

# 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. Additional rulemaking information, and electronic versions of all administrative rule publications are available at: <http://www.rules.utah.gov/>

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

Division of Administrative Rules, Salt Lake City 84114

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# EXECUTIVE DOCUMENTS

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

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

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## Governor's Executive Order EO/08/2013: Wildland Fire Management

### EXECUTIVE ORDER

#### Wildland Fire Management

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

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

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

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

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

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

It is found, determined and declared that a "State of Emergency" exists statewide due to the threat to public safety, property, natural resources and the environment for thirty days, effective as of September 10, 2013 requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

**IN TESTIMONY, WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 10th day of September 2013

(State Seal)

**Gary R. Herbert**  
Governor

ATTEST:

**Lieutenant Governor  
Greg Bell**

EO/08/2013

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**Governor's Proclamation 2013/03/E: Calling the Sixtieth Legislature Into the Third Extraordinary Session**

PROCLAMATION

**WHEREAS**, since the close of the 2013 General Session of the 60th Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

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

**NOW, THEREFORE, I, GARY R. HERBERT**, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 60th Legislature into the Third Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 18th day of September 2013, at 1:30 p.m., for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2013 General Session of the Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 16th day of September 2013.

(State Seal)

**Gary R. Herbert  
Governor**

ATTEST:

**Greg Bell  
Lieutenant Governor**

2013/03/E

**End of the Executive Documents Section**

## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between September 04, 2013, 12:00 a.m., and September 16, 2013, 11:59 p.m. are included in this, the October 01, 2013 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 October 31, 2013. 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 January 29, 2014, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses and the agency must start the process over.

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

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

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

**Agriculture and Food, Regulatory  
Services  
R70-330  
Raw Milk for Retail**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 37992

FILED: 09/13/2013

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to adjust requirements to conform to statutory provisions.

**SUMMARY OF THE RULE OR CHANGE:** The amendments: 1) emphasize the scope of the law to include, in addition to the selling of raw milk, its manufacture, distribution and holding; 2) change the requirements for a permit suspension; 3) clearly establish the bacteriological standard as determined by the Standard Plate count and the Total Coliforms; 4) allow batch samples to be obtained from other locations instead of the just self-owned off-premise store; 5) remove HACCP plan requirements; 6) remove pathogen sampling requirements; 7) allow producers to have samples analyzed at the State Dairy Lab; 8) allow UDAF to collect a fee for analyzing raw milk samples; and 9) clarify that giving away of raw milk samples is prohibited.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 4-3-2

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The amendments will remove the requirement for a department inspection prior to lifting the suspension of a permit; however, the department has not been conducting those inspections. No impact on the state budget has been identified.
- ◆ **LOCAL GOVERNMENTS:** Local government have no responsibility in Rule R70-330. There will be no budgetary impact to them.
- ◆ **SMALL BUSINESSES:** Based on information gained from small raw milk producers on 09/13/2012, the changes will reduce their overhead. They did not quantify the impact.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** UDAF has included all stakeholders in the preparation of these proposed amendments. No financial impacts have been identified beyond those described above.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Costs of compliance will be reduced because producers will not have to discard approved milk produced in batches prior to the one that causes a suspension.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule is needed to implement changes to the Utah Dairy Act made in the 2013 General Legislative Session under S.B. 244. The proposed amendments were approved by the Agriculture Advisory Board on 07/16/2013.

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

AGRICULTURE AND FOOD  
REGULATORY SERVICES  
350 N REDWOOD RD  
SALT LAKE CITY, UT 84116-3034

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at [kmathews@utah.gov](mailto:kmathews@utah.gov)
- ◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at [kylestephens@utah.gov](mailto:kylestephens@utah.gov)
- ◆ Richard Clark by phone at 801-538-7150, by FAX at 801-538-7126, or by Internet E-mail at [richardwclark@utah.gov](mailto:richardwclark@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2013

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2013

AUTHORIZED BY: Leonard Blackham, Commissioner

**R70. Agriculture and Food, Regulatory Services.**

**R70-330. Raw Milk for Retail.**

**R70-330-1. Authority.**

A. Promulgated under the authority of Section 4-3-2.

B. Scope: This rule establishes the requirements for the manufacture, production, distribution, holding, delivery, storage, offering for sale and sale of raw milk for retail.

C. History: The Utah Department of Agriculture and Food, with the concurrence of the U.S. Food and Drug Administration (FDA) strongly advises against the consumption of raw milk. There are numerous documented outbreaks of milkborne disease involving Salmonella and Campylobacter infections directly linked to the consumption of un-pasteurized milk. Cases of raw milk associated campylobacteriosis have been reported in the states of Arizona, California, Colorado, Georgia, Kansas, Maine, Montana, New Mexico, Oregon, Pennsylvania, and Utah. An outbreak of salmonellosis, involving 50 cases was confirmed in Ohio in 2002. Recent cases of Escherichia coli (E. coli) 0157:H7, Listeria monocytogenes, and Yersinia enterocolitica infections have also been attributed to raw milk consumption.

**R70-330-2. Definitions.**

A. "Raw milk" means milk as defined by law that has not been pasteurized, or heat treated. The word milk shall be interpreted to include the normal lacteal secretion, practically free of colostrum,



obtained by the complete milking of one or more healthy hoofed mammals.

B. "Properly staffed" means a person or persons on premise available to sell milk, exchange money, and lock and secure the retail store.

C. ~~"Quarterly pathogen testing verification" means a sample from the Raw for Retail batch is aseptically split by the Regulatory agency and tested for the prescribed pathogens at both the independent laboratory and the department laboratory and the results are evaluated and compared.~~

~~D.] "Department" means the Utah Department of Agriculture and Food.~~

### **R70-330-3. Permits.**

A permit shall be required to manufacture, distribute, sell, deliver, hold, store or offer for sale raw milk ~~for retail~~. Such permit shall be suspended when these rules or applicable sections of the Utah Dairy Act, Utah Code Annotated (UCA), Vol. 1, Title 4, Chapter 3, are violated. Cow-share programs, as defined in the Utah Dairy Act, shall not be allowed, either in conjunction with a permitted raw for pasteurization dairy, a permitted raw milk for retail dairy, or in lieu of a permit to sell raw milk for retail.

### **R70-330-6. [Testing] Bacteriological Standards.**

A. The bacterial standards for unpackaged raw milk, packaged raw milk sold on premise and packaged raw milk sold at a self-owned retail store shall be a bacterial count of no more than 20,000 per ml. and a coliform count of no more than 10 per ml.

B. The department shall suspend a permit issued under Section 4-3-8 if two out of four consecutive samples or two samples in a 30-day period violate the sample limits established in R70-330-6(A).

### **R70-330-7. Testing.**

#### A. Raw Milk for Retail Testing.

##### 1. Unpackaged Raw Milk

a. The Department shall collect a representative sample of milk from each Raw for Retail farm bulk tank once each month. All samples shall be delivered to the State Dairy Testing Laboratory. Tests shall include those prescribed for Raw Milk for Pasteurization as found in the Pasteurized Milk Ordinance, and in addition shall include added water, and/or other adulterants. ~~Whenever a sample result fails to meet a standard in any of the prescribed categories, the Raw for Retail permit shall be suspended until satisfactory sample results are received by the Department or a approved independent laboratory, meeting Pasteurized Milk Ordinance/Department standards and reported to the department by the laboratory. At such time as the above criteria are met, the Raw for Retail permit shall be fully reinstated.]~~

b. The Somatic Cell Count (SCC) in unpackaged raw milk for retail shall not exceed 400,000 cells per milliliter (ml) for cows, and not to exceed 1,500,000 cells per ml for goats. Whenever three out of five samples fail to meet this standard in a 5-month period, the Department shall suspend the raw for retail permit. The suspension shall remain effective until a sample result meets the standard. A temporary permit shall be issued at that time. The permit shall be fully reinstated when three of five samples meet the standard in a five-month period.

##### 2. Packaged Raw Milk sold on Premise

a. It shall be the responsibility of the Department to collect a representative sample of packaged raw milk once each month. All samples shall be delivered to the State Dairy Testing Laboratory. Tests shall include those prescribed for Grade "A" Pasteurized milk as found in the Pasteurized Milk Ordinance. ~~Whenever a sample result fails to meet a standard in any of the prescribed categories, the Raw for Retail permit shall be suspended until satisfactory sample results are received by the Department, meeting Pasteurized Milk Ordinance/Department standards. At such time as the above criteria are met, the Raw for Retail permit shall be fully reinstated.]~~

##### 3. Packaged Raw Milk sold at Self-Owned Retail Stores

a. It shall be the responsibility of the producer to have a sampler certified by the Department to collect a sample from each batch of milk ~~delivered to the retail store by obtaining one container of milk at the store.]~~ and submit ~~it~~ to the State Dairy Laboratory or a certified independent laboratory to be tested for Antibiotic Drug Residue, Standard Plate Count (SPC) and Coliform Count. All ~~containers of~~ milk from the sampled batch shall be withheld from sale until the results of the tests are known. Whenever a sample result exceeds the standard in any of the prescribed categories,

(i) the producer shall not allow the milk to enter into commerce and shall dispose of the milk in a manner agreeable to the Department ~~and~~

~~(ii) the Department shall suspend the producer's raw for retail permit until satisfactory sample results are received by a contracted approved independent laboratory, meeting Department standards, and reported to the Department by the laboratory]. The producer may sell raw milk from batches that were produced earlier and whose testing results met the standards.~~

~~b. It shall be the responsibility of the Department to collect at the operator's expense or oversee collection of a representative sample of packaged raw milk once each month for screening for the presence of Listeria monocytogenes, Salmonella, Campylobacter jejuni, and E. Coli 0157:H7. All samples shall be delivered to the State Dairy Testing Laboratory or other laboratories approved by the department. Test results showing any growth or activity shall be considered positive. If any of the screening test results are positive, then a confirmation test shall be performed.~~

~~Whenever any of the test results for any the prescribed pathogens are positive, the Raw for Retail permit shall be suspended until such time as a compliant sample can be obtained by the Department or contracted approved independent laboratory, meeting Pasteurized Milk Ordinance/Department standards. All expenses for the re-sampling, re-testing, and re-inspecting may be borne by the producer as per the Department's fee schedule. At such time as the above criteria are met, the Raw for Retail permit shall be fully reinstated.~~

~~c. A hazard analysis and critical control point (HACCP) System including a milk testing procedure for specified pathogens shall be required, and approved by the department, for all raw for retail dairies.~~

~~d. The HACCP System shall include plans and policies for initiating and conducting a recall in the event of a positive pathogen test result.~~

~~e. The HACCP System shall include the seven following principles:~~

~~(i) Conduct hazard analysis~~

~~(ii) Determine the critical control points~~

- ~~(iii) Establish critical limits~~
- ~~(iv) Establish monitoring procedures~~
- ~~(v) Establish corrective actions~~
- ~~(vi) Establish verification procedures~~
- ~~(vii) Establish record-keeping and documentation procedures.~~

~~f. Prior to the implementation of a HACCP plan, develop, document and implement written Prerequisite Programs (PPs). The HACCP Plan, along with the PPs becomes the HACCP System. Steps to producing the HACCP Plan and System are found in the U.S. National Advisory Committee on Microbiological Criteria for Food (NACMCF) document.~~

~~g. The HACCP plan shall identify and address points in the production, distribution, transportation and retail display system where the milk may become contaminated or held in conditions that support the growth of pathogens.~~

~~(i) When tests are performed by an independent laboratory, quarterly pathogen testing verification shall be conducted by the Department.~~

~~(ii) Independent laboratories shall participate in an annual split sampling program testing the capacity of the pathogen methodology directed by this rule, and results sent to the Department.]~~

~~[h]b. The producer shall recall all milk from the failed batch that is already in commerce.~~

~~[i]c. A database shall be kept and made available for review by both the Utah Department of Agriculture and Food and the Utah Department of Health of all customers, which shall include names, addresses, and telephone numbers of customers, dates of purchases and amounts of milk purchased.~~

~~[j]d. If another agency's epidemiological investigation finds probable cause to implicate a raw for retail dairy in a milkborne illness outbreak, the Raw for Retail Permit may be suspended by the Department until such time as milk samples are pathogen free when analyzed by the Department or other Department approved testing laboratories, and until an inspection can be performed at the facility by a Compliance Officer from the Department.~~

#### B. Animal Health Tests.

##### 1. General herd health examination.

a. Whenever the USDA/APHIS has determined Utah is "Certified Free" of a zoonotic disease relative to an animal species which is milked for human or animal consumption, no testing for that disease in that species shall be required.

b. Whenever USDA/APHIS has determined that Utah is not "Certified Free" of a zoonotic disease relative to an animal species which is milked for human or animal consumption, testing shall be conducted, as follows:

(i). Prior to inclusion in a raw milk supply, and each six months thereafter, all animals shall be examined by a veterinarian. Each animal in the herd must be positively identified as an individual. This examination shall include an examination of the milk by a method recommended by the Pasteurized Milk Ordinance, shall include a statement of the udder health of each animal, and a general systemic health evaluation.

[2](ii). Tuberculosis testing. Prior to inclusion in a raw milk supply, each animal shall have been tested for tuberculosis within 60 days prior to the beginning of milk production and shall be retested for tuberculosis once each year thereafter. All positively reacting animals shall be sent to slaughter in accordance with R58-10 and R58-11.

[3](iii). Brucellosis testing. Each bovine animal from which raw milk for retail is produced shall be positively identified as a properly vaccinated animal or shall be negative to the official blood test for brucellosis within 30 days prior to the beginning of each lactation. All positively reacting animals shall be sent to slaughter in accordance with R58-10 and R58-11. Goats and sheep shall be tested once each year for brucellosis with the official blood test and all positively reacting animals shall be sent to slaughter in accordance with R58-10 and R58-11.

[4](iv). Bulk tank milk testing. All bovine raw milk for retail shall be bulk tank tested at least four times yearly with the brucella milk ring test. If such brucella ring test is positive for brucellosis, then each animal in the herd shall be tested with the official blood test and any reactors found shall be immediately sent to slaughter in accordance with R58-10 and R58-11.

(v). This section shall not apply whenever the Utah State Veterinarian has determined that an animal species in Utah which is milked for human or animal consumption is not at risk for a specific zoonotic disease.

#### C. Personnel Health.

Each employee of the dairy working in the milk handling operation shall obtain a valid medical examination health card signed by a physician and approved by the department once each year and shall hold a valid food handler's permit. No person shall work in a milk handling operation if infected from any contagious illness or if they have on their hands or arms any exposed infected cut or lesion. If there is any question in this regard, the department may ask for an additional certification from a physician that this person is free from disease which may be transmitted by milk.

### **R70-330-[7]8. Packaging and Labeling.**

#### A. Label Requirements.

The consumer containers for raw milk for retail shall be furnished by the permittee and shall be labeled with the following information:

1. The common or usual name of the product without grade designation. The common name for raw milk is "Raw Milk". If it is other than cow's milk, the word "milk" shall be preceded with the name of the animal, i.e., "Raw Goat Milk".

2. The name, address, and zip code of the place of production and packaging.

3. Proper indication of the volume of the product either on the container itself or on the label.

4. Nutritional labeling information when applicable.

5. The phrase: "Raw milk, no matter how carefully produced, may be unsafe.", shall appear on the label in a conspicuous place. The height of the smallest letter shall be no less than one eighth inch.

6. The phrase: "Keep Refrigerated", shall also appear on the label with the height of the smallest letter no less than one eighth inch.

7. The shelf life labeling of bottled raw milk shall include a pull date, expiration date, or best-if-used-by date, and shall be displayed and clearly visible on raw milk. Raw milk shall not be sold after the pull date, expiration date, or best-if-used-by date has expired, and the date shall not be more than nine days after packaging.

8. Other provisions of labeling laws in effect in Utah relative to dairy/food products also apply. On the primary panel the words "raw" and "milk" shall be the same size lettering.

