs. Subsection 19-6-411(7)(b) of the UST Act specifies that the Board shall make rules providing for the identification of tanks that qualify for a certificate of compliance. Subsection 19-6-428(3)(b) of the UST Act provides that the executive secretary may determine, with reasonable cause, that soil/groundwater sampling is not required to establish that no petroleum has been released when an UST owner/operator desires to place an UST facility under Fund coverage after a period of non-participation.

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 on this rule have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary for continued operation of the Underground Storage Tank program. It specifies requirements for UST owners and operators participating in the Petroleum Storage Tank Trust Fund, and for those who show financial responsibility by other mechanisms. It provides rules for identification of compliant tanks, as mandated by Subsection 19-6-411(7)(b) of the UST Act. It specifies the conditions under which the Executive Secretary may determine that there is reasonable cause under Subsection 19-6-428(3)(b) of the UST Act to establish that no sampling is required for sites that will participate in the Fund after a period of non-participation. Therefore, this rule should be continued.

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

AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 04/10/2012

**Environmental Quality, Environmental
 Response and Remediation
 R311-207
 Accessing the Petroleum Storage Tank
 Trust Fund for Leaking Petroleum
 Storage Tanks**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION
 DAR FILE NO.: 36051
 FILED: 04/10/2012**

**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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Solid and Hazardous Waste Control Board authority to regulate USTs and petroleum storage tanks, and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs. Section 19-6-409 of the UST Act creates the Petroleum Storage Tank (PST) Trust Fund and provides for payment of costs covered by the Fund, including certain costs of UST consultants hired by third parties who have been affected by a release from an UST. Section 19-6-419 of the UST Act specifies costs to be paid by the Petroleum Storage Tank Trust Fund for investigating and cleaning up releases at UST sites, and specifies that the Board shall make rules governing the apportionment of costs among third-party claimants for releases that are covered by the fund.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Section R311-207-9 was the subject of a legislative nonreauthorization during the 2011 general legislative session. This section went into effect on 02/14/2011; it implemented Subsection 19-6-409(2)(e) of the Utah UST Act and required that a certified UST consultant hired by third parties be registered as a Professional Engineer or Professional Geologist. The nonreauthorization removed this section from the UST rules as of 05/01/2011. Before the action of the legislature, and after the rule became effective, DERR received a comment from a certified UST consultant stating his support for the rule and his desire that

the rule remain as implemented. No comments on the rule were received during informal or formal public comment periods.

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 an integral part of the Petroleum Storage Tank Trust Fund, and provides the necessary protocol allowing access to fund monies for investigating and cleaning up petroleum releases covered by the fund. It helps maintain the financial viability of the fund to provide a means for UST owner/operators to meet the federally-mandated financial responsibility requirements, and provide reimbursement for expenses associated with covered petroleum releases. Therefore, this rule should be continued. The section that was not re-authorized by the legislature was later replaced with a new version that removed the language that was the subject of the nonreauthorization. The new section, R311-207-9, provides necessary requirements to implement Subsection 19-6-409(2)(e) of the UST Act, and provides for payment of certain costs of UST consultants hired by third parties.

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

AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 04/10/2012

**Environmental Quality, Environmental
 Response and Remediation
 R311-208
 Underground Storage Tank Penalty
 Guidance**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 36052
 FILED: 04/10/2012

**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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Solid and Hazardous Waste Control Board authority to regulate USTs and petroleum storage tanks, and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs. Section 19-6-425 of the UST Act provides for civil penalties for violations of the Act. Section 19-6-416 of the UST Act provides for penalties for deliveries of petroleum to a regulated underground storage tank that is not identified as being properly certified and in compliance.

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 on this rule have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule provides guidance to the Executive Secretary of the Solid and Hazardous Waste Control Board in imposing and negotiating appropriate penalties against the various degrees of violations. The guidance provides that penalty amounts shall be in accordance with the severity of the violation, risk of harm, and the willingness of individuals to cooperate. Therefore, this rule should be continued.

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

AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 04/10/2012

**Environmental Quality, Environmental
Response and Remediation
R311-209
Petroleum Storage Tank Cleanup Fund
and State Cleanup Appropriation**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 36053
FILED: 04/10/2012

**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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Solid and Hazardous Waste Control Board authority to regulate USTs and petroleum storage tanks, and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs. Section 19-6-405.7 of the UST Act gives the Executive Secretary of the Board the authority use the Petroleum Storage Tank Cleanup Fund to investigate, abate, or take corrective action regarding releases from USTs that are not covered by the Petroleum Storage Tank Trust Fund. Section 19-6-424.5 allows the Executive Secretary to finance cleanup costs that are part of an agreement or order.

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 on this rule have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is integral to the goals of the UST Act to protect human health and the environment. It provides criteria for use of the Petroleum Storage Tank Cleanup Fund created by Section 19-6-405.7 of the UST Act and the cleanup appropriations made by the legislature. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
ENVIRONMENTAL RESPONSE AND
REMEDICATION
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

AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 04/10/2012

**Environmental Quality, Environmental
Response and Remediation
R311-210
Administrative Procedures**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 36054
FILED: 04/10/2012

**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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Solid and Hazardous Waste Control Board authority to regulate USTs and petroleum storage tanks, and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs. Section 19-1-301 of the Environmental Quality Code requires that the Department of Environmental Quality and its boards comply with procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act (APA), and specifies that procedures for an adjudicative proceeding conducted by an administrative law judge are governed by the APA and rules adopted by a board as allowed by Subsection 63G-4-102(6). Sections 63G-4-201 through 63G-4-205 of the APA allow agencies to enact rules governing certain aspects of adjudicative proceedings, such as: commencement of proceedings, designation of categories of proceedings as formal or informal, and procedures for conducting informal and formal proceedings. Section 63G-4-503 of the APA requires an agency to issue rules regarding declaratory 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 comments on 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: Under the direction of the Attorney General's office, the rules regarding administrative procedures were re-written in 2011 so they would apply to all divisions of the Department of Environmental Quality. The new rules are found in Rule R305-6. Rule R311-210 now contains only one sentence, stating that underground storage tank administrative proceedings are now governed by Rule R305-6. Adjudicative rules are necessary to address agency adjudicative needs not addressed in the Administrative Procedures Act, such as delineating the role of a presiding officer, providing a standard of agency review, designating proceedings as formal or informal, and providing specific procedures for involved formal adjudications. Without the rule, it would be difficult or impossible to conduct UST Act adjudications adequately.