B. Products not labeled as required shall be deemed misbranded.

**R70-330-9. Limitations on Raw Milk Distribution.**

A. Raw milk distribution to the public for human consumption is limited to the following circumstances:

1. A raw milk producer may sell raw milk to the public on the producer's farm if the producer obtains a raw for retail permit from the department, and

2. A raw milk producer may sell raw milk to the public at the producer's self-owned off-premise retail store if the producer obtains a raw for retail permit from the department.

3. A raw milk producer may distribute raw milk to members of the producer's immediate family on the producer's farm.

B. Other methods or circumstances whereby raw milk is distributed to the public for human consumption, including the giving away of samples, are prohibited.

**KEY: dairy inspections, raw milk**

**Date of Enactment or Last Substantive Amendment: [January 29, 2013]**

**Notice of Continuation: March 16, 2011**

**Authorizing, and Implemented or Interpreted Law: 4-3-2**

**Commerce, Occupational and  
Professional Licensing  
R156-61  
Psychologist Licensing Act Rule**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 37965

FILED: 09/05/2013

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** During the 2013 General Legislative Session, H.B. 56 was passed which amended provisions of Title 58, Chapter 61, the Psychologist Licensing Act. As a result, the Division and the Psychologist Licensing Board are now proposing amendments to this rule to comply with the provisions of H.B. 56. Additional amendments are also being proposed as requested by the Psychologist Licensing Board.

**SUMMARY OF THE RULE OR CHANGE:** Stylistic and numbering changes have been made throughout the rule. Substantive changes to specific sections are discussed as follows: In Subsection R156-61-102, the proposed amendment expands the definition of "approved diagnostic and statistical manual for mental disorders" to include the DSM (Diagnostic and Statistical Manual of Mental Disorders)-5. The inclusion is necessary because the American Psychiatric Association released DSM-5 in May 2013 and it is already in use. The rule should still reference DSM-IV because it continues to be used by many practitioners. A

reference to ICD-9 is added because many practitioners continue to use it. In Subsection R156-61-102(3), the definition of "direct supervision" is added as a result of H.B. 56. Under the proposed language, direct supervision may include when a supervisee meets with a supervisor remotely via real-time electronic methods. In Section R156-61-302a, stylistic and renumbering changes are made throughout this section. In Subsection R156-61-302a(2), several subsections outlining education requirements are removed. For programs located in the United States and Canada, these requirements are unnecessary because a program meets those requirements if it meets criteria outlined in Subsection R156-61-302a(2)(e). For programs located outside the United States or Canada, Subsection R156-61-302a(2)(f) is amended to require meeting the Association of State and Provincial Psychology Boards/National Register Designation Guidelines. This amendment is intended to ensure that foreign programs are held to the same standard as programs in the United States and Canada. In Subsection R156-61-502(1), incorporation of the June 2010 edition of the "Ethical Principles of Psychologists and Code of Conduct" of the American Psychological Association replaces incorporation of the August 2002 edition. This amendment is necessary because the new edition makes it clear that its standards can never be interpreted to justify or defend violating human rights. Subsection R156-61-502(22) is added because the Psychologist Licensing Board felt it was necessary in light of the new reference to the practice of mental health therapy remotely adopted in H.B. 56.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-61-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Updates Ethical Principles of Psychologists and Code of Conduct, published by American Psychological Association, June 1, 2010

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Division will incur minimal costs due to the need for the Division and Board to review and approve written supervisory agreements from licensees seeking approval to complete some or all 40 hours of direct supervision via real-time electronic methods under Subsection R156-61-102(3). At this time, it is anticipated that only a few supervisees will seek this approval, resulting in minimal impact to the Division and its budget. Amendments to the education requirement in Section R156-61-302a simplify the requirement and will likely reduce the amount of time that the Division and Board spend reviewing psychologist license applications. As a result, the Division may experience some saving impact. However, these impacts cannot be quantified. Also, there is no cost relating to the June 2010 Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association since this updated document is available for free on the American Psychological Association website.

◆ LOCAL GOVERNMENTS: The proposed amendments only apply to psychologists and applicants for licensure as a psychologist. As a result, the proposed amendment does not apply to local governments.

◆ SMALL BUSINESSES: The proposed amendment to Subsection R156-610-102(3) expands the definition of direct supervision to include when a supervisee meets with a supervisor remotely via real-time electronic methods. Small businesses may experience a cost savings as a result of this proposed amendment because it may save a supervisor and supervisee the cost of traveling to physically meet with one another. This anticipated cost savings cannot be quantified by the Division due to a wide range of circumstances.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendment to Subsection R156-61-102(3) expands the definition of direct supervision to include when a supervisee meets with a supervisor remotely via real-time electronic methods. In some cases, this proposed amendment may translate into a cost savings for individual supervisors and supervisees because they will save the cost of traveling to physically meet with one another. This anticipated cost savings cannot be quantified by the Division due to a wide range of circumstances.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendment to Subsection R156-61-102(3) expands the definition of direct supervision to include when a supervisee meets with a supervisor remotely via real-time electronic methods. In some cases, this proposed amendment may translate into a cost savings for individual supervisors and supervisees because they will save the cost of traveling to physically meet with one another. This anticipated cost savings cannot be quantified by the Division due to a wide range of circumstances.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing updates an existing definition to reflect industry developments; clarifies the minimum standards that a licensing program must meet; and creates, in response to H.B. 56 (2013), provisions to ensure that a supervisor who is not physically proximate to a supervisee fulfills the supervisory duties through real-time electronic methods and according to a written plan. Any costs that licensing program providers might incur to meet the required standards will vary and cannot be estimated. Any fiscal impact attendant to remote supervision was considered by the Legislature in determining to pass H.B. 56. No additional fiscal impact is anticipated from these proposed amendments.

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

COMMERCE  
 OCCUPATIONAL AND PROFESSIONAL  
 LICENSING  
 HEBER M WELLS BLDG  
 160 E 300 S  
 SALT LAKE CITY, UT 84111-2316

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Rich Oborn by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at roborn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2013

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 10/29/2013 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2013

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.**

**R156-61. Psychologist Licensing Act Rule.**

**R156-61-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 61, as used in Title 58, Chapters 1 and 61 or this rule:

(1) "Approved diagnostic and statistical manual for mental disorders" means the following: [~~Diagnostic and Statistical Manual of Mental Disorders", 4th edition Text Revision (DSM-IV-TR), published by the American Psychiatric Association, or the ICD-10-CM published by Medicode or the American Psychiatric Association.~~]

(a) Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition: DSM-5 or Fourth Edition: DSM-IV published by the American Psychiatric Association;

(b) 2013 ICD-9-CM for Physicians, Volumes 1 and 2 Professional Edition published by the American Medical Association; or

(c) ICD-10-CM 2013: The Complete Official Draft Code Set published by the American Medical Association.

(2) "CoA" means Committee on Accreditation of the American Psychological Association.

(3) "Direct supervision" of a supervisee in training, as used in Subsection 58-61-304(1)(f), means:

(a) a supervisor meeting with the supervisee when both are physically present in the same room at the same time; or

(b) a supervisor meeting with the supervisee remotely via real-time electronic methods that allow for visual and audio interaction between the supervisor and supervisee under the following conditions:

(i) the supervisor and supervisee shall enter into a written supervisory agreement which, at a minimum, establishes the following:

(A) frequency, duration, reason for, and objectives of electronic meetings between the supervisor and supervisee;

(B) a plan to ensure accessibility of the supervisor to the supervisee despite the physical distance between their offices;

(C) a plan to address potential conflicts between clinical recommendations of the supervisor and the representatives of the agency employing the supervisee;

(D) a plan to inform a supervisee's client or patient and employer regarding the supervisee's use of remote supervision;

(E) a plan to comply with the supervisor's duties and responsibilities as established in rule; and

(F) a plan to physically visit the location where the supervisee practices on at least a quarterly basis during the period of supervision or at a lesser frequency as approved by the Division in collaboration with the Board;

(ii) the supervisee submits the supervisory agreement to the Division and obtains approval before counting direct supervision completed via live real-time methods toward the 40 hour direct supervision requirement; and

(iii) in evaluating a supervisory agreement, the Division shall consider whether it adequately protects the health, safety, and welfare of the public.

~~(3)4~~(a) "Predoctoral internship" refers to a formal training program that meets the minimum requirements of the Association of Psychology Postdoctoral and Internship Centers (APPIC) offered to culminate a doctoral degree in clinical, counseling, or school psychology.

(b) A training program may be a full-time one year program or a half-time two year program.

~~(4)5~~(a) "Program accredited by the CoA", as used in Subsections R156-61-302a(1), means a psychology department program that is accredited at the time of completion of a doctoral psychology degree.

(b) No other accredited educational program at a degree granting institution is considered to meet the requirement in Subsections R156-61-302a(1), and in no case are departments or institutions of higher education considered accredited.

~~(5)6~~(a) "Program of respecialization", as used in Subsection R156-61-302a(3), is a formal program designed to prepare someone with a doctoral degree in psychology with the necessary skills to practice psychology.

(b) The respecialization activities ~~[must]~~shall include substantial requirements that are formally offered as an organized sequence of course work and supervised practicum leading to a certificate (or similar recognition) by an educational body that offers a doctoral degree qualifying for licensure in the same area of practice as that of the certificate.

~~(6)7~~ "Qualified faculty", as used in Subsection 58-1-307(1)(b), means a university faculty member who provides pre-doctoral supervision of clinical or counseling experience in a university setting who:

(i) is licensed in Utah as a psychologist; and

(ii) is training students in the context of a doctoral program leading to licensure.

~~(7)8~~ "Residency program", as used in Subsection 58-61-301(1)(b), means a program of post-doctoral supervised clinical training necessary to meet licensing requirements as a psychologist.

~~(8)2~~(a) "Psychology training", as used in Subsection 58-61-304(1)(e), means practical training experience providing direct services in the practice of mental health therapy and psychology under supervision. All activities in full-time internships and full-time post-doctoral positions devoted solely to mental health delivery meet this definition.

(b) Activities not directly related to the practice of psychology, even if commonly performed by psychologists, do not meet the definition of psychology training under Subsection 58-61-

304(1)(e). Examples of ineligible activities include psychology coursework, analog clinical activities (e.g. role plays), activities required for business purposes (e.g. billing), supervision of others engaged in activities other than practice of psychology (e.g. supervising adolescents in wilderness settings), and activities commonly performed by non-psychologists (e.g. teaching of psychology on topics not of a professional nature).

#### **R156-61-302a. Qualifications for Licensure - Education Requirements.**

(1) In accordance with Subsection 58-61-304(1)(d), an institution or program of higher education awarding a psychology degree that qualifies an applicant for licensure as a psychologist shall be accredited by the CoA.

(a) An applicant ~~must~~shall graduate from the actual program that is accredited by CoA. No other program within the department or institution qualifies unless separately accredited.

(b) If a transcript does not uniquely identify the qualifying CoA accredited degree program, it is the responsibility of the applicant to provide signed, written documentation from the program director or department chair that the applicant did indeed graduate from the qualifying accredited degree program.

(2) In accordance with Subsection 58-61-304(1)(d), an institution or program of higher education awarding a psychology doctoral degree that is not accredited by CoA ~~must~~shall meet the following criteria in order to qualify an applicant for licensure as a psychologist:

~~(a) [if located in the United States or Canada, be accredited by a professional accrediting body approved by the Council for Higher Education of the American Council on Education, at the time the applicant received the required earned degree;~~

~~(b) if located outside of the United States or Canada, be equivalent to an accredited program under Subsection (a), and the burden to demonstrate equivalency shall be upon the applicant;~~

~~(c) result from successful completion of a program conducted or based on a college or university campus;~~

~~(d) result from a program which includes at least one year of residence at the educational institution;~~

~~(e) [if located in the United States or Canada, be an institution having a doctoral psychology program recognized by the Association of State and Provincial Psychology Boards (ASPPB)/National Register Joint Designation Committee as being found to meet "designation criteria", at the time the applicant received the earned degree. Whether a program is found to meet designation criteria is a decision to be made by the [Association of State and Provincial Psychology Boards]ASPPB/National Register Joint Designation Committee[-]; or~~

~~(f)b) if located outside of the United States or Canada, [the applicant shall have the education program evaluated by a credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES) for the purpose of determining whether the education is substantially equivalent to the education required of applicants with degrees from institutions located in the United States or Canada;]be an institution that meets the ASPPB National Register (NR) Designation Guidelines for defining a doctoral degree in psychology as determined by the NR.[~~

~~(g) have an organized and clearly identified sequence of study to provide an integrated educational experience appropriate to preparation for the professional practice of psychology and licensure, and shall clearly identify those persons responsible for the program with clear authority and responsibility for the core and specialty areas regardless of whether or not the program cuts across administrative lines in the educational institution;~~

~~(h) clearly identify in catalogues or other publications the psychology faculty, demonstrate that the faculty is sufficient in number and experience to fulfill its responsibility to adequately educate and train professional psychologists, and demonstrate that the program is under the direction of a professionally trained psychologist;~~

~~(i) grant earned degrees resulting from a program encompassing a minimum of three academic years of full-time graduate study with an identifiable body of students who are matriculated in the program for the purpose of obtaining a doctoral degree;~~

~~(j) include supervised practicum, internship, and field or laboratory training appropriate to the practice of psychology;~~

~~(k) require successful completion of a minimum of two semester/three quarter hour graduate level core courses including:~~

~~(i) scientific and professional ethics and standards;~~

~~(ii) research design and methodology;~~

~~(iii) statistics; and~~

~~(iv) psychometrics including test construction and measurement;~~

~~(l) require successful completion of a minimum of two graduate level semester hours/three graduate level quarter hours in each of the following knowledge areas. Course work must have a theoretical focus as opposed to an applied, clinical focus:~~

~~(i) biological bases of behavior such as physiological psychology, comparative psychology, neuropsychology, psychopharmacology, perception and sensation;~~

~~(ii) cognitive-affective bases of behavior such as learning, thinking, cognition, motivation and emotion;~~

~~(iii) social and cultural bases of behavior such as social psychology, organizational psychology, general systems theory, and group dynamics; and~~

~~(iv) individual differences such as human development, personality theory and abnormal psychology; and~~

~~(m) require successful completion of specialty course work and professional education courses necessary to prepare the applicant adequately for the practice of psychology.]~~

(3) An applicant whose psychology doctoral degree training is not designed to lead to clinical practice or who wishes to practice in a substantially different area than the training of the doctoral degree shall complete a program of respecialization as defined in Subsection R156-61-102(5), and shall meet requirements of Subsections R156-61-302a(2).

(4) [In accordance with Subsection 58-61-304(1)(d), an applicant who has received a doctoral degree in psychology by completing the requirements of Subsections R156-61-302a(1)(a) through (2)(i), without completing the core courses required under Subsection R156-61-302a(2)(j), or the specialty course work required in Subsection (2)(l) may be allowed to complete the required course work post-doctorally. The supplemental course work shall consist of formal graduate level work meeting the requirements of Subsections (2)(j) and (2)(l) in regularly offered

~~and scheduled classes. University based directed reading courses may be approved at the discretion of the Board.~~

~~(5)]The date of completion of the doctoral degree shall be the graduation date listed on the official transcript.~~

#### **R156-61-302b. Qualifications for Licensure - Experience Requirements.**

(1) An applicant for licensure as a psychologist under Subsection 58-61-304(1)(e) or mental health therapy under Subsections 58-61-304(1)(e) and (1)(f) shall complete a minimum of 4,000 hours of psychology training approved by the Division in collaboration with the Board. The training shall:

(a) be completed in not less than two years;

(b) be completed in not more than four years following the awarding of the doctoral degree unless the Division in collaboration with the Board approves an extension due to extenuating circumstances;

(c) be completed while the applicant is enrolled in an approved doctoral program or licensed as a certified psychology resident;

(d) be completed while the applicant is under the supervision of a qualified psychologist meeting the requirements under Section R156-61-302d;

(e) if completed under the supervision of a qualified faculty member who is not an approved psychology training supervisor in accordance with Subsection R156-61-302d, the training ~~may~~ shall not be credited toward the 4,000 hours of psychology doctoral clinical training;

(f) be completed as part of a supervised psychology training program as defined in Subsection R156-61-102(4) that does not exceed:

(i) 40 hours per week for full-time internships and full-time post doctoral positions; or

(ii) 20 hours of part-time internships and part-time post doctoral positions; and

(g) be completed while the applicant is under supervision of a minimum of one hour of supervision for every 20 hours of pre-doctoral training and experience and one hour for every 40 hours of post-doctoral training and experience.