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

AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 04/10/2012

**Environmental Quality, Environmental
 Response and Remediation**

R311-211

**Corrective Action Cleanup Standards
 Policy - UST and CERCLA Sites**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 36055
 FILED: 04/10/2012

**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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Solid

and Hazardous Waste Control Board authority to regulate USTs and petroleum storage tanks, and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs. Section 19-6-303 of the Hazardous Substance Mitigation Act authorizes the Executive Director to make rules consistent with the state's responsibilities and involvement with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Section 19-6-106 of the Solid and Hazardous Waste Act authorizes the Solid and Hazardous Waste Control Board to make rules under CERCLA, to the extent the Board has jurisdiction.

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 on 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 provides essential standards to be used in directing corrective action at contaminated UST and CERCLA sites, and determining when cleanup is complete. This oversight of cleanup is an essential part of the agency's statutory responsibility. Therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY
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 REMEDIATION
 FIRST FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
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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

AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 04/10/2012

**Environmental Quality, Environmental
 Response and Remediation**

R311-212

**Administration of the Petroleum
 Storage Tank Loan Fund**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 36056
FILED: 04/10/2012

**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 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Solid and Hazardous Waste Control Board authority to regulate USTs and petroleum storage tanks and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the Board the authority to establish standards governing USTs. Subsection 19-6-405.3(7) of the UST Act authorizes the Board to make rules for the administration of the Petroleum Storage Tank Loan Fund.

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 on this rule have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary for continued operation of the Petroleum Storage Tank Loan program, and is required by statute. The UST Act contains the basic framework of the loan program, and mandates that the Board make rules for the program's administration. Therefore, this rule should be continued.

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

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REMEDIATION
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195 N 1950 W
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or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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AUTHORIZED BY: Brent Everett, Director

EFFECTIVE: 04/10/2012

**Environmental Quality, Environmental
Response and Remediation****R311-401****Utah Hazardous Substances Priority
List****FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 36030
FILED: 04/04/2012

**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: Section 19-6-311 requires publication and maintenance by rule of the hazardous substances priority list.

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 following comment was received on 11/01/2007: "The Sharon Steel site was deleted from the NPL. You should consider deleting it from your rule."

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Publication and maintenance of the hazardous substances priority list is required by Section 19-6-311. Therefore, this rule should be continued. The Department of Environmental Quality determined that the site should not be removed because placement on the list is necessary to use the hazardous substance mitigation fund for state costs related to this site and to use authority granted by the Hazardous Substance Mitigation Act.

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:

♦ Sandra Allen by phone at 801-536-4122, by FAX at 801-359-8853, or by Internet E-mail at skallen@utah.gov

AUTHORIZED BY: Brad Johnson, Deputy Director

EFFECTIVE: 04/04/2012

**Governor, Economic Development
R357-1**

Rural Fast Track Program

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 36066
FILED: 04/13/2012

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 63M-1-904 permits the administrator to make rules governing the following aspects of the Rural Fast Track Program: (a) the content of the application form; (b) who qualifies as an employee; and (c) the verification procedure.

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 in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule and the Rural Fast Track Program are both working as intended. Therefore, this rule should be continued.

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

GOVERNOR
ECONOMIC DEVELOPMENT
FIFTH FLOOR
324 S STATE
SALT LAKE CITY, UT 84111
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Zachary Derr by phone at 801-538-8746, by FAX at 801-538-8888, or by Internet E-mail at zderr@utah.gov

AUTHORIZED BY: Les Prall, Rural Development Director

EFFECTIVE: 04/13/2012

Health, Administration

R380-20

**Government Records Access and
Management**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 36025
FILED: 04/03/2012

**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-2-202(8), and Sections 63G-2-204, 63A-12-104, 26-1-5, and 26-1-17 require adoption of a rule to implement public access to public records held by the Department.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No 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: Public access to records held by the Department is supported and facilitated by this rule. Therefore, this rule should be continued.

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

HEALTH
ADMINISTRATION
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:
♦ Doug Springmeyer by phone at 801-538-6971, by FAX at 801-538-6306, or by Internet E-mail at dspringm@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 04/03/2012

**Human Services, Child and Family Services
R512-51**

Fee Collection for Criminal Background Screening for Prospective Foster and Adoptive Parents and for Employees of Other Department of Human Services Licensed Programs

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36044
FILED: 04/09/2012

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 62A-4a-102 authorizes the Division of Child and Family Services to establish rules in order to provide programs and services that support the strengthening of family values, including services which preserve and enhance family life and relationships; protect children, youth, and families; and advocate and defend family values established by public policy and advocacy and education.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary in order for the Division of Child and Family Services to collect fees for processing criminal background screenings for prospective foster and adoptive parents of children in state custody and other adults in the home, and also for employees of other licensed programs upon request of the Office of Licensing as capacity allows.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
- ♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

AUTHORIZED BY: Brent Platt, Director

EFFECTIVE: 04/09/2012

**Human Services, Juvenile Justice Services
R547-14**

Possession of Prohibited Items in Juvenile Detention Facilities

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36043
FILED: 04/09/2012

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 53-5-710: Persons carrying weapons are restricted from established secure areas within detention facilities as outlined in Sections 76-8-311.1, 76-8-311.3, and 76-10-523.5.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There are no comments on this rule since the last review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The agency continues to need to restrict weapons in secure areas of juvenile detention facilities. Therefore, this rule should be continued.

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

HUMAN SERVICES
JUVENILE JUSTICE SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Judy Hammer by phone at 801-538-4098, by FAX at 801-538-4334, or by Internet E-mail at judyhammer@utah.gov
 ♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

AUTHORIZED BY: Susan Burke, Director

EFFECTIVE: 04/09/2012

Insurance, Administration
R590-68

**Insider Trading of Equity Securities of
 Domestic Stock Insurance Companies**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 36037
 FILED: 04/05/2012

**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 31A-2-201(3) authorizes rules to implement the Insurance Code. Subsection 31A-5-303(3)(a) allows the commissioner to adopt a rule to "define terms and prescribe conditions regarding securities held in the ordinary course of business and incident to the establishment of maintenance of a primary or secondary market."

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 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 R590-68 gives substantial additional guidance regarding Section 31A-5-303, Insider Trading of Securities. Without this additional and much more detailed guidance, several forms of exemption from the requirements of the statute would not be apparent or effectively available to entities to whom the described situations apply. This lack of guidance would at best be confusing and at worst lead to costly decisions being made in error regarding the form of any insider trading transaction or the absence thereof. 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

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 04/05/2012

Insurance, Administration
R590-85

**Individual Accident and Health
 Insurance and Individual and Group
 Medicare Supplement Rates**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 36034
 FILED: 04/05/2012

**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: Subsections 31A-22-605(4)(e) and 31A-22-620(3)(e) establish minimum loss ratios and implement procedures for the filing of all individual accident and health insurance and all Medicare supplement premium rates, including the initial filing of rates, and any subsequent rate changes. This rule is promulgated pursuant to the authority vested in the commissioner by Subsection 31A-2-201(3)(a) to write rules to implement the provisions of Title 31A and Section 31A-2-201.1 to write rules to provide specific requirements for the filing of rates.

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 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 provides standards for rating certain policies. The rule allows insurers to request increases as necessary to maintain a viable block of businesses and to protect consumers against unfair pricing of policies. 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

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 04/05/2012

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 to provide the maximum interest rate that an insurer can charge on premiums due under a life insurance or annuity contract during a grace period or upon subsequent reinstatement of the contract. It protects consumer against their insurer charging them an unreasonably high interest rate.

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

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 04/04/2012

Insurance, Administration

R590-108

Interest Rate During Grace Period or Upon Reinstatement of Policy

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36032
FILED: 04/04/2012

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: Subsection 31A-2-201(3) allows the commissioner to adopt rules to implement the provisions of the Utah Insurance Code. Specifically, Section 31A-22-402 and Subsection 31A-22-407(1) authorize the commissioner to establish by rule the rate of interest an insurer may charge in a life insurance or annuity contract upon premiums due or overdue during a grace period or upon subsequent reinstatement of the contract.

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 in the past five years.

Insurance, Administration

R590-120

Surety Bond Forms

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36059
FILED: 04/11/2012

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: Subsection 31A-2-201(3) authorizes rules to implement the Utah Insurance Code. Subsection 31A-21-101(5) authorizes rules exempting classes of insurance contracts from any or all provisions of Title 31A, Chapter 21, 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: The department has not received any written comments over the past 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 exempts surety insurers from filing 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

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 04/11/2012

Insurance, Administration
R590-146
Medicare Supplement Insurance
Standards

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 36036
FILED: 04/05/2012

**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 issued pursuant to the authority vested in the commissioner under Section 31A-22-620 requiring the commissioner to adopt rules to establish minimum standards for individual and group Medicare supplement insurance.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Two amendments and two nonsubstantive changes were made to this rule in the past five years. Comments were received approving the changes and a couple of comments were received suggesting nonsubstantive changes, which were made.

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 guidelines for Medicare Supplement plans sold in our state. It ensures that the various plans are the same from company to company. This allows consumers to decide on the type of plan they want and then base their purchase on price and service. This rule provides consumer protection. 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

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 04/05/2012

Insurance, Administration
R590-203
Health Grievance Review Process

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 36035
FILED: 04/05/2012

**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 specifically authorized by Subsection 31A-22-629(4) and Section 31A-4-116, which require the commissioner to establish minimum standards for grievance review procedures. The rule is also promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. The authority to examine carrier records, files, and documentation is provided by Section 31A-2-203.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: In 2011 this rule was changed twice. One comment was regarding the mistaken elimination of the term "medical necessity..." which was corrected in August. Another concern stated that the "adverse benefit determination was too broad". However, this language follows the wording in the statute. In November, the Department received a request that the implementation date be changed to an effective date and make it no sooner than 01/01/2012. The Department cannot put effective dates in the rule and to include an enforcement date would have meant another comment period which would have taken us beyond the 01/01/2012 date.

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 clarifies statute and explains the difference between federal law and the state statutes. The rule ensures that a carrier's grievance review procedures for individual and group health insurance and disability income insurance plans comply with federal law. Removing this rule would confuse insurers as to what is required of them in regards to their grievance procedures. This rule provides protections for 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

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 04/05/2012

Insurance, Administration
R590-239

**Exemption of Student Health Centers
From Insurance Code**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 36031
FILED: 04/04/2012

**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: Section 31A-2-201 gives the commissioner authority to implement by rule the provisions of Title 31A. Subsection 31A-1-103(3)(d) allows the commission to exempt from regulation under Title 31A, business specified by findings that the transaction of business in this state does not require regulation for the protection of the residents or it would be impracticable to require compliance.