(2) In accordance with Subsection 58-61-301(1)(b), an individual engaged in a post-doctoral residency program of supervised clinical training shall be certified as a psychology resident.

(3) An applicant for licensure may accrue any portion of the 4,000 hours of psychology doctoral degree training and experience required in Subsection 58-61-304(1)(e) in a pre-doctoral program.

(4) An applicant who applies for licensure as a psychologist who completes the 4,000 hours of psychology doctoral degree training and experience required in Subsection 58-61-304(1)(e) in a pre-doctoral program or post-doctoral residency, and meets qualifications for licensure, may be approved to sit for the examinations, and upon passing the examinations will be issued a psychologist license.

(5) An applicant for licensure as a psychologist who has commenced and completed all or part of the psychology or mental health therapy training requirements under Subsection R156-61-302b(1) outside the state, may receive credit for that training completed outside of the state if it is demonstrated by the applicant

that the training is equivalent to the requirements for training under Subsections 58-61-304(1)(e) and (f), and Subsection R156-61-302b(1).

**R156-61-302c. Qualifications for Licensure - Examination Requirements.**

(1) The examination requirements which ~~must~~ shall be met by an applicant for licensure as a psychologist under Subsection 58-61-304(1)(g) are:

(a) passing the Examination for the Professional Practice of Psychology (EPPP) developed by the American Association of State Psychology Board (ASPPB) with a passing score as recommended by the ASPPB; and

(b) passing the Utah Psychologist Law and Ethics Examination with a score of not less than 75%.

(2) A person may be admitted to the EPPP and Utah Psychologist Law and Ethics examinations in Utah only after meeting the requirements under 58-61-305, and after receiving written approval from the Division.

(3) If an applicant is admitted to an EPPP examination based upon substantive information that is incorrect and furnished knowingly by the applicant, the applicant shall automatically be given a failing score and shall not be permitted to retake the examination until the applicant submits fees and a correct application demonstrating the applicant is qualified for the examination and adequately explains why the applicant knowingly furnished incorrect information. If an applicant is inappropriately admitted to an EPPP examination because of a Division or Board error and the applicant receives a passing score, the results of the examination may not be used for licensure until the deficiency which would have barred the applicant for admission to the examination is corrected.

(4) An applicant who fails the EPPP examination three times will only be allowed subsequent admission to the examination after the applicant has appeared before the Board, developed with the Board a plan of study in appropriate subject matter, and thereafter completed the planned course of study to the satisfaction of the Board.

(5) An applicant who is found to be cheating on the EPPP examination or in any way invalidating the integrity of the examination shall automatically be given a failing score and shall not be permitted to retake the examination for a period of at least three years or as determined by the Division in collaboration with the Board.

(6) In accordance with Section 58-1-203 and Subsection 58-61-304(1)(g), an applicant for the EPPP or the Utah Psychologist Law and Ethics Examination ~~must~~ shall pass the examinations within one year from the date of the psychologist application for licensure. If the applicant does not pass the examinations within one year, the pending psychologist application ~~will~~ shall be denied. The applicant may continue to register to take the EPPP examination under the procedures outlined in Subsection R156-61-302c(4).

(7) In accordance with Section 58-1-203 and Subsection 58-61-304(2)(d), an applicant for psychologist licensure by endorsement ~~must~~ shall pass the Utah Psychologist Law and Ethics Examination within six months from the date of the psychologist application for licensure. If the applicant does not pass the

examination in six months, the pending psychologist application ~~will~~ shall be denied.

**R156-61-302g. License Reinstatement - Requirements.**

An applicant for reinstatement of a license after two years following expiration of that license shall ~~be required to~~:

(1) upon request meet with the Board for the purpose of evaluating the applicant's current ability to safely and competently engage in practice as a psychologist and to make a determination of education, experience or examination requirements which will be required before reinstatement;

(2) upon the recommendation of the Board, establish a plan of supervision under an approved supervisor which may include up to 4,000 hours of psychology and/or mental health therapy training;

(3) take or retake, and pass the Utah Psychology Law Examination; or the EPPP Examination, or both, if it is determined by the Board it is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a psychologist; and

(4) complete a minimum of 48 hours of professional education in subjects determined necessary by the Board to ensure the applicant's ability to engage safely and competently in practice as a psychologist.

**R156-61-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) violation of any provision of the "Ethical Principles of Psychologists and Code of Conduct" of the American Psychological Association (APA) as adopted by the APA, ~~August 2002~~ June 1, 2010 edition, which is adopted and incorporated by reference;

(2) violation of any provision of the "ASPPB Code of Conduct" of the Association of State and Provincial Psychology Boards (ASPPB) as adopted by the ASPPB, 2005 edition, which is adopted and incorporated by reference;

(3) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-61-302d and R156-61-302e;

(4) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(5) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(6) failing to establish and maintain appropriate professional boundaries with a client or former client;

(7) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(8) engaging in sexual activities or sexual contact with a client with or without client consent;

(9) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;

(10) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the psychologist and the client;

(11) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the psychologist and that individual;

(12) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(13) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(14) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(15) exploiting a client for personal gain;

(16) using a professional client relationship to exploit a client or other person for personal gain;

(17) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(18) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(19) failure to cooperate with the Division during an investigation

(20) participating in a residency program or other post degree experience without being certified as a psychology resident for post-doctoral training and experience; ~~and~~

(21) supervising a residency program of an individual who is not certified as a psychology resident; or

(22) when providing services remotely:

(a) failing to practice according to professional standards of care in the delivery of services remotely;

(b) failing to protect the security of electronic, confidential data and information; or

(c) failing to appropriately store and dispose of electronic, confidential data and information.

**KEY: licensing, psychologists**

**Date of Enactment or Last Substantive Amendment:** ~~[August 16, 2010]~~ **2013**

**Notice of Continuation:** February 10, 2009

**Authorizing, and Implemented or Interpreted Law:** 58-1-106(1)(a); 58-1-202(1)(a); 58-61-101

Education, Administration

**R277-106**

Utah Professional Practices Advisory  
Commission Appointment Process

## NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 37998

FILED: 09/16/2013

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to provide updated language and terminology to make it consistent with other rules.

**SUMMARY OF THE RULE OR CHANGE:** Language and terminology is updated throughout the rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 53A-1-401(3) and Subsection 53A-6-303(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. The language and terminology changes do not result in costs or savings.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government. The language and terminology changes do not result in a cost or savings.

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

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local governmental entities. The language and terminology changes do not result in a cost or savings.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. The language and terminology changes do not create compliance requirements.

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

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

EDUCATION

ADMINISTRATION

250 E 500 S

SALT LAKE CITY, UT 84111-3272

or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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



INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2013

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2013

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

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

#### **R277-106. Utah Professional Practices Advisory Commission Appointment Process.**

##### **R277-106-1. Definitions.**

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

B. "Nomination application" means:

(1) written and signed statement by the [S]superintendent of the school district or charter school director in which the educator is currently employed, that the [S]superintendent/director understands the time commitment of UPPAC members and supports the educator in applying for one three-year term as identified in statute. If the applicant is a school district superintendent or charter school director, the chair of the local/charter school board shall provide a statement of support for the educator;

(2) written and signed statement by the educator's building principal or director that the principal/director understands the time commitment of UPPAC members and supports the educator in applying for one three-year term. If the applicant is a principal, the applicant shall include a statement of understanding of the time commitment in the personal statement provided by the applicant;

(3) written and signed personal statement by the applicant expressing the applicant's desire to serve as a UPPAC member, a summary of the applicant's professional experience, including associations and professional affiliations; and

(4) the applicant's vita.

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

D. [~~"UPPAC or Commission" means the Utah Professional Practices Advisory Commission as defined and authorized under Section 53A-6-301 et. seq.~~]"Utah Professional Practices Advisory Commission (UPPAC)" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, under Section 53A-6-301.

##### **R277-106-2. Authority and Purpose.**

A. This rule is adopted pursuant to Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-6-303(1)(a) which directs the Board to adopt rules establishing procedures for nominating and appointing [Commission]UPPAC members, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish nomination and appointment procedures for UPPAC members.

##### **R277-106-3. UPPAC Notification, Nomination and Application Process.**

A. The UPPAC Executive Secretary shall notify school districts, charter schools and education organizations in writing of openings on UPPAC for the upcoming term by May 15 of the year in which [~~the Commission~~]UPPAC vacancies shall be filled by appointment by the Superintendent.

B. As provided under Section 53A-6-303(1)(b), nomination petitions shall be filed with the Superintendent.

##### **R277-106-4. UPPAC Selection Process.**

A. The UPPAC Executive Secretary shall review all complete and properly filed applications and may make recommendation(s), per direction from the Superintendent, to the Superintendent prior to May 30 of the year in which membership on [~~the Commission~~]UPPAC is sought.

(1) The Executive Secretary may seek additional information to provide to the Superintendent about the experience and qualification of UPPAC applicants.

(2) Recommendations shall maintain a representative balance of six teachers and three other educators.

(3) Recommendations shall [~~give~~] consider[~~ation to~~] rural/urban, elementary/secondary, gender, ethnic, and geographical balance of [~~Commission~~]UPPAC members.

B. The Superintendent shall make [~~Commission~~]UPPAC appointments [~~prior to June 1 of the year in which Commission members shall begin serving~~]consistent with Section 53A-6-303.

C. Community members

(1) Community [M]members [shall]may be nominated by the state organization or a local chapter of the education organization with the largest membership of parents of students and teachers in the state.

(2) Community members who are members of a parent/teacher parent/teacher/student organization may submit their names to the education organization described in Section 53A-6-302(1) for nomination by the organization.

([2]3) The two community members shall not serve concurrent terms.

D. If current [~~Commission~~]UPPAC members desire to serve for a second term, the member shall indicate the desire to serve an additional term in writing to the Superintendent prior to May 15 of the year in which the member's term expires.

E. The applications(s) of (a) [~~Commission~~]UPPAC member(s) seeking reappointment shall be considered for recommendation at the same time that new appointments are considered.

F. The Executive Secretary may retain applications for consideration for mid-term vacancies or for vacancies in subsequent years.

##### **R277-106-5. Filling of Vacancies.**

A. The UPPAC Executive Secretary shall recommend names to the Superintendent to fill vacancies that occur midyear.

B. The UPPAC Executive Secretary may recommend names of previous applicants for [~~Commission~~]UPPAC vacancies or names from school districts or charter schools or other groups or areas of the state that are under represented to fill vacancies.

**KEY: professional competency, professional practices**  
**Date of Enactment or Last Substantive Amendment:**  
**[December 8, 2011]2013**  
**Notice of Continuation: September 9, 2013**  
**Authorizing, and Implemented or Interpreted Law: Art X Sec**  
**3; 53A-6-303(1)(a); 53A-1-401(3)**

## Education, Administration **R277-113**

### LEA Fiscal Policies and Accountability

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 37999

FILED: 09/16/2013

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to provide clarifying language and Utah code citations that were inadvertently omitted.

**SUMMARY OF THE RULE OR CHANGE:** Amendments provide language to clarify that the school-sponsored definition applies to curricular school clubs only and provide Utah Code and administrative rule citations.

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

#### ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. The changes to the rule are mainly for clarification purposes.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government. The changes to the rule are mainly for clarification purposes.
- ◆ **SMALL BUSINESSES:** There is no anticipated cost 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 is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. The changes to the rule are mainly for clarification purposes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. The changes to the rule are mainly for clarification purposes and do not create compliance requirements.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2013

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2013

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

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

#### **R277-113. LEA Fiscal Policies and Accountability.**

#### **R277-113-1. Definitions.**

A. "Arm's length transaction" means a transaction between two unrelated, independent and unaffiliated parties or a transaction between two parties acting in their own self interest that is conducted as if the parties were strangers so that no conflict of interest exists.

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

C. "Exclusive contract or arrangement" means an agreement requiring a buyer to purchase or exchange all needed goods or services from one seller.

D. "Internal controls" are procedures designed to safeguard assets, detect errors and misappropriations, produce timely and accurate financial reports, and ensure compliance with laws and rules.

E. "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. "Management" means an LEA superintendent or director, deputy or associate, business administrator or manager, or other educational administrator or designated staff.

G. "Public funds" (Utah Code Section 51-7-3(25)) means money, funds, and accounts, regardless of the source from which the funds are derived, that are owned, held, or administered by the state or any of its political subdivisions including LEAs or other public bodies.

H. "School sponsored" means an activity, fundraising event, club, camp, clinic or other event or activity that is authorized by a specific LEA or public school which supports the LEA or authorized curricular school club, activity, sport, class or program, that also satisfies at least one of the following conditions:

(1) it is managed or supervised by an LEA or public school, or LEA or public school employee;

(2) it uses the LEA or public school's facilities, equipment, or other school resources; or

(3) it is supported or subsidized, more than inconsequently, by public funds, including the public school's activity funds or minimum school program dollars.

I. "Utah Public Officers' and Employees' Ethics Act" (Utah Code Sections 67-16-1 through 15) means an Act that provides standards of conduct for officers and employees of the state of Utah and its political subdivisions in areas where there are actual or potential conflicts of interest between their public duties and their private interests.

**R277-113-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and by Section 53A-1-402(1)(e) which directs the Board to establish rules and minimum standards for school productivity and cost effectiveness measures.

B. The purpose of this rule is to (1) require LEAs to formally adopt and implement policies regarding the management and use of public funds; (2) provide minimum standards, procedures and definitions for LEA policies; (3) direct that LEAs make policies, procedures and training materials available to the public and readily accessible on LEA or public school websites, to the extent of resources available; (4) require LEAs to train employees in appropriate financial practices, necessary accounting procedures and ethical financial practices; and (5) provide for consistency among LEAs regarding fiscal policies, procedures and accountability practices.

**R277-113-3. Board Responsibilities.**

A. The Board shall provide training and informational materials and model policies for use by LEAs in developing LEA and public school-specific financial policies about the use and management of public funds before March 31, 2013.

B. The Board shall provide online training and resources for LEAs regarding the use and management of public funds and ethical practices for licensed Utah educators who manage, control, participate in fundraising, or expend public funds before March 31, 2013.

C. The Board may provide and establish a cycle for state review of LEA fiscal policies and standards.

D. The Board shall work with and provide information upon request to the Utah State Auditors Office, the Legislative Fiscal Auditors and other state agencies with the right to information from the Utah State Office of Education.

**R277-113-4. LEA Responsibilities.**

A. LEAs shall develop, have approved by local/charter boards and implement the fiscal policies required in R277-113-5 before September 15, 2013. These policies shall be in writing.

B. LEAs shall also develop a plan for training LEA and public school employees, at least annually, on policies enacted by the LEA specific to job function.

(1) These policies shall be available at each LEA main office, at individual public schools, and on the LEA's website.

(2) The LEA fiscal policies and training may have different components, specificity, and levels of complexity for public elementary and secondary schools.

(3) LEAs may have one policy or more than one satisfying the minimum requirements of this rule.

(4) An LEA policy shall address how often the policy shall be reviewed, including periodic updates or training and resource manuals.

(5) An LEA policy may reference specific training manuals or other resources that provide detailed descriptions of business practices which are too lengthy or detailed to include in the LEA policy.

C. An LEA shall designate board members to serve on an audit or finance committee. The LEA audit or finance committee has the following responsibilities:

(1) ensuring that management properly develops and adheres to a sound system of internal controls consistent with the requirements of R277-113-5;

(2) receiving a report of the risk assessment process undertaken by management in developing the system of internal controls;

(3) developing a process to review financial information, financial statements, and LEA and individual school records on a regular basis;

(4) ensuring that management conducts a competitive RFP process to hire external auditors and other professional services and making a recommendation to the LEA board on the results of the RFP process consistent with the State Procurement Code;

(5) receiving communication from or meeting with the external auditors annually and receiving a direct report of the audit findings, exceptions, and other matters noted by the auditor;

(6) reporting the annual audit reports and findings or other matters communicated by the external auditor or other regulatory bodies to the LEA board in a public meeting;

(7) ensuring that matters reported by external audits, internal audits, or other regulatory bodies are resolved in a timely manner.

D. The definition of school sponsored and requirements of R277-113-4F do not apply to activities, fundraising events, clinics, clubs, camps, or activities organized by a third party which have not been designated by the LEA as school sponsored. All transactions pertaining to nonschool sponsored events shall be conducted at arm's length; revenues and expenditures shall not be commingled with public funds.

E. For nonschool sponsored events, funds may be managed or held by a public school employee, only consistent with R277-107.

F. The definition of school sponsored and requirements of R277-113-4F do not apply to non-curricular clubs specifically authorized and meeting all criteria of Sections 53A-11-1205 through 1208.

[F]G. LEAs and individual public schools shall comply with the following regarding school and nonschool sponsored activities:

(1) may enter into contractual agreements to allow for fundraising and use of LEA facilities. An agreement shall take into consideration the LEA's fiduciary responsibility for the management and use of public funds. LEAs should consult with the LEA insurer or legal counsel, or both, to ensure risks are adequately considered and managed;

(2) shall annually review fundraising activities that support or subsidize LEA or public school-authorized clubs,

activities, sports, classes or programs to determine if the activities are school sponsored consistent within R277-113-1H;

(3) shall ensure that revenues raised from school sponsored activities and funds expended from the proceeds are considered public funds consistent with R277-113-1G;

(4) shall maintain adequate records to ensure that funds collected from or during school sponsored activities are in compliance with LEA cash handling policies as required by R277-113-5;

(5) shall maintain adequate records to show that expenditures made to support activities from LEA or public school funds are in compliance with LEA expenditure of funds policies as required by R277-113-5;

(6) shall make records of activities available to parents, students, and donors and shall maintain the records in sufficient detail to track individual contributions and expenditures as well as overall financial outcome. Records may be private or protected consistent with Sections 63G-2-302, 303, 305, and the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g;

[G]H. Public Education Foundations established by LEAs shall follow the requirements provided in Section 53A-4-205.

#### **R277-113-5. Required LEA Fiscal Policies.**

A. The following fiscal policies shall be required in each LEA. LEAs shall ensure that each policy addresses the ~~specific~~ applicable Utah Code references or Board Rules in each section. The required items are minimum requirements. LEAs may include other related items, provide LEA specific policy and guidance, and set polices that are more restrictive and inclusive than the minimum provisions established by the Board.

B. LEAs shall ensure that policies address applicable elements from the Utah Public Officers' and Employees' Ethics Act, Utah Educator Standards (R277-515), and the definition of public funds.

C. LEA fiscal policies shall address the following:

(1) Cash Handling: The LEA cash handling policy shall address cash receipts (cash, checks, credit cards, and other items) collected at the LEA and individual public schools through school sponsored activities and shall include:

(a) establishment of internal controls and procedures over the collection, deposit, and reconciliation of cash receipts received;

(b) compliance with Utah Code 51-4-2(2) regarding deposits.

(2) Expenditure of Public Funds: The LEA expenditure policy shall address expenditures made by checks, electronic transfers and credit/~~debit~~ purchase cards that are made by the LEA and individual public schools through school sponsored activities and shall include:

(a) establishment of internal controls and procedures over the initiation, approval and monitoring of expenditures, credit or ~~debit~~ purchase card transactions, employee reimbursements, travel, and payroll;

(b) directives regarding the appropriate use of the LEA tax exempt status number;

(c) compliance with Section 63G-6a-1204~~(7)~~ regarding length of multi-year contracts;

(d) compliance with Section 63G-6a et seq., procurement state law and Board rule regarding construction and improvements, and compliance with Title IX; and

(e) procedures and documentation maintained by the LEA if the LEA chooses to enter into exclusive contracts or arrangements consistent with state procurement law and the LEA procurement policy.

(3) Fundraising: The LEA fundraising policy shall establish procedures for LEA and public school fundraising in general, establish an approval process for fundraising activities, school sponsored activities, provide for compliance with school fee and fee waiver provisions, and shall include:

(a) specific designation of employees by title or job description who are authorized to approve fundraising, school sponsored activities, and grant fee waivers with appropriate attention to student and family confidentiality;

(b) establishment of internal controls and procedures over the approval of fundraising and school sponsored activities and compliance with associated cash handling and expenditure policies;

(c) directives regarding the appropriate use of the LEA tax exempt status number, and issuance of charitable donation receipts;

(d) procedures governing LEA or public school employee interaction with parents, donors, and nonschool sponsored organizations;

(e) disclosure requirements for LEA and public school employees approving or otherwise managing or overseeing fundraising activities who also have a financial or controlling interest or access to bank accounts in the fundraising organization or company.

(f) This policy shall be in harmony with Article X of the Utah Constitution establishing a free public education system, with R277-407 regarding school fees, and compliance with Title IX.

(g) The LEA may include procedures governing student participation and incentives offered to students, allowable types of fundraising activities, and participation in school sponsored activities by volunteer or outside organizations.

(4) Donations and Gifts: The LEA donation and gift policy shall establish acceptance and approval process for monetary donations, donations and gifts with donor restrictions, donations of gifts, goods, materials or equipment, and funds or items designated for construction or improvements of facilities, and shall include:

(a) establishment of internal controls and procedures over the acceptance and approval of donations and gifts and compliance with associated cash handling and expenditure policies;

(b) directives regarding the appropriate use of the LEA tax exempt status number, and issuance of charitable donation receipts;

(c) procedures regarding the objective valuation of donations or gifts if advertising or other services are offered to the donor in exchange for a donation or gift;

(d) procedures governing LEA or public school employee conduct with parents, donors, and nonschool sponsored organizations;

(e) procedures establishing provisions to direct donations or gifts to the LEA or LEA programs, individual public school or public school programs, and restricting donations from being directed at specific LEA employees, individual students, vendors, or brand name goods or services;

(f) compliance with Title 63G, Chapter 6a regarding the procurement code, state law and Board rule regarding construction and improvements, IRS regulations and tax deductible directives, and compliance with Title IX.

(g) The LEA may include procedures for accepting donations and gifts through an LEA's legally organized foundation, if applicable, or procedures for recognition of donors, or granting naming rights.

**R277-113-6. LEA Financial Policies and Compliance with State and Federal Law.**

A. LEAs are responsible to ensure that policies comply with the following state laws and Board Rules:

- (1) Utah Constitution Article X, Section 3;
- (2) Utah Code 63G-6a, Utah Procurement Code;
- (3) Utah Code 51-4, Deposit of Funds Due State;
- (4) Utah Code 67-16, Utah Public Officers' and

Employees' Ethics Act;

(5) 20 U.S.C. Section 1232g, Family Educational Rights and Privacy Act;

(6) Utah Code 63G-2, Government Records Access and Management Act;

(7) Utah Code Section 53A-12, Fees and Textbooks;

(8) Utah Code Section 53A-4-205, Public Education

Foundations;

(9) Utah Code 53A-11-1205 through 53A-11-1208:

(a) 53A-11-1205, Noncurricular clubs -- Annual authorization;

(b) 53A-11-1206, Clubs -- Limitations and denials;

(c) 53A-11-1207, Faculty oversight of authorized clubs;

(d) 53A-11-1208, Use of school facilities by clubs;

(9)10 R277-407, School Fees;

(10)11 R277-107, Educational Services Outside of Educator's Regular Employment;

(11)12 R277-515, Utah Educator Standards;

(12) R277-605, Coaching Standards and Athletic Clinics.

B. In establishing policies and providing staff training, LEAs shall consider requirements of Title IX, including:

(1) Fundraising shall equitably benefit ~~[boys]~~males and ~~[girls]~~females;

(2) ~~[Boys]~~Males and ~~[girls]~~females shall have reasonably equal access to facilities, fields and equipment;

(3) School sponsored activities shall be reasonably equal for ~~[boys]~~males and ~~[girls]~~females.

**KEY: school sponsored activities, public funds, fiscal policies and procedures, audit committee**

**Date of Enactment or Last Substantive Amendment: [April 22,] 2013**

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

**Education, Administration**  
**R277-402**  
**Online Testing**

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 38000

FILED: 09/16/2013

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is repealed because necessary sections or provisions provided for in this rule have been incorporated into another rule making this rule unnecessary.

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

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 53A-1-401(3) and Subsection 53A-1-708(5)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. The rule is no longer necessary because the sections or provisions provided for in this rule have been incorporated into another rule.

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government. The rule is no longer necessary because the sections or provisions provided for in this rule have been incorporated into another rule.

♦ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses. The rule applies to public education and does not affect businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. This rule is no longer necessary because the sections or provisions provided for in this rule have been incorporated into another rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no compliance costs for affected persons. The rule is no longer necessary because the sections or provisions provided for in this rule have been incorporated into another rule.

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

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

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

## DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2013

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2013

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

**R277. Education, Administration.****[R277-402. Online Testing.****R277-402-1. Definitions.**

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

\_\_\_\_\_ B. "Formative assessment" means an activity, such as questioning, observation, interview and assessment, engaged in by teachers and students during instruction that provides feedback to adjust ongoing teaching and learning to improve students' achievement of intended instructional outcomes.

\_\_\_\_\_ C. "Intent to implement a uniform online summative test system" as used in 53A-1-708(4) means the commitment by the USOE to provide a consistent statewide process for school districts/charter schools to administer 100 percent of CRT U-PASS-required assessments. This includes the willingness of school districts/charter schools to provide documentation of preparatory activities and of actual test-taking by students.

\_\_\_\_\_ D. "Online formative assessment system" means a system coordinated by the USOE for the online delivery of formative assessments that can be created by teachers, school districts/charter schools, or the USOE. One part of the system is the Utah Test Item Pool Service (UTIPS).

\_\_\_\_\_ E. "Summative tests" means tests administered near the end of a course to assess overall achievement of course goals.

\_\_\_\_\_ F. "Uniform online summative test system" means a statewide process coordinated by the USOE for the online delivery of summative tests required under U-PASS.

\_\_\_\_\_ G. "Utah Performance Assessment System for Students (U-PASS)" means:

\_\_\_\_\_ (1) criterion-referenced achievement testing of students in all grade levels in:

\_\_\_\_\_ (a) language arts (grades 3-11);

\_\_\_\_\_ (b) mathematics (grades 3-7) and pre-algebra, elementary Algebra 1, Algebra 2 and geometry;

\_\_\_\_\_ (c) science (grades 4-8) and earth systems, biology, chemistry, and physics; and

\_\_\_\_\_ (2) an online direct writing assessment in grades 5 and 8;

\_\_\_\_\_ (3) a tenth grade basic skills competency test as detailed in Section 53A-1-611 (suspended through at least the 2011-2012 school year); and

\_\_\_\_\_ (4) the use of student behavior indicators in assessing student performance.

\_\_\_\_\_ (5) The U-PASS Performance Report is suspended through at least the 2011-2012 school year.

\_\_\_\_\_ H. "USOE" means Utah State Office of Education.

\_\_\_\_\_ I. "USOE item pool" means all test items developed for or by USOE which are intended to support the instruction of the Utah curriculum for Utah K-12 teachers and students.

\_\_\_\_\_ J. "Utah Test Item Pool Service (UTIPS)" means a system which includes the USOE item pool, all copyrights, logos, the UTIPS website and domain name, all copyrighted materials, and all other items and equipment used to provide and enhance the USOE item pool.

\_\_\_\_\_ K. "UTIPS Steering Committee" means a committee formed to govern, support, develop and administer UTIPS. The committee is comprised of the elected co-chairs of the UTIPS User's Group and the UTIPS Operators' Group, the USOE Assessment Director, the USOE Computer Based Assessments Specialist, the USOE Curriculum Director, and one at-large member.

**R277-402-2. Authority and Purpose.**

\_\_\_\_\_ A. This rule is authorized by Utah constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-708(5) which directs the Board to specify procedures and accountability for online summative testing by school districts/charter schools consistent with existing U-PASS requirements, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

\_\_\_\_\_ B. The purpose of this rule is to provide additional definitions and a timeline for expeditious implementation of an educational technology infrastructure for school districts/charter schools to use to satisfy U-PASS requirements through an online testing system.

\_\_\_\_\_ C. The purpose of this rule is also to provide the requirements for school districts'/charter schools' use of UTIPS.

**R277-402-3. Application and Award Procedures.**

\_\_\_\_\_ A. Online testing funds shall be distributed to school districts/charter schools consistent with Section 53A-1-708.

\_\_\_\_\_ B. The USOE shall provide non-competitive applications to school districts/charter schools for a twenty-five percent base and seventy-five percent per pupil distribution of funds. For the purpose of this funding, all charter schools are considered collectively for the twenty-five percent base.

\_\_\_\_\_ (1) Applications shall express the intent of the school district/charter school to build educational technology infrastructure and capacity to participate in online testing consistent with Section 53A-1-708.

\_\_\_\_\_ (2) Applications shall provide a plan for online CRT testing implementation including:

\_\_\_\_\_ (a) names of participating schools within the school district and participating charter schools;

\_\_\_\_\_ (b) which CRTs will be assessed online;

\_\_\_\_\_ (c) number of students who will participate in the online administration of each CRT; and

\_\_\_\_\_ (d) dates of tests and numbers of students who will participate in the online testing for each year of the school district's/charter school's online testing phase in plan.

\_\_\_\_\_ (3) Applications shall provide an evaluation or accountability process for determining and documenting the effectiveness of the online testing phase in plan.

~~(4) Application budget shall be consistent with the school district/charter school Consolidated Utah Student Achievement Plan (CUSAP) and educational technology plan.~~

~~C. The USOE shall implement and maintain at least one online formative assessment system. School districts/charter schools may access the USOE item pool through regional servers and receive updates to the USOE item pool only consistent with the following conditions:~~

~~(1) use of the version of software supported by the UTIPS Steering Committee and available through the UTIPS Operator's Group;~~

~~(2) participating in both the UTIPS Operators' Group and User group;~~

~~(3) posting of the USOE item pool copyright on their login website;~~

~~(4) providing monthly and annual statistics, as determined by the UTIPS Steering Committee to the USOE; and~~

~~(5) providing feedback to the USOE regarding item quality and the schools' need for additional items.~~

~~D. Regional servers and school districts/charter schools that do not act consistent with conditions under R277-402-3C shall not receive access to the USOE item pool.~~

**R277-402-4. Distribution of Funds.**

~~A. Twenty-five percent of the funds shall be distributed equally to school districts/charter schools that provide applications required under R277-402-3. Seventy-five percent of the funds appropriated by the Legislature in Section 53A-1-708 shall be distributed to school districts/charter schools on a per pupil basis that provide applications required under R277-402-3.~~

~~B. Per pupil amounts shall be derived from October student counts of applicants.~~

~~C. The USOE shall work with applicants, to the extent of resources available, to improve the applications for funding.~~

~~D. Each school district/charter school plan shall be approved by the USOE prior to the school district/charter school receiving funding under this rule.~~

~~E. School districts/charter schools accepting funding under this rule shall ensure compliance with the requirements of this rule.~~

**R277-402-5. Timelines.**

~~A. School districts/charter schools shall submit the plan required under R277-402-3B(2) to the USOE.~~

~~B. Applications shall be available from the USOE for funds under this rule.~~

~~C. School districts/charter schools shall provide an evaluation of planning or preparation for the use of online testing and an assessment of the actual online testing process as directed by the USOE.~~

~~D. Schools that do not provide timely, complete and accurate evaluations may not be considered for continued funding under this rule.~~

**KEY: online testing**

**Date of Enactment or Last Substantive Amendment: August 9, 2010**

**Notice of Continuation: July 16, 2009**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-708(5); 53A-1-401(3)]**

**Education, Administration  
R277-403  
Student Reading Proficiency and  
Notice to Parents**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 38001

FILED: 09/16/2013

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to provide updated language for assessing student reading competency at the beginning, in the middle, and at the end of each year and requires notification of assessment results if the student is not reading at grade level. Outdated language is also removed.