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 in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of this rule is to exempt student health centers established by institutions of higher education from regulation under the Utah Insurance Code. The rule clarifies what is and is not insurance so as to not impose a greater burden on an organization that does not sell insurance. It states that student health centers are not insurance and therefore regulated by the Insurance Department. On the other hand, health insurance from an insurer through an institution to its students is not exempt from state insurance regulations. 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

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 04/04/2012

Natural Resources, Parks and
Recreation
R651-102
Government Records Access
Management Act

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 36060
FILED: 04/11/2012

**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: This rule provides procedures for access to division records as allowed under Subsection 63G-2-204 (2). It also prescribes where and to whom requests for information 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: To our knowledge there have been no comments received in support or opposition of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule prescribes where and to whom requests for information shall be directed and provides procedures for access to division records as allowed under Subsection 63G-2-204(2). Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
PARKS AND RECREATION
ROOM 116
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

AUTHORIZED BY: Fred Hayes, Acting Director

EFFECTIVE: 04/11/2012

Transportation, Operations, Traffic and
Safety
R920-50
Ropeway Operation Safety

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 36081
FILED: 04/16/2012

**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 under the authority of Section 72-11-210 wherein the Passenger Ropeway Safety Committee is authorized to make rules requiring registration of passenger ropeways, establishing standards, and outlining procedures for inspection and enforcement.

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 from interested persons received during and since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should remain in effect to enable the Passenger Safety Ropeway Committee to fulfill its purposes in safeguarding the life, health, property, and welfare of citizens using passenger ropeways, through registration, inspection and enforcement of the standards adopted in the rule. The ski industry is the major operator of passenger ropeways and has been supportive of this rule. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
OPERATIONS, TRAFFIC AND SAFETY
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:
♦ Brian Allen by phone at 801-965-4766, by FAX at 801-965-3845, or by Internet E-mail at brianallen@utah.gov
♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 04/16/2012

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF FIVE-YEAR EXPIRATIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules (Division). However, if the agency fails to file either the review or the extension by the five-year anniversary date of the rule, the rule expires.

Upon expiration of the rule, the Division is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule, and it must follow regular rulemaking procedures to replace the rule if necessary.

The rules listed below were *not* reviewed in accordance with Section 63G-3-305. These rules have expired and have been removed from the *Utah Administrative Code*.

The expiration of administrative rules for failure to comply with the five-year review requirement is governed by Subsection 63G-3-305(8).

Science Technology and Research
Governing Authority (USTAR),
Administration

R856-1

Formation and Funding of Utah
Science Technology and Research
Innovation Teams

FIVE-YEAR REVIEW EXPIRATION

DAR FILE NO.: 36083

FILED: 04/16/2012

SUMMARY: USTAR did not file the five-year review by the due date of 04/04/2012. Therefore, this rule is expired and removed from the Utah Administrative Code as of 04/05/2012.

EFFECTIVE: 04/05/2012

Science Technology and Research
Governing Authority (USTAR),
Administration

R856-2

Distribution of Utah Science
Technology and Research
Commercialization Revenues

FIVE-YEAR REVIEW EXPIRATION

DAR FILE NO.: 36084

FILED: 04/16/2012

SUMMARY: USTAR did not file the five-year review by the due date of 04/04/2012. Therefore, this rule is expired and removed from the Utah Administrative Code as of 04/05/2012.

EFFECTIVE: 04/05/2012

End of the Notices of Notices of Five Year Expirations Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a Notice of Effective Date within 120 days from the publication of a Proposed Rule or a related Change in Proposed Rule the rule lapses and the agency must start the rulemaking process over.

Notices of Effective Date are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

Corrections

Administration

No. 35805 (NEW): R251-106. Media Relations

Published: 03/01/2012

Effective: 04/09/2012

No. 35806 (NEW): R251-107. Executions

Published: 03/01/2012

Effective: 04/09/2012

No. 35807 (NEW): R251-108. Adjudicative Proceedings

Published: 03/01/2012

Effective: 04/09/2012

No. 35808 (NEW): R251-703. Vehicle Direction Station

Published: 03/01/2012

Effective: 04/09/2012

No. 35809 (NEW): R251-704. North Gate

Published: 03/01/2012

Effective: 04/09/2012

No. 35810 (NEW): R251-705. Inmate Mail Procedures

Published: 03/01/2012

Effective: 04/09/2012

No. 35811 (NEW): R251-706. Inmate Visiting

Published: 03/01/2012

Effective: 04/09/2012

Education

Administration

No. 35875 (NEW): R277-497. School Grading System

Published: 03/01/2012

Effective: 04/10/2012

No. 35876 (REP): R277-521. Professional Specialist Licensing

Published: 03/01/2012

Effective: 04/10/2012

No. 35877 (AMD): R277-600-7. Alternative Transportation

Published: 03/01/2012

Effective: 04/10/2012

No. 35878 (NEW): R277-615. Standards and Procedures for Student Searches

Published: 03/01/2012

Effective: 04/10/2012

Environmental Quality

Air Quality

No. 35615 (AMD): R307-101-3. Version of Code of Federal Regulations Incorporated by Reference

Published: 02/01/2012

Effective: 04/05/2012

Labor Commission

Antidiscrimination and Labor, Labor

No. 35833 (AMD): R610-3-21. Uniforms

Published: 03/01/2012

Effective: 04/16/2012

Tax Commission

Administration

No. 35862 (AMD): R861-1A-9. Tax Commission as Board of Equalization Pursuant to Utah Code Ann. Sections 59-2- 212, 59-2-1004, and 59-2-1006

Published: 03/01/2012

Effective: 04/12/2012

Auditing

No. 35863 (AMD): R865-3C-1. Allocation of Net Income Pursuant to Utah Code Ann. Section 59-7-204

Published: 03/01/2012

Effective: 04/12/2012

NOTICES OF RULE EFFECTIVE DATES

Property Tax

No. 35864 (AMD): R884-24P-66. Appeal to County Board of Equalization Pursuant to Utah Code Ann. Section 59-2-1004
Published: 03/01/2012
Effective: 04/12/2012

Transportation

Motor Carrier
No. 35873 (AMD): R909-1. Safety Regulations for Motor Carriers
Published: 03/01/2012
Effective: 04/11/2012

End of the Notices of Rule Effective Dates Section

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2012 through April 16, 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/>).