**SUMMARY OF THE RULE OR CHANGE:** The amended rule refers to reading "competency", a demonstrable acquisition of a specified knowledge, skill, or ability that has been organized into a hierarchical arrangement leading to higher levels of knowledge, skill, or ability, rather than reading "proficiency". The amended rule clarifies that LEAs must notify parents of the results of the assessments given at the three points during the year if students are reading below grade level.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 53A-1-401(3) and Subsection 53A-17a-150(14)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. Utah State Board of Education (Board) reporting requirements will be administered by existing staff and within existing budgets.

♦ **LOCAL GOVERNMENTS:** There may be some additional costs to schools/school districts to notify parents of student results following each benchmark assessment. It is anticipated that any additional costs for notification will be administered by existing staff and within existing budgets.

♦ **SMALL BUSINESSES:** There is no anticipated cost 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 is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. Any additional costs are to the school/school district.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Board and schools/school districts will comply with the requirements of this rule.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2013

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2013

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

**R277. Education, Administration.**

**R277-403. Student Reading Proficiency and Notice to Parents.**

**R277-403-1. Definitions.**

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

B. "Competency" means a demonstrable acquisition of a specified knowledge, skill or ability that has been organized into a hierarchical arrangement leading to higher levels of knowledge, skill or ability.

[B]C. "Lacks proficiency" for purposes of this rule means that a student requires additional instruction beyond that provided to typically developing peers in order to close the gap between the student's current level of reading achievement and that expected of all students in that grade as determined by valid and reliable assessments as designated by the Board.

[C]D. "LEA" means a [Utah school]local education agency, including local school boards/public school districts [or]and charter schools.

[D]E. "Midpoint of the school year" means January 31 of the school year.

[E]F. "Notification to parents" for purposes of this rule means notice by any reasonable means including electronic notice, notice by telephone, written notice, or personal notice.

[F]G. "Reading below grade level" for purposes of this rule means that a student requires additional instruction beyond that provided to typically developing peers in order to close the gap between the student's current level of reading achievement and that

expected of all students in that grade as determined by valid and reliable assessments as designated by the Board.

[G]H. "Reading remediation interventions" means instruction or activities or both in reading given to students in addition to their regular reading instruction, during another time in the school day, outside regular instructional time, or in the summer, which is focused on specific needs as identified by reliable and valid assessments.

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

[I]J. "Utah Consolidated Application (UCA)" means the web-based grants management tool employed by the Utah State Office of Education by which local education agencies submit plans and budgets for approval of the Utah State Office of Education.

**R277-403-2. Authority and Purpose.**

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by [~~Section 53A-1-606.6 which directs the Board to make rules defining expected reading levels, providing necessary definitions, and establishing necessary timelines.~~]Section 53A-17a-150(14) which directs the Board to make rules to implement the Program and to require progress reports from each LEA documenting the LEA's satisfaction with its reading goal(s), and by Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities.

B. The purpose of this rule is to provide [~~notice, reporting standards and timelines for LEAs and to provide for a report by the Board to the Education Interim Committee as required under Section 53A-1-606.6~~]definitions of terms used in Section 53A-1-606.6, to provide necessary testing and reporting windows and timelines, and to require submission by LEAs of student reading assessment data to the USOE.

**[R277-403-3. LEA Responsibilities (For the 2011-2012 School Year).**

~~A. Before the midpoint of the school year, each LEA or school within an LEA, shall identify every first, second and third grade student currently enrolled in the school who is reading below grade level.~~

~~B. Each LEA shall notify the parent/legal guardian of each student identified under R277-403-3A as determined by the LEA by February 15 of the school year.~~

~~C. An LEA shall use at least two different assessments to identify students who are not reading at grade level.~~

~~D. One assessment shall be determined by the Board.~~

~~E. Each LEA shall select and submit the name or type of the additional assessment to the USOE that it shall use to identify students who are not reading at grade level as a part of the UCA.~~

~~F. LEAs shall determine the grade level designation for each selected assessment; the USOE shall provide guidance to LEAs to assist in their designation of grade level for various assessments.~~

~~G. If the reading assessment indicates a student lacks proficiency in a reading skill, the LEA shall:~~

~~(1) provide notice to the parent or guardian of each student reading below grade level, lack of proficiency and provide information to the parent or guardian of appropriate interventions available to the student outside regular instructional time that may~~



~~include tutoring, before and after school programs, or summer school;~~

~~(2) provide focused intervention to develop the reading skill;~~

~~(3) administer formative assessments to measure the success of the focused intervention; and~~

~~(4) inform the student's parent or guardian of activities that the parent or guardian may engage in with the student to assist the student in improving reading proficiency.~~

~~H. LEAs shall report to parents the student's reading level at the end of third grade.~~

~~I. LEAs shall provide as part of the Clearinghouse Data Submission, the following information:~~

~~(1) the number of students in each of grades 1, 2 and 3 that were reading below grade level at the midpoint of the school year;~~

~~(2) the number of students in each grade level that were reading below grade level at the midpoint of the school year and who received reading remediation interventions;~~

~~(3) the name of each student in grades 1, 2 and 3 and a designation of whether the student is reading at grade level or below grade level; and~~

~~(4) the name of each student in grades 1, 2 and 3 who received reading interventions as required under R277-403-3G in the prior school year.~~

**R277-403-[4]3. LEA Responsibilities**~~[(Beginning with the 2012-2013 School Year)].~~

A. LEAs shall administer the Board approved benchmark assessments at the beginning, in the middle, and at the end of grade one, grade two and grade three within testing windows determined by USOE.

B. Following each benchmark assessment, an LEA or school within an LEA shall notify parents or guardians of the student's results.

[B]C. ~~[Before the midpoint of the school year, each]~~At the beginning, in the middle and at the end of the school year, each LEA or school within an LEA, shall identify every student currently enrolled in the school who is in the first, second or third grade who is not reading at grade level.

[E]D. If a benchmark assessment or supplemental reading assessment indicates a student lacks [proficiency]competency in a reading skill, the LEA shall:

(1) provide notice to parents of student's lack of [proficiency]competency;

(2) provide information to the parent or guardian regarding appropriate interventions available to the student outside regular instructional time that may include tutoring, before and after school programs, or summer school;

(3) provide focused individualized intervention to develop the reading skill;

(4) administer formative assessments to measure the success of the focused intervention; and

(5) inform the student's parent or guardian of activities that the parent or guardian may engage in with the student to assist the student in improving reading [proficiency]competency.

[D]E. LEAs shall report to parents in the beginning, by February 15, and at the end of grade one, grade two and grade three, assessment results.

[E]E. LEAs shall also report to parents the student's reading level at the end of third grade.

[F]G. LEAs shall provide as part of the ~~[Clearinghouse]~~UTREx Data Submission, the following information:

(1) the number of students in each of grades 1, 2 and 3 that were reading below grade level at the beginning, midpoint, and end of the school year;

(2) the number of students in each grade level that were reading below grade level at the midpoint of the school year and who received reading remediation interventions;

(3) the name of each student in grades 1, 2 and 3 and a designation of whether the student is reading at grade level or below grade level; and

(4) the name of each student in grades 1, 2 and 3 who received reading interventions as required under R277-403-3G in the prior school year.

**R277-403-[5]4. Board/USOE Responsibilities.**

A. The Board shall designate one benchmark assessment for use statewide by all LEAs to assess the reading [proficiency]competency of students in grades one, two, and three for the beginning, midpoint and end of year assessments.

B. The USOE shall provide guidance to LEAs about valid and reliable assessments to be used for the midpoint supplemental assessments to assist in evaluating the reading grade level of students.

C. The USOE shall provide procedures for LEAs to determine expected reading levels of first, second and third grade students.

~~[D. The USOE shall report and provide data to the Education Interim Committee consistent with Section 53A-1-606.6(3)].~~

[E]D. The Board shall contract with an educational technology provider, selected through a request for proposals process, for a diagnostic assessment system for reading for students in kindergarten through grade three that meets the requirements of 53A-1-606.7.

[F]E. To the extent of funds available, the USOE shall select interested LEAs to use the diagnostic assessment for reading ~~[beginning in the 2011-12 school year]~~.

[G]E. The USOE shall provide timelines to LEAs for notification to the USOE of:

(1) LEA selected assessments;

(2) student reading data required by law;

(3) assurance of compliance with all legislative and Board requirements as requested.

[H]G. LEAs that select the assessment technology shall use the assessment consistent with Board directives.

[H]H. The Board shall evaluate the diagnostic assessment system for reading by comparing the learning gains for students in LEAs that do not use the diagnostic assessment system for reading with LEAs that used the diagnostic reading assessment.

[J]I. ~~[The Board shall submit a report of the comparison and other data to the Public Education Appropriations Subcommittee by November 2013]~~The Board shall report to the Education Interim Committee consistent with timelines and information required under Section 53A-17a-150(13).

[K]J. The Board shall make an annual report to the Public Education Appropriations Subcommittee as described in 53A-17a-150(16).

**KEY:** students, reading, ~~proficiency~~competency

**Date of Enactment or Last Substantive Amendment:** ~~October 11, 2011~~2013

**Notice of Continuation:** June 10, 2013

**Authorizing, and Implemented or Interpreted Law:** Art X, Sec 3; 53A-1-606.6(2); 53A-1-401(3)

## Education, Administration **R277-404** Requirements for Assessments of Student Achievement

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 38002

FILED: 09/16/2013

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to incorporate the language and requirements about student assessment into one rule. Three other rules are being repealed.

**SUMMARY OF THE RULE OR CHANGE:** The amendments to this rule provide new definitions; update and clarify Utah State Board of Education (Board) responsibilities for maintaining a comprehensive assessment system; provide new language for local education agency (LEA) responsibilities for providing professional development for all teachers, administrators and standardized assessment specialists regarding guidelines and procedures for standardized assessment administration; provide assessment requirements, protocols, and security procedures; provide time periods for assessment administration, data exchange procedures, and crisis indicators in state assessments.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 53A-1-603 through 53A-1-611 and Subsection 53A-1-401(3)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. For the most part, the procedures provided for in this rule have been existing and amended into this rule from other rules.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government. For the most part, the procedures provided for in this rule have been existing and amended into this rule from other rules.

◆ **SMALL BUSINESSES:** There is no anticipated cost 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 is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. For the most part, the procedures provided for in this rule have been existing and amended into this rule from other rules.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. Professional development will be provided so that assessment procedures are administered consistent with this rule.

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

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

EDUCATION

ADMINISTRATION

250 E 500 S

SALT LAKE CITY, UT 84111-3272

or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2013**

**THIS RULE MAY BECOME EFFECTIVE ON:** 11/07/2013

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

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

#### **R277-404. Requirements for Assessments of Student Achievement.**

##### **R277-404-1. Definitions.**

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

~~]~~ ~~B. "Criterion-Referenced test (CRT)" means a test to measure performance against a specific standard. The meaning of the scores is not tied to the performance of other students.~~

B. "College readiness assessment" means an assessment adopted by the Board that includes a college admissions test that provides an assessment of language arts, mathematics, and science, that is most commonly used by local universities to assess student preparation for college. The college readiness assessment may include the Armed Services Vocational Aptitude Battery (ASVAB) and a battery of assessments that is predictive of success in higher education.

C. "Days," for purposes of this rule, means calendar days unless specifically designated otherwise in this rule.

[C]D. "Direct Writing Assessment (DWA)" means a [USOE] Board-designated online [test]assessment to measure writing performance for students in grades five and eight.

[D]E. "English Language Learner (ELL) student" means a student who is learning in English as a second language.

[E]E. "English Language Proficiency Test (ELPT)" means an assessment designed to measure the acquisition of the English language for English Language Learners.

[F]G. "Individualized Education Program (IEP)" means an individualized instructional and assessment plan for students who are eligible for special education services under the Individuals with Disabilities Education Act of 2004.

[G]H. "LEA" means local education agency, including local school boards/ public school districts and schools, and charter schools.

[H]I. "National Assessment of Education Progress (NAEP)" is the national achievement assessment administered by the United States Department of Education to measure and track student academic progress.

[I]J. "Pre-post" means an assessment administered at the beginning of the school year and at the end of the school year to determine individual student growth in [achievement]academic proficiency which has occurred during the school year.

[J]K. "Section 504 accommodation plan" required by Section 504 of the Rehabilitation Act of 1973, means a plan designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

[K]L. "Summative adaptive assessments" means assessments administered to assess a student's achievement. The assessments are administered online to measure the full range of student ability by adapting to each student's responses, selecting more difficult questions when a student answers correctly and less difficult questions when a student answers incorrectly. Summative assessments provide summary information allowing a student or groups of students to be compared with other students.

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

[L]N. "Utah Alternate Assessment (UAA)" means an assessment instrument for students in special education with disabilities so severe they are not able to participate in the components of U-PASS even with [testing]assessment accommodations or modifications. The UAA measures progress on the [common]Utah core instructional goals and objectives in the student's individual education program (IEP).

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

P. "Utah Performance Assessment System for Students (U-PASS)" means:

- (1) summative adaptive assessments of students in grades 3 through 12 in basic skills courses;
- (2) an online writing assessment in grades 5 and 8;
- (3) college readiness assessments;

(4) the use of student behavior indicators in assessing student performance; and

(5) assessment of students in grade 3 to measure reading grade level.

#### **R277-404-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Sections 53A-1-603 through 53A-1-611 which direct the Board to adopt rules for the [conduct]maintenance and administration of U-PASS, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide consistent definitions and to provide standards and procedures for a Board developed and directed comprehensive assessment system for all students, as required by state and federal law.

#### **R277-404-3. Board Responsibilities.**

A. [Beginning in the 2011-2012 school year, t]The Board shall [implement]maintain a comprehensive assessment system for [each]all students in grades K-12. This assessment system shall include:

- (1) [Criterion-Referenced tests]Summative adaptive assessments in English language arts for grades 3 - 11; mathematics for grades 3 - [12]8; secondary math 1, 2, 3; and science for grades 4 - 8[;]; earth systems, biology, physics and chemistry[OR summative adaptive assessments in reading, language arts, mathematics and science for grades 3-12];
- (2) Direct Writing Assessment (DWA) for grades 5 and 8;
- (3) Pre-post kindergarten assessment for kindergarten[-age] students as determined by the LEA;
- (4) one benchmark reading assessment determined by USOE for 1st, 2nd and 3rd grade students at the midpoint of the year. [Beginning in 2012-2013, t]This assessment shall be administered at the beginning, midpoint and end of year;
- (5) Third grade summative end of year reading assessment;
- (6) Utah Alternate Assessment (UAA);
- (7) English Language Proficiency Test (ELPT);[and]
- (8) National Assessment of Educational Progress (NAEP)

[;];

(9) College readiness assessments for grades 11, 10 and either grade 9 or 8 as determined by the LEA; and

(10) Reporting by the USOE of U-PASS results to include:

(a) the computation of student performance based on information that is disaggregated with respect to race, ethnicity, gender, limited English proficiency, eligibility for special education services, and those students who qualify for free or reduced price school lunch;

(b) security features to maintain the integrity of the system, including statewide uniform assessment dates, multiple assessment forms, assessment administration protocols, and training; and

(c) compilation of summative adaptive assessment results and online writing assessment scores and assessment summaries.

B. The Board shall provide specific rules, administrative guidelines, timelines, procedures, and ~~[testing]~~assessment ethics training and requirements for all required assessments.

~~[C. Schools must declare their decision to replace the Criterion-Referenced tests with the adaptive summative test no later than August 1 for the coming year.~~

~~] C. The Board shall provide information and applications:~~

~~(1) establishing procedures for applying for and awarding funding for computer adaptive assessment technology;~~

~~(2) specifying how funds for computer adaptive assessment technology shall be allocated among LEAs that qualify to receive the funding; and~~

~~(3) requiring reporting of the expenditure of funds awarded for computer adaptive assessment technology and evidence that the funds were used to implement computer adaptive assessments.~~

D. The Board shall provide resources, to the extent available, and recommendations for:

~~(1) LEA implementation of the assessment system;[and]~~

~~(2) professional development for teachers to administer assessments and interpret assessment results[-]; and~~

~~(3) teacher access to assessment scores from the previous school year for students who have been assigned to the teacher's class for the new school year.~~

E. All Utah public school students shall participate in the comprehensive assessment system unless the UAA or ELPT is approved for specific students consistent with federal law.

#### **R277-404-4. LEA Responsibilities.**

~~A. LEAs shall develop a comprehensive assessment system plan to include the assessments described in R277-404-3A. This plan shall, at a minimum, include:~~

~~[A-](1) professional development for teachers to fully implement the assessment system;~~

~~[B-](2) training for educators and appropriate paraprofessionals in the requirements of [testing]assessment administration ethics; and~~

~~[C-](3) training for educators and appropriate paraprofessionals to utilize assessment results effectively to inform instruction[-and].~~

~~[D. adherence to all testing administration and ethics requirements consistent with R277-473.]~~

~~B. LEAs shall make all policies and procedures consistent with the law, Board rules for standardized assessment administration, and the USOE Testing Ethics Policy available from the USOE.~~

~~C. At least once each school year, LEAs shall provide professional development for all teachers, administrators, and standardized assessment administrators concerning guidelines and procedures for standardized assessment administration, including teacher responsibility for assessment security and proper professional practices.~~

~~D. LEA assessment staff shall use the USOE Testing Ethics Policy in providing training for all assessment administrators/proctors.~~

#### **R277-404-5. School Responsibilities.**

~~[A. LEAs shall develop a comprehensive assessment system implementation plan to include the assessments required under R277-404-3A. This plan shall, at a minimum, include:~~

~~(1) professional development for teachers and others as directed by the LEA to fully implement system;~~

~~(2) training for educators and appropriate paraprofessionals in the requirements of testing administration ethics;~~

~~(3) training to utilize assessment tools and results to inform instruction; and~~

~~(4) adherence to all testing administration and ethics requirements consistent with R277-473.]A. LEAs/schools shall require teachers and assessment administrators/proctors to individually sign the Testing Ethics signature page provided by the USOE acknowledging or assuring that the teacher shall administer assessments consistent with ethics and protocol requirements.~~

~~B. All teachers and assessment administrators shall conduct assessment preparation, supervise assessment administration, provide assessment results and complete error resolution.~~

~~C. All teachers and assessment administrators/proctors shall securely handle and return all protected assessment materials, where instructed, in strict accordance with the procedures and directions specified in assessment administration manuals, LEA rules and policies, Board rules, USOE Testing Ethics Policy, and state applications of federal requirements for funding.~~

#### **R277-404-6. Assessment Requirements, Protocols, and Security.**

~~A. Teachers, test administrators/proctors, administrators, school personnel and volunteers, under the direction of school personnel, shall not:~~

~~(1) provide students directly or indirectly with specific questions, answers, or the content of any specific item in any standardized assessment prior to assessment administration;~~

~~(2) download, copy, print, or make any facsimile of protected assessment material prior to assessment administration without express permission of the USOE and LEA administrators;~~

~~(3) change, alter or amend any student answer or any other standardized assessment materials at any time in such a way that alters the student's intended response;~~

~~(4) use any prior form of any standardized assessment (including pilot assessment materials) that has not been released by the USOE in assessment preparation without express permission of the USOE and LEA administrators;~~

~~(5) violate any specific assessment administrative procedure specified in the assessment administration manual, or violate any state or LEA standardized assessment policy or procedure, or violate any procedure specified in the USOE Testing Ethics Policy;~~

~~(6) fail to administer a required assessment;~~

~~(7) submit falsified data; or~~

~~(8) knowingly do anything that would affect the security, validity, or reliability of standardized assessment scores of any individual student, class, or school.~~

B. All assessment materials, questions and student responses for required assessments shall be designated protected, consistent with Section 63G-2-305, until released by the USOE.

C. A student's individual responses and scores shall be available to the student's parent(s)/legal guardian(s) consistent with the federal Family Educational Rights and Privacy Act (FERPA), 20 USC, Sec. 1232g; 34 CFR Part 99.

D. Each LEA shall ensure that all assessment content is secured so that only authorized personnel have access and that assessment materials are returned to USOE following testing, as required by the USOE. Individual educators shall not retain test materials, in either paper or electronic form, for purposes inconsistent with ethical test administration or beyond the time period allowed for test administration.

E. Violation of any of these rules subjects licensed educators to possible disciplinary action under R277-515, Utah Educator Standards.

[B]E. A student's IEP, ELL, or Section 504 team shall determine a student's participation in statewide assessments.

#### **R277-404-7. Time Periods for Assessment Administration.**

A. LEAs shall administer assessments required under R277-404-3, and consistent with the following schedule:

(1) All summative adaptive assessments and UAAs (elementary and secondary, English language arts, math, science) shall be administered within the USOE annually designated assessment windows.

(2) The grade 5 and grade 8 Direct Writing Assessment shall be administered in a three week window beginning at least 14 weeks prior to the last day of school.

(3) The UALPA shall be administered to all English Language Learner students identified as Level 1 Entering, Level 2 Beginning, Level 3 Developing, Level 4 Expanding, or enrolled for the first time in the LEA at any time during the school year. The assessment shall be administered annually to show progress. LEAs shall submit UALPA paper answer documents to the USOE-identified scoring provider for scanning and scoring on a schedule defined by the USOE.

(4) Pre-post kindergarten assessment for kindergarten students as determined by the LEA during assessment windows determined by the LEA.

(5) One benchmark reading assessment specifically and solely determined by the USOE for grade 1, grade 2, and grade 3 students administered to students in the beginning, midpoint, and end of the school year.

(6) Grade 3 summative end of year reading assessment determined specifically and solely by USOE administered by LEAs consistent with USOE procedures.

(7) NAEP assessments determined and required annually by the United States Department of Education and administered to students as directed by United States Department of Education.

B. LEAs shall complete all required assessment procedures prior to the end of the USOE-defined assessment window(s).

C. LEAs shall set dates for summative adaptive assessment administration for courses taught on alternative, year-round, semester or trimester schedules. LEAs shall assess students at the point in the course where students have had approximately the same amount of instructional time as students on a traditional

full year schedule. LEAs with alternative scheduling shall provide course level test administration schedule(s) to the USOE before instruction begins for the course.

#### **R277-404-8. Data Exchanges.**

A. The USOE IT Section shall communicate regularly with LEAs regarding required formats for electronic submission of required data.

B. LEAs shall update UTREx data using the processes and according to schedule(s) determined by the USOE.

C. LEAs shall ensure that any computer software for maintaining or submitting LEA data is compatible with data reporting requirements as determined in R277-484.

D. The USOE shall provide directions to all LEAs detailing the data exchange requirements for each assessment.

E. Each LEA shall verify that all the requirements of the USOE-provided directions have been satisfied.

F. Consistent with Utah law, the USOE shall return assessment results from all required assessments to the school before the end of the school year.

G. Each LEA shall check all assessment results for each school within the LEA and for the LEA as a whole, verify their accuracy with the USOE, and certify that they are prepared for publication within two weeks of receipt of the data. Except in compelling circumstances, as determined by the USOE, no changes shall be made to LEA data after this two week period. Compelling circumstances may include:

(1) a natural disaster or other catastrophic occurrence, such as a school fire or flood, that precludes timely review of data; and

(2) resolution of a professional practices issue that may impede reporting of the data.

H. LEAs shall not release data publicly until authorized to do so by the USOE.

#### **R277-404-9. Crisis Indicators in State Assessments.**

A. Students participating in state assessments may reveal intentions to harm themselves or others, that a student is at risk of harm from others, or may reveal other indicators that the student is in a crisis situation.

B. If a student's response comes to the attention of USOE assessment staff, the USOE shall notify the school principal, counselor or other LEA personnel who USOE staff determines has legitimate educational interests, whenever the USOE identifies and determines, in its sole discretion, that a student response indicates the student may be in a crisis situation.

C. As soon as practicable, the school district superintendent/charter school director, or designee shall be given the name of the individual contacted at the school regarding a student's potential crisis situation.

D. The USOE shall provide the school and district with a copy of the relevant student response.

E. Using their professional judgment, school personnel contacted by USOE shall notify the student's parent, guardian or law enforcement of the student's expressed intentions as soon as practical under the circumstances.

F. The student response provided by USOE shall not be part of the student's record and the school shall destroy any copies of the student response once the school or district personnel

involved in resolution of the matter determine the student response is no longer necessary.

G. School personnel who contact a parent, guardian or law enforcement agency in response to the USOE's notification of potential harm shall provide the USOE with the name of the person contacted and the date of the contact within three business days from the date of contact.

**KEY: assessment, student achievement**

**Date of Enactment or Last Substantive Amendment:** [September 23, 2011]2013

**Notice of Continuation:** September 13, 2013

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53A-1-603 through 53A-1-611; 53A-1-401(3)

## Education, Administration **R277-405** Requirements for Assessment Pilot Programs

### NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 38003

FILED: 09/16/2013

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is repealed because the pilot program has been completed.

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

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 53A-1-603 through 53A-1-611 and Subsection 53A-1-401(3) and Subsection 53A-1-708(5)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. The pilot program has been completed so the rule is being repealed.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government. The pilot program has been completed so the rule is being repealed.
- ◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses. This rule applies to public education and does not affect businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. The pilot program has been completed so the rule is being repealed.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. The pilot program has been completed so the rule is being repealed.

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

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2013**

**THIS RULE MAY BECOME EFFECTIVE ON:** 11/07/2013

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

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

**[R277-405. Requirements for Assessment Pilot Programs.**

**R277-405-1. Definitions:**

\_\_\_\_\_ A. "Adaptive testing" means assessments administered to assess a student's achievement. The assessments are administered online to measure the full range of student ability by adapting to each student's responses, selecting more difficult questions when a student answers correctly and less difficult questions when a student answers incorrectly.

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

\_\_\_\_\_ C. "EXPLORE, PLAN, ACT System (EPAS)" means assessments that are aligned to college and career ready common core standards for grades 8, 10 and 11.

\_\_\_\_\_ D. "Large school district" means a public school district with a student enrollment greater than 29,000 students based on the October 1, 2010 enrollment count.

\_\_\_\_\_ E. "LEA" means local education agency, including local school boards/public school districts and schools, and charter schools.

\_\_\_\_\_ F. "Online writing" means an online test to measure writing performance.

\_\_\_\_\_ G. "U-PASS testing requirements" as defined in Section 53A-1-602, include Criterion-Referenced tests (CRT) or Adaptive tests, Utah Basic Skills Competency Test and Direct Writing Assessment (DWA).

**R277-405-2. Authority and Purpose.**

~~\_\_\_\_\_ A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Sections 53A-1-603 through 53A-1-611 which direct the Board to adopt rules for the conduct and administration of U-PASS, Section 53A-1-708(5) which directs the Board to make rules establishing procedures for applying for and awarding grants, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.~~

~~\_\_\_\_\_ B. The purpose of this rule is to provide consistent definitions and to provide standards and procedures for a Board-developed and directed pilot assessment system for identified students as required by state law and consistent with federal law.~~

**R277-405-3. K-12 Assessment Pilot Program.**

~~\_\_\_\_\_ A. The Board may exempt an LEA from U-PASS testing requirements if an LEA pilots an assessment system that incorporates:~~

- ~~\_\_\_\_\_ (1) online classroom-based assessment that utilizes adaptive testing in all grades;~~  
~~\_\_\_\_\_ (2) online writing assessment in grades 4 through 12; or~~  
~~\_\_\_\_\_ (3) assessments administered in grades 8, 10, and 11 to determine readiness for postsecondary education.~~

~~\_\_\_\_\_ B. The pilot assessment system is subject to an accountability plan and high school graduation standards that are based on the assessment system described in the Utah Code and as developed and adopted by the Board.~~

~~\_\_\_\_\_ C. The K-12 Pilot Program shall extend until July 1, 2015.~~

**R277-405-4. High School Assessment Pilot Program.**

~~\_\_\_\_\_ A. The Board shall implement the High School Assessment Pilot Program consistent with Section 53A-1-603(7) to allow LEAs to:~~

- ~~\_\_\_\_\_ (1) administer the EPAS System (EXPLORE, PLAN and ACT) to secondary students for the 2010-11 and 2011-12 school years; or~~  
~~\_\_\_\_\_ (2) administer a computer adaptive testing of basic skills, or both the EPAS and computer adaptive testing.~~

~~\_\_\_\_\_ B. The High School Assessment Pilot Program shall extend until July 1, 2012.~~

~~\_\_\_\_\_ C. The Board shall develop an application for LEAs choosing to participate in the High School Assessment Pilot Program.~~

~~\_\_\_\_\_ D. The Board shall re-direct the money saved by not administering the UBSCT to fund implementation of the High School Assessment Pilot Program.~~

~~\_\_\_\_\_ E. LEAs participating in the High School Assessment Pilot Program shall assure:~~

- ~~\_\_\_\_\_ (1) the LEA will continue required CRT or summative adaptive testing;~~  
~~\_\_\_\_\_ (2) full participation and cooperation with evaluators and Board staff in implementing the High School Assessment Pilot Program;~~  
~~\_\_\_\_\_ (3) the local board or governing board has fully endorsed the LEA's participation in a public meeting; and~~  
~~\_\_\_\_\_ (4) the LEA agrees to provide participation data and results to the Board or the Utah State Legislature, or both, as a requirement of the High School Assessment Pilot Program.~~

**R277-405-5. Pilot Assessment to Large School Districts for Online Delivery of U-PASS Tests.**

~~\_\_\_\_\_ A. Large school districts may submit an application for funds for online delivery of U-PASS.~~

~~\_\_\_\_\_ B. Applicants shall provide the following:~~

- ~~\_\_\_\_\_ (1) names of participating schools within the school district;~~  
~~\_\_\_\_\_ (2) U-PASS assessments that will be provided online;~~  
~~\_\_\_\_\_ (3) a budget for implementing online testing involving all students and all online assessments throughout the school district in the 2011-2012 school year;~~  
~~\_\_\_\_\_ (4) an assurance from the applicant that online testing shall be implemented at 100 percent of students and assessments during the pilot period; and~~  
~~\_\_\_\_\_ (5) a proposed evaluation for the pilot program.~~

~~\_\_\_\_\_ C. Pilot online assessment funds may be used for the following:~~

- ~~\_\_\_\_\_ (1) computer equipment and peripherals, including electronic data capture devices designed for electronic test administration and scoring;~~  
~~\_\_\_\_\_ (2) software;~~  
~~\_\_\_\_\_ (3) networking equipment;~~  
~~\_\_\_\_\_ (4) upgrades of existing equipment or software;~~  
~~\_\_\_\_\_ (5) upgrades of existing physical plant facilities;~~  
~~\_\_\_\_\_ (6) online adaptive assessments approved for U-PASS testing; and~~  
~~\_\_\_\_\_ (7) personnel to provide technical support, coordination, management, and professional development (combined expenditures shall not exceed 10 percent of the funds allotted to a school district).~~

~~\_\_\_\_\_ D. Large school district applicants for the online pilot assessment shall be selected for participation only if applicants have fully complied with student assessment Board rules and requirements.~~

~~\_\_\_\_\_ E. Applications shall be provided by the USOE by May 15, 2011 and school districts shall submit completed applications to the USOE by June 15, 2011.~~

~~\_\_\_\_\_ F. Funds shall be distributed to selected school districts based on a per pupil basis and proposed budgets.~~

**KEY: assessment, pilot programs**

**Date of Enactment or Last Substantive Amendment: August 8, 2011**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-603 through 53A-1-611; 53A-1-401(3); 53A-1-708(5)**

Education, Administration  
**R277-473**  
 Testing Procedures

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 38004

FILED: 09/16/2013

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being repealed because necessary sections or provisions provided for in this rule have been incorporated into another rule making this rule unnecessary.