RULES INDEX - BY AGENCY (CODE NUMBER)
ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Archives</u>					
R17-9	Electronic Participation at Meetings	35304	NEW	01/30/2012	2011-20/6
<u>Child Welfare Parental Defense (Office of)</u>					
R19-1-6	Child Welfare Parental Defense Oversight Committee	35205	AMD	01/12/2012	2011-18/6
R19-1-7	Electronic Meetings	35206	AMD	01/12/2012	2011-18/7
<u>Finance</u>					
R25-14	Payment of Attorneys Fees in Death Penalty Cases	35663	5YR	01/12/2012	2012-3/105
<u>Fleet Operations</u>					
R27-4	Vehicle Replacement and Expansion of State Fleet	35622	5YR	01/05/2012	2012-3/105
R27-5	Fleet Tracking	35617	5YR	01/05/2012	2012-3/106
R27-5	Fleet Tracking	35623	NSC	01/31/2012	Not Printed
R27-6	Fuel Dispensing Program	35620	5YR	01/05/2012	2012-3/106
R27-8	State Vehicle Maintenance Program	35621	5YR	01/05/2012	2012-3/107
R27-9	Dispensing Compressed Natural Gas to the Public	35727	NEW	03/26/2012	2012-4/6
<u>Purchasing and General Services</u>					
R33-1	Utah State Procurement Rules Definitions	35664	AMD	03/30/2012	2012-3/4
R33-3	Source Selection and Contract Formation	35613	AMD	03/30/2012	2012-2/6
R33-3-7	Types of Contracts	35667	AMD	03/30/2012	2012-3/6
R33-4	Specifications	35665	AMD	03/30/2012	2012-3/10
R33-6-101	Revisions to Contract Clauses	35666	AMD	03/30/2012	2012-3/12
AGRICULTURE AND FOOD					
<u>Administration</u>					
R51-2	Administrative Procedures for Informal Proceedings Before the Utah Department of Agriculture and Food	35614	5YR	01/04/2012	2012-3/107
<u>Animal Industry</u>					
R58-1	Admission and Inspection of Livestock, Poultry, and Other Animals	35691	5YR	01/18/2012	2012-4/59
R58-6	Poultry	35692	5YR	01/18/2012	2012-4/59
R58-18	Elk Farming	35695	5YR	01/18/2012	2012-4/60
R58-19	Compliance Procedures	35696	5YR	01/18/2012	2012-4/60
R58-22	Equine Infectious Anemia (EIA)	35694	5YR	01/18/2012	2012-4/61
R58-23	Equine Viral Arteritis (EVA)	35693	5YR	01/18/2012	2012-4/61
<u>Plant Industry</u>					
R68-19	Compliance Procedures	35697	5YR	01/18/2012	2012-4/62

R68-21	Standard of Identity for Honey	35566	REP	03/07/2012	2012-2/16
<u>Regulatory Services</u>					
R70-201	Compliance Procedures	35660	5YR	01/12/2012	2012-3/108
R70-320	Minimum Standards for Milk for Manufacturing Purposes, its Production and Processing	35661	5YR	01/12/2012	2012-3/109
R70-350	Ice Cream and Frozen Dairy Food Standards	35658	5YR	01/12/2012	2012-3/109
R70-360	Procedure for Obtaining a License to Test Milk for Payment	35657	5YR	01/12/2012	2012-3/110
R70-530	Food Protection	35920	5YR	03/07/2012	2012-7/63
R70-550	Utah Inland Shellfish Safety Program	35659	5YR	01/12/2012	2012-3/110
R70-560	Inspection and Regulation of Cottage Food Production Operations	35662	5YR	01/12/2012	2012-3/111
ALCOHOLIC BEVERAGE CONTROL					
<u>Administration</u>					
R81-1-6	Violation Schedule	35588	AMD	03/01/2012	2012-2/20
CAPITOL PRESERVATION BOARD (STATE)					
<u>Administration</u>					
R131-3	Use of Magnetometers on Capitol Grounds	35899	EXT	02/29/2012	2012-6/43
R131-9	State Capitol Preservation Board Art Program and Policy	35686	R&R	03/09/2012	2012-3/13
R131-10	Commercial Solicitations	35687	5YR	01/17/2012	2012-3/111
R131-11	Preservation of Free Speech Activities	35688	5YR	01/17/2012	2012-3/112
R131-13	Health Reform - Health Insurance Coverage in State Contracts - Implementation	35611	EMR	01/03/2012	2012-2/105
R131-13	Health Reform - Health Insurance Coverage in State Contracts - Implementation	35610	AMD	02/21/2012	2012-2/24
CAREER SERVICE REVIEW OFFICE					
<u>Administration</u>					
R137-1-21	The Evidentiary/Step 4 Adjudicatory Procedures	35559	AMD	02/21/2012	2012-2/26
COMMERCE					
<u>Administration</u>					
R151-3	Americans With Disabilities Act Rule	35897	5YR	02/28/2012	2012-6/35
<u>Consumer Protection</u>					
R152-6	Utah Administrative Procedures Act Rules	35974	5YR	03/26/2012	2012-8/71
R152-15	Business Opportunity Disclosure Act Rules	35965	5YR	03/22/2012	2012-8/71
R152-20	New Motor Vehicle Warranties	35967	5YR	03/22/2012	2012-8/72
R152-22	Charitable Solicitations Act	35970	5YR	03/22/2012	2012-8/72
R152-23	Utah Health Spa Services	35971	5YR	03/22/2012	2012-8/73
R152-42	Uniform Debt-Management Services Act Rules	35972	5YR	03/22/2012	2012-8/73
<u>Occupational and Professional Licensing</u>					
R156-1	General Rule of the Division of Occupational and Professional Licensing	35624	5YR	01/05/2012	2012-3/112
R156-11a	Barber, Cosmetologist/Barber, Esthetician, Electrologist and Nail Technician Licensing Act Rule	35853	5YR	02/06/2012	2012-5/101
R156-16a	Optometry Practice Act Rule	35893	5YR	02/21/2012	2012-6/35
R156-20a	Environmental Health Scientist Act Rule	35430	AMD	01/10/2012	2011-23/10
R156-37	Utah Controlled Substances Act Rule	35892	5YR	02/21/2012	2012-6/36
R156-47b-102	Definitions	35498	AMD	01/26/2012	2011-24/6
R156-55d	Burglar Alarm Licensing Rule	35860	5YR	02/07/2012	2012-5/102
R156-56	Building Inspector and Factory Built Housing Licensing Act Rule	35735	5YR	01/31/2012	2012-4/62
R156-64	Deception Detection Examiners Licensing Act Rule	35736	5YR	01/31/2012	2012-4/64
R156-67-503	Administrative Penalties	35389	AMD	03/09/2012	2011-22/14