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

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 53A-1-401(3) and Subsection 53A-1-603(3)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. The rule is no longer necessary because the sections or provisions provided for in this rule have been incorporated into another rule.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government. The rule is no longer necessary because the sections or provisions provided for in this rule have been incorporated into another rule.
- ◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses. This rule applies to public education and does not affect businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. The rule is no longer necessary because the sections or provisions provided for in this rule have been incorporated into another rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. The rule is no longer necessary because the sections or provisions provided for in this rule have been incorporated into another rule.

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

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**THIS RULE MAY BECOME EFFECTIVE ON:** 11/07/2013

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

**R277. Education, Administration.****[R277-473. Testing Procedures.****R277-473-1. Definitions.**

- \_\_\_\_\_ A. "Board" means the Utah State Board of Education.
- \_\_\_\_\_ B. "Computer Based Testing System (CBT system)" means the USOE designated technology system utilized to deliver U-PASS assessments to students online.
- \_\_\_\_\_ C. "Criterion Reference Test (CRT)" means a test to measure performance against a specific standard. The meaning of the scores is not tied to the performance of other students.
- \_\_\_\_\_ D. "Days" for purposes of this rule means calendar days unless specifically designated otherwise in this rule.
- \_\_\_\_\_ E. "Direct Writing Assessment (DWA)" means a USOE-designated online test to measure writing performance for students in grades five and eight.
- \_\_\_\_\_ F. "IT" means the USOE Information Technology section.
- \_\_\_\_\_ G. "Last day of school" means the last day classes are held in each school district/charter school.
- \_\_\_\_\_ H. "Midpoint of the school year" means on or before February 15 of the school year.
- \_\_\_\_\_ I. "National Assessment of Education Progress (NAEP)" is the national achievement assessment administered by the United States Department of Education to measure and track student academic progress.
- \_\_\_\_\_ J. "Protected test materials" means consumable and nonconsumable test booklets, electronic test materials delivered and available through the USOE CBT system, test questions (items), directions for administering the assessments and supplementary assessment materials designated as protected test materials by the USOE. Protected test materials shall be used for authorized state testing only and shall be secured where they can be accessed by authorized personnel only.
- \_\_\_\_\_ K. "Raw test results" means number correct out of number possible, without scores being equated and scaled.
- \_\_\_\_\_ L. "Standardized tests" means tests required, consistent with R277-404-3 to be administered to all students in identified subjects at the specified grade levels.
- \_\_\_\_\_ M. "Utah Academic Proficiency Assessment (UALPA)" means a USOE-designated test to determine the academic proficiency and progress of English Language Learner students.
- \_\_\_\_\_ N. "Utah Alternative Assessment (UAA)" means a USOE-designated test to assess the achievement or progress of students with severe cognitive disabilities.
- \_\_\_\_\_ O. "Utah Basic Skills Competency Test (UBSCT)" means a USOE-designated test to be administered to Utah students beginning in the tenth grade (suspended through at least the 2011-2012 school year) to include components in reading, writing, and mathematics. Utah students shall satisfy the requirements of the UBSCT, in addition to state and school district/charter school graduation requirements, prior to receiving a high school diploma that indicates a passing score on all UBSCT subtests unless exempted consistent with R277-705-11.



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

**R277-473-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-603(3) which directs the Board to adopt rules for the conduct and administration of the testing programs and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide specific standards and procedures by which school districts/charter schools shall receive, manage and administer standardized tests and related student data and materials.

**R277-473-3. Time Periods for Administering and Returning Materials.**

A. School districts/charter schools shall administer assessments required under R277-404-3, and consistent with the following schedule:

(1) All CRTs and UAAs (elementary and secondary, English language arts, math, science) shall be administered in a six week window beginning six weeks before the last Monday of the end of the course.

(2) The Utah Basic Skills Competency Test shall be administered Tuesday, Wednesday, and Thursday of the first week of February and Tuesday, Wednesday, and Thursday of the third week of October (UBSCT requirements are suspended through at least the 2011-2012 school year).

(3) The fifth and eighth grade Direct Writing Assessment shall be administered in a three week window beginning at least 14 weeks prior to the last day of school.

(4) The UALPA shall be administered to all English Language Learner students identified as Level 1 Entering, Level 2 Beginning, Level 3 Developing, Level 4 Expanding, or enrolled for the first time in the school district at any time during the school year. The test shall be administered once a year to show progress.

(5) Pre-post kindergarten assessment for kindergarten-age students as determined by the LEA during testing windows determined by the LEA.

(6) One benchmark reading assessment specifically and solely determined by the USOE for 1st, 2nd, and 3rd grade students shall be administered to students in the beginning, midpoint, and end of the school year.

(7) Third grade summative end of year reading assessment determined specifically and solely by USOE to be administered by LEAs consistent with USOE procedures.

(8) NAEP tests determined and required annually by the United States Department of Education and administered to students as directed by United States Department of Education.

B. School districts/charter schools shall submit all paper answer sheets to the IT Section of the USOE for scanning and scoring as follows:

(1) School districts/charter schools shall return all answer sheets to the USOE no later than five working days after the last day of the testing window.

(2) School districts/charter schools shall return UBSCT answer sheets to the USOE no later than three days after the final make-up day (UBSCT requirements are suspended through at least the 2011-2012 school year).

C. School districts/charter schools shall submit all electronic responses according to USOE established procedures.

D. When determining the date of CRT testing, schools on trimester schedules shall schedule the CRT testing at the point in the course where students have had approximately the same amount of instructional time as students on a traditional semester schedule and provide the schedule to the USOE.

E. Makeup opportunities shall be provided to students for the Utah Basic Skills Competency Test according to the following:

(1) Students shall be allowed to participate in makeup tests if they did not participate to any degree in the Utah Basic Skills Competency Test or subtest(s) of the Utah Basic Skills Competency Test.

(2) School districts/charter schools shall determine acceptable reasons for student makeup eligibility which may include absence due to serious illness, absence due to family emergency, or absence due to death of family member or close friend.

(3) School districts/charter schools shall provide a makeup window not to exceed five days immediately following the last day of each administration of the Utah Basic Skills Competency Test.

(4) School districts/charter schools shall determine and notify parents in an appropriate and timely manner of dates, times, and sites of makeup opportunities for the Utah Basic Skills Competency Test (UBSCT requirements are suspended through at least the 2011-2012 school year).

**R277-473-4. Security of Testing Materials.**

A. All test questions and answers for all standardized tests as determined by the USOE shall be designated protected, consistent with Section 63G-2-305(5), until released by the USOE. A student's individual answer sheet or CBT file shall be available to parents under the federal Family Educational Rights and Privacy Act (FERPA), 20 USC, Sec. 1232g; 34 CFR Part 99.

B. The USOE shall maintain a record of all of the protected test materials sent to the school districts/charter schools.

C. Each school district/charter school shall maintain a record of all protected test materials sent to each school in the district and charter school, and shall submit the record to USOE upon request.

D. Each school district/charter school shall ensure that all test materials are secured so only authorized personnel have access, or are returned to USOE following testing as required by the USOE. Individual educators shall not retain test materials, in either paper or electronic form, beyond the time period allowed for test administration.

E. Individual schools within a school district and charter schools shall secure or return paper test materials within three working days of the completion of testing. Electronic testing materials shall be secured between administrations of the test, and shall be removed from teacher and student access immediately following the final administration of the test.

F. The USOE shall ensure that all test materials sent to a school district/charter school are returned as required by USOE, and may periodically audit school districts/charter schools to confirm that test materials are properly accounted for and secured.

G. School district/charter school employees and school personnel may not copy or in any way reproduce protected test

materials without the express permission of the specific test publisher, including the USOE.

**R277-473-5. Format for Electronic Submission of Data.**

A. IT shall communicate regularly with school districts/charter schools regarding required formats for electronic submission of any required data.

B. School districts/charter schools shall ensure that any computer software for maintaining school district/charter school data is compatible with data reporting requirements as determined in R277-484.

**R277-473-6. Format for Submission of CBT Files, Answer Sheets and Other Materials.**

A. The USOE shall provide a checklist to each school district/charter school with directions detailing the format in which answer documents, including CBT files, are to be collected, reviewed, and returned to the USOE.

B. Each school district/charter school shall verify that all the requirements of the testing checklist have been met.

C. Data may be submitted in batches in cooperation with the assigned IT data technician.

**R277-473-7. Timing for Return of Results to School Districts/Charter Schools.**

A. Scanning and scoring shall occur in the order data is received from the school districts/charter schools.

B. Consistent with Utah law, raw test results from all CRTs shall be returned to the school before the end of the school year.

C. Each school district/charter school shall check all test results for each school within the district and charter school and for the school district as a whole, verify their accuracy with IT, and certify that they are prepared for publication within two weeks of receipt of the data. Except in compelling circumstances, as determined by the USOE, no changes shall be made to school or school district data after this two week period. Compelling circumstances may include:

(1) a natural disaster or other catastrophic occurrence (e.g., school fire) that precludes timely review of data; and

(2) resolution of a professional practices issue that may impede reporting of the data.

D. School districts/charter schools shall not release data until authorized to do so by the USOE.

**R277-473-8. USOE and School Responsibilities for Crisis Indicators in State Assessments.**

A. Students participating in state assessments may reveal intentions to harm themselves or others, that the student is at risk of harm from others, or may reveal other indicators that the student is in a crisis situation.

B. The USOE shall notify the school principal, counselor or other school or school district personnel who the USOE determines have legitimate educational interests, whenever the USOE determines, in its sole discretion, that a student answer indicates the student may be in a crisis situation.

C. As soon as practicable, the school district superintendent/charter school director, or designee shall be given

the name of the individual contacted at the school regarding a student's potential crisis situation.

D. The USOE shall provide the school and district with a copy of the relevant written text.

E. Using their best professional judgment, school personnel contacted by USOE shall notify the student's parent, guardian or law enforcement of the student's expressed intentions as soon as practical under the circumstances.

F. The text provided by USOE shall not be part of the student's record and the school shall destroy any copies of the text once the school or district personnel involved in resolution of the matter determine the text is no longer necessary. The school principal shall provide notice to the USOE of the date the text is destroyed.

G. School personnel who contact a parent, guardian or law enforcement agency in response to the USOE's notification of potential harm shall provide the USOE with the name of the person contacted and the date of the contact within three business days from the date of contact.

**R277-473-9. Standardized Testing Rules and Professional Development Requirements.**

A. It is the responsibility of all educators to take all reasonable steps to ensure that standardized tests reflect the ability, knowledge, aptitude, or basic skills of each individual student taking standardized tests.

B. School districts/charter schools shall develop policies and procedures consistent with the law, Board rules for standardized test administration, and the USOE Testing Ethics Policy, and make them available and provide training to all teachers and administrators who administer state tests.

C. At least once each school year, school districts/charter schools shall provide professional development for all teachers, administrators, and standardized test administrators concerning guidelines and procedures for standardized test administration, including teacher responsibility for test security and proper professional practices.

D. School district/charter school assessment staff shall use the USOE Testing Ethics Policy in providing training for all test administrators/proctors.

E. Each and every test administrator/proctor shall individually sign a Testing Ethics signature page provided by the USOE.

F. All teachers and test administrators shall conduct test preparation, test administration, provide test results, and the return of all protected test materials in strict accordance with the procedures and guidelines specified in test administration manuals, school district/charter school rules and policies, Board rules, USOE Testing Ethics Policy, and state application of federal requirements for funding.

G. Teachers, administrators, and school personnel shall use assessments specifically required and as directed under R277-404.

H. Teachers, administrators, and school personnel shall not:

(1) provide students directly or indirectly with specific questions, answers, or the subject matter of any specific item in any standardized test prior to test administration;

~~\_\_\_\_\_ (2) copy, print, or make any facsimile of protected testing material prior to test administration without express permission of the specific test publisher, including USOE, and school district/charter school administration;~~

~~\_\_\_\_\_ (3) change, alter, or amend any student answer sheet, including CBT files, or any other standardized test materials at any time in such a way as to alter the student's intended response;~~

~~\_\_\_\_\_ (4) use any prior form of any standardized test (including pilot test materials) that has not been released by the USOE in test preparation without express permission of the specific test publisher, including USOE, and school district/charter school administration;~~

~~\_\_\_\_\_ (5) violate any specific test administration procedure specified in the test administration manual, or violate any state or school district/charter school standardized testing policy or procedure, or violate any procedure specified in the USOE Testing Ethics Policy;~~

~~\_\_\_\_\_ (6) knowingly and intentionally do anything that would inappropriately affect the security, validity, or reliability of standardized test scores of any individual student, class, or school;~~

~~\_\_\_\_\_ (7) fail to administer a required assessment; and~~

~~\_\_\_\_\_ (8) submit falsified data.~~

~~\_\_\_\_\_ I. Violation of any of these rules may subject licensed educators to possible disciplinary action under R277-515, Utah Educator Standards.~~

**KEY: educational testing**

**Date of Enactment or Last Substantive Amendment: August 8, 2011**

**Notice of Continuation: April 29, 2010**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-603(3); 53A-1-401(3)]**

**Education, Administration**

**R277-477-4**

**Distribution of Funds - Determination of Proportionate Share**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 38005

FILED: 09/16/2013

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R277-477-4 is amended to provide clarifying language describing the distribution to charter schools to make it in line with statute.

SUMMARY OF THE RULE OR CHANGE: The amendment removes "1/25 of one percent" and adds "0.4 percent" in Subsection R277-477-4(D).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-16-101.5(3)(c)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There is no anticipated cost or savings to the state budget. The amendment is for clarification purposes and does not result in a cost or savings.

◆ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government. The amendment is for clarification purposes and does not result in a cost or savings.

◆ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses. The amendment applies to public education and does not affect businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. The amendment is for clarification purposes and does not result in a cost or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The amendment is for clarification purposes and does not create a compliance 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:

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ADMINISTRATION  
250 E 500 S  
SALT LAKE CITY, UT 84111-3272  
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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 10/31/2013

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2013

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

**R277. Education, Administration.****R277-477. Distribution of Funds from the Interest and Dividend Account and Administration of the School LAND Trust Program.****R277-477-4. Distribution of Funds - Determination of Proportionate Share.**

A. A designated amount appropriated by the Legislature from the Interest and Dividends Account shall be used to fund the School Children's Trust Section, the administration of the program and other duties outlined in this rule and Sections 53A-16-101.5 and 53A-16-101.6. Any unused balance initially allocated for School LAND Trust Program administration shall be deposited in the Interest and Dividends Account for future distribution to schools in the School LAND Trust Program.

B. Funds shall be distributed to school districts and charter schools as provided under Section 53A-16-101.5(3)(a). The distribution shall be based on the state's total fall enrollment as reflected in the audited October 1 Fall Enrollment Report from the previous school year.

C. Each school district shall distribute funds received under R277-477-3A to each school within each school district on an equal per student basis.

D. Charter schools shall receive funding from the USOE on a per pupil basis, provided that each charter school receives at least [~~1/25 of one percent~~] 0.4 percent of the total available to charter schools as a group. The remainder of the distribution to charter schools shall be allocated to all charter schools that do not receive the minimum amount, on a per pupil basis.

E. Local boards of education shall adjust distributions, maintaining an equal per student distribution within a school district for school openings and closures and for boundary changes occurring after the audited October 1 Fall Enrollment Report of the prior year.

F. If a school chooses not to apply for School LAND Trust Program funds nor meet the requirements for receiving funds, the funds allocated for that school shall be retained by the USOE and included with the statewide distribution for the following school year.

G. Local boards and school districts shall ensure timely notification to chairs and principals of the availability of the funds to schools with approved plans.

H. Plans submitted by the USDB governing board shall be reviewed and approved by the School Children's Trust Section and reported to the State Superintendent or designee.

**KEY: schools, trust lands funds****Date of Enactment or Last Substantive Amendment: 2013****Notice of Continuation: June 10, 2013****Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-16-101.5(3)(c); 53A-1-401(3)****Education, Administration****R277-502****Educator Licensing and Data Retention****NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 38006

FILED: 09/16/2013

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to provide updated language and more specific requirements for teacher licensing programs.