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R156-67-503	Administrative Penalties	35389	CPR	03/09/2012	2012-3/86
R156-68-503	Administrative Penalties	35388	AMD	03/09/2012	2011-22/19
R156-68-503	Administrative Penalties	35388	CPR	03/09/2012	2012-3/90
R156-76	Professional Geologist Licensing Act Rule	35894	5YR	02/21/2012	2012-6/37
R156-78B	Prelitigation Panel Review Rule	35820	5YR	02/02/2012	2012-5/102
R156-83-502	Unprofessional Conduct	35585	AMD	02/21/2012	2012-2/28

Securities

R164-101	Securities Fraud Reporting Program Act	35558	NEW	02/21/2012	2012-2/29
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COMMUNITY AND CULTURE

Arts and Museums

R207-1	Utah Arts Council General Program Rules	35723	5YR	01/24/2012	2012-4/64
R207-2	Policy for Commissions, Purchases, and Donations to, and Loans from, the Utah State Art Collection	35724	5YR	01/24/2012	2012-4/65

Home Energy Assistance Target (HEAT)

R195-1	Energy Assistance: General Provisions	35403	AMD	03/26/2012	2011-23/12
R195-3-3	Unearned Income	35405	AMD	03/26/2012	2011-23/16
R195-5	Energy Assistance: Program Benefits	35406	AMD	03/26/2012	2011-23/17
R195-6	Energy Assistance: Eligibility Determination	35407	AMD	03/26/2012	2011-23/18
R195-7	Energy Assistance: Records and Benefit Management	35408	AMD	03/26/2012	2011-23/19
R195-8	Energy Assistance: Special State Programs	35409	AMD	03/26/2012	2011-23/20

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Administration

R251-106	Media Relations	35760	EXD	01/18/2012	2012-4/123
R251-106	Media Relations	35767	EMR	02/01/2012	2012-4/45
R251-106	Media Relations	35805	NEW	04/09/2012	2012-5/11
R251-107	Executions	35761	EXD	01/18/2012	2012-4/123
R251-107	Executions	35768	EMR	02/01/2012	2012-4/47
R251-107	Executions	35806	NEW	04/09/2012	2012-5/13
R251-108	Adjudicative Proceedings	35762	EXD	01/18/2012	2012-4/123
R251-108	Adjudicative Proceedings	35769	EMR	02/01/2012	2012-4/49
R251-108	Adjudicative Proceedings	35807	NEW	04/09/2012	2012-5/15
R251-305	Visiting at Community Correctional Centers	35754	EXT	01/31/2012	2012-4/121
R251-305	Visiting at Community Correctional Centers	36039	5YR	04/06/2012	Not Printed
R251-306	Sponsors in Community Correctional Centers	35755	EXT	01/31/2012	2012-4/121
R251-306	Sponsors in Community Correctional Centers	36040	5YR	04/06/2012	Not Printed
R251-703	Vehicle Direction Station	35763	EXD	01/18/2012	2012-4/124
R251-703	Vehicle Direction Station	35770	EMR	02/01/2012	2012-4/51
R251-703	Vehicle Direction Station	35808	NEW	04/09/2012	2012-5/17
R251-704	North Gate	35764	EXD	01/18/2012	2012-4/124
R251-704	North Gate	35771	EMR	02/01/2012	2012-4/52
R251-704	North Gate	35809	NEW	04/09/2012	2012-5/18
R251-705	Inmate Mail Procedures	35765	EXD	01/18/2012	2012-4/124
R251-705	Inmate Mail Procedures	35772	EMR	02/01/2012	2012-4/53
R251-705	Inmate Mail Procedures	35810	NEW	04/09/2012	2012-5/19
R251-706	Inmate Visiting	35766	EXD	01/18/2012	2012-4/124
R251-706	Inmate Visiting	35773	EMR	02/01/2012	2012-4/56
R251-706	Inmate Visiting	35811	NEW	04/09/2012	2012-5/22
R251-707	Legal Access	35756	EXT	01/31/2012	2012-4/121
R251-707	Legal Access	36041	5YR	04/06/2012	Not Printed
R251-710	Search	35757	EXT	01/31/2012	2012-4/121
R251-710	Search	36042	5YR	04/06/2012	Not Printed

EDUCATION

Administration

R277-100	Rulemaking Policy	35449	AMD	01/10/2012	2011-23/21
R277-102	Adjudicative Proceedings	35534	R&R	02/07/2012	2012-1/8
R277-102	Adjudicative Proceedings	35856	NSC	02/29/2012	Not Printed

R277-107	Educational Services Outside of Educator's Regular Employment	35674	AMD	03/12/2012	2012-3/19
R277-425	Budgeting, Accounting, and Auditing for Utah School Districts	35535	AMD	02/07/2012	2012-1/11
R277-426	Definition of Private and Non-Profit Schools for Federal Program Services	35536	AMD	02/07/2012	2012-1/13
R277-470	Charter Schools	35451	AMD	01/10/2012	2011-23/28
R277-476	Incentives for Elementary Reading Program	35675	REP	03/12/2012	2012-3/22
R277-480-1	Definitions	35582	NSC	01/31/2012	Not Printed
R277-480-1	Definitions	35817	NSC	02/29/2012	Not Printed
R277-481	Charter School Oversight, Monitoring and Appeals	35452	NEW	01/10/2012	2011-23/34
R277-482	Charter School Timelines and Approval Processes	35453	NEW	01/10/2012	2011-23/38
R277-484-3	Deadlines for Data Submission	35676	AMD	03/12/2012	2012-3/23
R277-497	School Grading System	35875	NEW	04/10/2012	2012-5/24
R277-503	Licensing Routes	35677	AMD	03/12/2012	2012-3/24
R277-503	Licensing Routes	35939	5YR	03/15/2012	2012-7/63
R277-507	Driver Education Endorsement	35940	5YR	03/15/2012	2012-7/64
R277-511	Highly Qualified Teacher Grants	35671	5YR	01/17/2012	2012-3/113
R277-511	Highly Qualified Teacher Grants	35678	REP	03/12/2012	2012-3/28
R277-512	Online Licensure	35673	5YR	01/17/2012	2012-3/114
R277-513	Dual Certification	35679	REP	03/12/2012	2012-3/30
R277-519	Educator Inservice Procedures and Credit	35941	5YR	03/15/2012	2012-7/64
R277-520	Appropriate Licensing and Assignment of Teachers	35680	AMD	03/12/2012	2012-3/32
R277-521	Professional Specialist Licensing	35876	REP	04/10/2012	2012-5/26
R277-600-7	Alternative Transportation	35877	AMD	04/10/2012	2012-5/28
R277-608	Prohibition of Corporal Punishment in Utah's Public Schools	35454	AMD	01/10/2012	2011-23/41
R277-615	Standards and Procedures for Student Searches	35878	NEW	04/10/2012	2012-5/29
R277-703	Centennial Scholarship for Early Graduation	35537	AMD	02/07/2012	2012-1/14
R277-705	Secondary School Completion and Diplomas	35818	5YR	02/02/2012	2012-5/103
R277-714	Dissemination of Information About Juvenile Offenders	35681	AMD	03/12/2012	2012-3/36
R277-718	Utah Career Teaching Scholarship Program	35682	REP	03/12/2012	2012-3/37
R277-730	Alternative High School Curriculum	35538	REP	02/07/2012	2012-1/16
R277-751	Special Education Extended School Year	35539	AMD	02/07/2012	2012-1/18
R277-915	Work-based Learning Programs for Interns	35819	5YR	02/02/2012	2012-5/104
R277-915	Work-based Learning Programs for Interns	35683	AMD	03/12/2012	2012-3/39

ENVIRONMENTAL QUALITY

Administration

R305-1	Records Access and Management	35928	5YR	03/13/2012	2012-7/65
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Air Quality

R307-101-3	Version of Code of Federal Regulations Incorporated by Reference	35615	AMD	04/05/2012	2012-3/40
R307-110	General Requirements: State Implementation Plan	35774	5YR	02/01/2012	2012-4/65
R307-120	General Requirements: Tax Exemption for Air Pollution Control Equipment	35775	5YR	02/01/2012	2012-4/81
R307-121	General Requirements: Clean Air and Efficient Vehicle Tax Credit	35716	5YR	01/23/2012	2012-4/81
R307-121-7	Proof of Purchase to Demonstrate Eligibility for Special Mobile Equipment Converted to Clean Fuels	35718	NSC	02/09/2012	Not Printed
R307-130	General Penalty Policy	35776	5YR	02/01/2012	2012-4/82
R307-135	Enforcement Response Policy for Asbestos Hazard Emergency Response Act	35777	5YR	02/01/2012	2012-4/82
R307-210-1	Standards of Performance for New Stationary Sources (NSPS)	35496	AMD	03/07/2012	2011-24/7
R307-220-3	Section II, Hospital, Medical, Infectious Waste Incinerators	35531	AMD	03/07/2012	2012-1/21

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R307-301	Utah and Weber Counties: Oxygenated Gasoline Program As a Contingency Measure	35778	5YR	02/01/2012	2012-4/83
R307-320	Ozone Maintenance Areas and Ogden City: Employer-Based Trip Reduction Program	35779	5YR	02/01/2012	2012-4/84
R307-325	Ozone Nonattainment and Maintenance Areas: General Requirements	35780	5YR	02/01/2012	2012-4/84
R307-326	Ozone Nonattainment and Maintenance Areas: Control of Hydrocarbon Emissions in Petroleum Refineries	35781	5YR	02/01/2012	2012-4/85
R307-327	Ozone Nonattainment and Maintenance Areas: Petroleum Liquid Storage	35782	5YR	02/01/2012	2012-4/86
R307-328	Gasoline Transfer and Storage	35783	5YR	02/01/2012	2012-4/86
R307-335	Ozone Nonattainment and Maintenance Areas: Degreasing and Solvent Cleaning Operations	35784	5YR	02/01/2012	2012-4/87
R307-340	Ozone Nonattainment and Maintenance Areas: Surface Coating Processes	35785	5YR	02/01/2012	2012-4/87
R307-341	Ozone Nonattainment and Maintenance Areas: Cutback Asphalt	35786	5YR	02/01/2012	2012-4/88
R307-343	Ozone Nonattainment and Maintenance Areas: Emissions Standards for Wood Furniture Manufacturing Operations	35787	5YR	02/01/2012	2012-4/89
R307-405	Permits: Major Sources in Attainment or Unclassified Areas (PSD)	35413	AMD	02/02/2012	2011-23/42
R307-405-3	Definitions	35872	NSC	02/29/2012	Not Printed
R307-415-2	Authority	35529	AMD	03/07/2012	2012-1/25
R307-424	Permits: Mercury Requirements for Electric Generating Units	36033	5YR	04/05/2012	Not Printed

Environmental Response and Remediation

R311-200	Underground Storage Tanks: Definitions	35668	AMD	03/09/2012	2012-3/42
R311-200	Underground Storage Tanks: Definitions	36057	5YR	04/10/2012	Not Printed
R311-201	Underground Storage Tanks: Certification Programs and UST Operator Training	35447	AMD	01/13/2012	2011-23/45
R311-201	Underground Storage Tanks: Certification Programs and UST Operator Training	36045	5YR	04/10/2012	Not Printed
R311-202	Underground Storage Tank Technical Standards	36046	5YR	04/10/2012	Not Printed
R311-203	Underground Storage Tanks: Technical Standards	36047	5YR	04/10/2012	Not Printed
R311-204	Underground Storage Tanks: Closure and Remediation	36048	5YR	04/10/2012	Not Printed
R311-205	Underground Storage Tanks: Site Assessment Protocol	36049	5YR	04/10/2012	Not Printed
R311-206	Underground Storage Tanks: Financial Assurance Mechanisms	36050	5YR	04/10/2012	Not Printed
R311-207	Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks	36051	5YR	04/10/2012	Not Printed
R311-208	Underground Storage Tank Penalty Guidance	36052	5YR	04/10/2012	Not Printed
R311-209	Petroleum Storage Tank Cleanup Fund and State Cleanup Appropriation	36053	5YR	04/10/2012	Not Printed
R311-210	Administrative Procedures	36054	5YR	04/10/2012	Not Printed
R311-211	Corrective Action Cleanup Standards Policy - UST and CERCLA Sites	36055	5YR	04/10/2012	Not Printed
R311-212	Administration of the Petroleum Storage Tank Loan Fund	36056	5YR	04/10/2012	Not Printed
R311-401	Utah Hazardous Substances Priority List	36030	5YR	04/04/2012	Not Printed

Radiation Control

R313-17	Administrative Procedures	35416	AMD	03/19/2012	2011-23/50
R313-22-75	Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material	35417	AMD	01/16/2012	2011-23/51
R313-35	Requirements for X-Ray Equipment Used for Non-Medical Applications	35906	5YR	03/02/2012	2012-7/65

R313-36	Special Requirements for Industrial Radiographic Operations	35418	AMD	01/16/2012	2011-23/54
<u>Solid and Hazardous Waste</u>					
R315-1	Utah Hazardous Waste Definitions and References	35349	AMD	01/13/2012	2011-21/27
R315-2	General Requirements - Identification and Listing of Hazardous Waste	35350	AMD	01/13/2012	2011-21/30
R315-3	Application and Permit Procedures for Hazardous Waste Treatment, Storage, and Disposal Facilities	35351	AMD	01/13/2012	2011-21/38
R315-5	Hazardous Waste Generator Requirements	35352	AMD	01/13/2012	2011-21/53
R315-6	Hazardous Waste Transporter Requirements	35353	AMD	01/13/2012	2011-21/57
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ABBREVIATIONS

AMD = Amendment
 CPR = Change in proposed rule
 EMR = Emergency rule (120 day)
 NEW = New rule
 EXD = Expired
 NSC = Nonsubstantive rule change
 REP = Repeal
 R&R = Repeal and reenact
 5YR = Five-Year Review

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	35814	R406-201	5YR	02/02/2012	2012-5/105	
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	35756	R251-707	EXT	01/31/2012	2012-4/121
	36041	R251-707	5YR	04/06/2012	Not Printed
	35757	R251-710	EXT	01/31/2012	2012-4/121
	36042	R251-710	5YR	04/06/2012	Not Printed
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	35941	R277-519	5YR	03/15/2012	2012-7/64
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	35864	R884-24P-66	AMD	04/12/2012	2012-5/96
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	35790	R414-308	AMD	04/01/2012	2012-4/14
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	35445	R392-100	AMD	01/26/2012	2011-23/62	
	35710	R392-200	5YR	01/20/2012	2012-4/91	
	35709	R392-300	5YR	01/20/2012	2012-4/92	
	35708	R392-301	5YR	01/20/2012	2012-4/93	
	35711	R392-400	5YR	01/20/2012	2012-4/94	
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	35712	R392-402	5YR	01/20/2012	2012-4/95	
	35713	R392-501	5YR	01/20/2012	2012-4/96	
	36017	R392-502	5YR	04/02/2012	2012-8/75	
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