**SUMMARY OF THE RULE OR CHANGE:** The changes are: 1) more specific standards are added for educator preparation program approval; 2) new requirements are added for Level 1 license renewal; 3) changes are made to license recommendation timelines; and 4) terminology changes are provided.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53A-6-104 and Subsection 53A-1-401(3)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. The specificity in the standards for educator preparation programs is intended to help institutions recruit and retain the best candidates in Utah teacher preparation programs. There are no costs for other licensing and renewal procedures.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government. More specific standards do not have a cost associated with them.

◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses. The amendments to this rule apply to public education and do not affect businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. Additional standards do not have any costs associated with them.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. The amendments to this rule provide more specific standards but no known 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 10/31/2013

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2013

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

**R277. Education, Administration.****R277-502. Educator Licensing and Data Retention.****R277-502-1. Definitions.**

A. "Accredited" means a Board-approved educator preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC) or the Council for Accreditation of Educator Preparation (CAEP).

B. "Accredited school" for purposes of this rule, means a public or private school that meets standards essential for the operation of a quality school program and has received formal approval through a regional accrediting association.

C. "Authorized staff" for purposes of this rule means an individual designated by the USOE or an LEA and approved by the USOE and who has completed CACTUS training.

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

E. "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; and
- (5) a record of disciplinary action taken against the educator.

F. "ESEA subject" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA).

G. "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.

H. "Letter of Authorization" means a designation given to an individual for one year, such as an out-of-state candidate or individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements and who is employed by an LEA.

I. "Level 1 license" means a Utah professional educator license issued upon completion of a Board-approved educator preparation program or an alternative preparation program, or to an applicant that holds an educator license issued by another state or country that has met all ancillary requirements established by law or rule.

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

(1) 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 LEA or accredited private school;

(2) at least three years of successful education experience in a Utah public LEA or accredited private school or one year of successful education experience in a Utah public LEA or accredited private school and at least three years of successful education experience in a public LEA or accredited private school outside of Utah;

(3) additional requirements established by law or rule.

K. "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.

L. "License areas of concentration" means designations to licenses obtained by completing a Board-approved educator preparation program or an alternative preparation program in a specific area of educational studies to include the following: Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Middle (still valid, but not issued after 1988, 5-9), Secondary (6-12), Administrative/Supervisory (K-12), Career and Technical Education, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders, Speech-Language Pathologist, Speech-Language Technician. License areas of concentration may also bear endorsements relating to subjects or specific assignments.

M. "License endorsement (endorsement)" means a specialty field or area earned through completing required course work established by the USOE or through demonstrated competency approved by the USOE; the endorsement shall be listed on the [P]professional [E]educator [L]license indicating the specific qualification(s) of the holder.

N. "Professional learning plan" means a plan developed by an educator in collaboration with the educator's supervisor consistent with R277-500 detailing appropriate professional learning activities for the purpose of renewing the educator's license.

O. "Renewal" means reissuing or extending the length of a license consistent with R277-500.

P. "State Approved Endorsement Program (SAEP)" means a plan in place developed between the USOE and a licensed educator to direct the completion of endorsement requirements by the educator consistent with R277-520-11.

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

**R277-502-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, by Section 53A-6-104 which gives the Board power to issue licenses, and Section 53A-1-401(3) which

allows the Board to adopt rules in accordance with its responsibilities.

B. This rule specifies the types of license levels and license areas of concentration available and procedures for obtaining a license, required for employment as a licensed educator in the public schools of Utah. The rule provides a process ~~[of]~~and criteria for educators whose licenses have lapsed and return to the teaching profession. All licensed educators employed in the Utah public schools shall be licensed consistent with this rule in order for the district to receive full funding under Section 53A-17a-107(2).

### **R277-502-3. Program Approval and Requirements.**

A. The Board shall accept educator license recommendations from educator preparation programs that have applied for Board approval and have met the requirements described in this rule and the Standards for Program Approval established by the Board in R277-504, R277-505, or R277-506 as determined by USOE.

B. The Board, or its designee, shall establish deadlines and uniform forms and procedures for all aspects of licensing.

C. To be approved for license recommendation the educator preparation program shall:

- (1) be accredited by NCATE or TEAC; or
- (2) be accredited by CAEP using the CAEP Program Review with National Recognition or CAEP Program Review with feedback options; and

(2)3 have a physical location in Utah where students attend classes or if the program provides only online instruction:

(a) the program's primary headquarters shall be located in Utah and

(b) the program shall be licensed to do business in Utah through the Utah Department of Commerce;

(3) include coursework design~~[at]~~ed to ensure that the educator is able to meet the Utah Effective Teaching Standards and Educational Leadership Standards established in R277-530;

(4) in the case of content endorsements, include coursework that is, at minimum, equivalent to the course requirements for the endorsement as established by USOE;

(5) establish entry requirements designed to ensure that only high quality individuals enter the licensure program; ~~[such as]~~requirements shall include the following minimum components, beginning August 1, 2014:

(a) a minimum ~~[H]~~high ~~[S]~~school/~~[C]~~college GPA of 3.0; and

(b) ~~[minimum college entry exam scores (ACT/SAT)]~~a USOE-cleared fingerprint background check; and

(c) a passing ~~[of]~~score on a Board-approved basic skills test; or

(d) ~~[disposition testing or entrance interview]~~an ACT composite score of 21 with a verbal/English score no less than 20 and a mathematics/quantitative score of no less than 19; or

(e) a combined SAT score of 1000 with neither mathematics nor verbal below 450.

(f) An institution may waive any of the entrance requirements provided in R277-502-3(5) based on program established guidelines for no more than 10 percent of an entrance cohort.

~~(6) require a USOE-cleared fingerprint background check; and~~

] (~~[7]~~6) include a student teaching or intern experience that meets the requirements detailed in R277-504, R277-505, and R277-506.

D. USOE representatives shall be a part of the accrediting team for any Board-approved educator preparation program seeking to maintain or receive program approval. USOE representatives shall be responsible for:

- (1) observing and monitoring the accreditation process;
- (2) reviewing~~[of]~~ subject specific programs to determine if the program meets state standards for licensure in specific areas;
- (3) reviewing~~[of]~~ program procedures to ensure that Board requirements for licensure are followed;
- (4) reviewing licensure candidate files to determine if Board requirements for licensure are followed by the program.

E. ~~[Upon receiving formal accreditation approval, a Board-approved educator preparation program shall prepare a report in conjunction with USOE for]~~After completion of the accreditation site visit, a Board-approved educator preparation program, working with the USOE, shall prepare and submit a program approval request for consideration by the Board that includes:

- (1) program summary;
- (2) accreditation findings;
- (3) program areas of distinction;
- (4) program enrollment;
- (5) program goals and direction.

F. If the program approval request is approved by the Board, the program shall be considered Board-approved until the next scheduled accreditation visit unless the program is placed on probation by the USOE and program approval is revoked by the Board under R277-502-3N.

~~[F]G.~~ New educator preparation programs that seek Board approval or previously Board-approved educator preparation programs that seek approval for additional license area preparation and endorsements shall submit applications to USOE including:

- (1) information detailing the exact license areas of concentration and endorsements that the program intends to award;
- (2) detailed course information, including required course lists, course descriptions, and course syllabi for all courses that will be required as part of a program;

(3) detailed information showing how the required coursework will ensure that the educator satisfies all standards in the Utah Effective Teaching Standards and Educational Leadership Standards established in R277-530 and Professional Educator Standards established in R277-515;

(4) information about program timelines and anticipated enrollment.

~~[G]H.~~ Applications for new educator preparation programs shall be approved by the Board.

~~[H]I.~~ Applications for previously Board-approved educator preparation programs desiring Board approval for additional license areas and endorsements:

- (1) shall be reviewed and approved by USOE;
- (2) may receive preliminary approval pending Utah State Board of Regents approval of the new program if the program is within a public institution.

~~[H]J.~~ An educator preparation program seeking accreditation may apply to the Board for probationary approval ~~[not to exceed two]~~for a maximum of three years contingent on the completion of the accreditation process.

~~[F]K.~~ A previously Board-approved educator preparation program shall submit an annual report to the USOE by July 1 of each year. The report shall summarize the institution's annual accreditation report and shall include the following:

(1) student enrollment counts designated by anticipated license area of concentration and endorsement and disaggregated by gender and ethnicity;

(2) information ~~[regarding]~~explaining any significant changes to course requirements or course content;

(3) the program's response to USOE-identified areas of concern or areas of focus;

(4) information regarding any program-determined areas of concern or areas of focus and the program's planned response~~[-]~~;

~~(5) a summary explanation of students admitted under the waiver identified in R277-502-3C(5)(f) and an explanation of the waiver.~~

~~[K]L.~~ The USOE shall provide reporting criteria to Board-approved educator preparation programs regarding the annual report and USOE-designated areas of concern or focus by January 31 annually.

~~[L]M.~~ Educator preparation programs that submit inadequate or incomplete information to the USOE may be placed on a probationary status by USOE.

~~[M]N.~~ Board-approved educator preparation programs on probationary status that continue to fail to meet requirements may have their license recommendation status revoked in full or in part by the Board with at least one year notice.

O. An individual that completes a Board-approved educator preparation program may be recommended for licensure within five years of program completion if the individual meets current licensing requirements.

P. If five years have passed since an individual completed a Board-approved preparation program, the individual may be recommended for licensure following review by the individual program. The preparation program officials shall determine whether any content or pedagogy coursework previously completed meets current program standards and if additional coursework, hours or other activities are necessary. The individual shall complete all work required by the program officials before receiving a license recommendation.

#### **R277-502-4. License Levels, Procedures, and Periods of Validity.**

##### **A. Level 1 License Requirements**

(1) An initial license, the Level 1 license, is issued to an individual who is recommended by a Board-approved educator preparation program or approved alternative preparation program, or an educator with a professional educator license from another state.

(a) LEAs and Board-approved educator preparation programs shall cooperate in preparing candidates for the educator Level 1 license. The resources of both may be used to assist candidates in preparation for licensing.

(b) The recommendation indicates that the individual has satisfactorily completed the programs of study required for the preparation of educators and has met licensing standards in the license areas of concentration for which the individual is recommended.

(2) The Level 1 license is issued for three years.

(3) A Level 1 license holder shall satisfy all requirements of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

(4) An educator qualified to teach any ESEA subject shall be considered Highly Qualified in at least one ESEA subject prior to moving from Level 1 to Level 2.

(5) A license applicant who has received or completed license preparation activities or coursework inconsistent with this rule may present compelling information and documentation for review and approval by the USOE to satisfy the licensing requirements.

(6) If an educator has taught for three years in a K-12 public education system in Utah, a Level 1 license may only be renewed if:

(a) the employing LEA has requested a one year extension consistent with R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers; or

(b) the individual has continuous experience as a speech language pathologist in a clinical setting.

##### **B. Level 2 License Requirements**

(1) A Level 2 license may be issued by the Board to a Level 1 license holder upon satisfaction of all USOE requirements for the Level 2 license and upon the recommendation of the employing LEA.

(2) The recommendation shall be made following the completion of three years of successful, professional growth and educator experience, satisfaction of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers, any additional requirements imposed by the employing LEA, and before the Level 1 license expires.

(3) A Level 2 license shall be issued for five years and shall be valid unless suspended or revoked for cause by the Board.

(4) The Level 2 license may be renewed for successive five year periods consistent with R277-500, Educator Licensing Renewal.

##### **C. Level 3 License Requirements**

(1) A Level 3 license may be issued by the Board to a Level 2 license holder who:

(a) has achieved National Board Certification; or

(b) has a doctorate in education in a field related to a content area in a unit of the public education system or an accredited private school; or

(c) holds a Speech-Language Pathology area of concentration and has obtained American Speech-Language Hearing Association (ASHA) certification.

(2) A Level 3 license is valid for seven years unless suspended or revoked for cause by the Board.

(3) The Level 3 license may be renewed for successive seven year periods consistent with R277-500.

(4) A Level 3 license shall revert to a Level 2 license if the holder fails to maintain National Board Certification status or fails to maintain a current Certificate of Clinical Competence from the American Speech-Language-Hearing Association.

##### **D. License Renewal Timeline**

Licenses expire on June 30 of the year of expiration recorded on CACTUS and may be renewed any time after January of the same year. Responsibility for license renewal rests solely with the holder.

**R277-502-5. Professional Educator License Areas of Concentration, and Endorsements and Under-Qualified Employees.**

A. Unless excepted under rules of the Board, to be employed in the public schools in a capacity covered by the following license areas of concentration, a person shall hold a valid license issued by the Board in the respective license areas of concentration:

- (1) Early Childhood (K-3);
- (2) Elementary (1-8);
- (3) Elementary (K-6);
- (4) Middle (still valid, and issued before 1988, 5-9);
- (5) Secondary (6-12);
- (6) Administrative/Supervisory (K-12);
- (7) Career and Technical Education;
- (8) School Counselor;
- (9) School Psychologist;
- (10) School Social Worker;
- (11) Special Education (K-12);
- (12) Preschool Special Education (Birth-Age 5);
- (13) Communication Disorders;
- (14) Speech-Language Pathologist;
- (15) Speech-Language Technician.

B. Under-qualified educators:

(1) Educators who are licensed and hold the appropriate license area of concentration but who are working out of their endorsement area(s) shall request and prepare an SAEP to complete the requirements of an endorsement with a USOE education specialist; or

(2) LEAs may request Letters of Authorization[

~~\_\_\_\_\_ (a) LEAs may request~~] from the Board [~~a Letter of Authorization~~] for educators employed by [~~the local board~~]LEAs [~~who~~]if educators have not completed requirements for areas of concentration or endorsements.

(~~[b]~~a) An approved Letter of Authorization is valid for one year.

(~~[e]~~b) Educators may be approved for no more than three Letters of Authorization throughout their employment in Utah schools. Exceptions to the three Letters of Authorization limitation may be granted by the State Superintendent of Public Instruction or his designee on a case by case basis following specific approval of the request by the LEA governing board. Letters of Authorization approved prior to the 2000-2001 school year [~~are~~]shall not be counted in this limit.

(~~[d]~~c) Following the expiration of the Letter of Authorization, the educator who is still not completely approved for licensing shall be considered under~~[-]~~-qualified.

C. License areas of concentration may be endorsed to indicate qualification in a subject or content area. An endorsement is not valid for employment purposes without a current license and license area of concentration.

**R277-502-6. Returning Educator Relicensure.**

A. A previously licensed educator with an expired license may renew an expired license upon satisfaction of the following:

(1) Completion of criminal background check including review of any criminal offenses and [~~approval~~]clearance by the Utah Professional Practices Advisory Commission;

(2) Employment by an LEA;

(3) Completion of a one-year professional learning plan developed jointly by the school principal or charter school director and the returning educator consistent with R277-500 that also considers the following:

(a) previous successful public school teaching experience;

(b) formal educational preparation;

(c) period of time between last public teaching experience and the present;

(d) school goals for student achievement within the employing school and the educator's role in accomplishing those goals;

(e) returning educator's professional abilities, as determined by a formal discussion and observation process completed within the first 30 days of employment; and

(f) completion of additional necessary professional development for the educator, as determined jointly by the principal/school and educator.

(4) Filing of the professional development plan within 30 days of hire;

(5) Successful completion of required Board-approved exams for licensure;

(6) Satisfactory experience as determined by the LEA with a trained mentor; and

(7) Submission to the USOE of the completed and signed Return to Original License Level Application, available on the USOE[~~Educator Quality and Licensing~~] website prior to June 30 of the school year in which the educator seeks to return.

B. The Professional Learning Plan is independent of the License Renewal Point requirements in R277-500-3C.

C. Returning educators who previously held a Level 2 or Level 3 license shall be issued a Level 1 license during the first year of employment. Upon completion of the requirements listed in R277-502-6A and a satisfactory LEA evaluation, [~~if available,~~] the employing LEA may recommend the educator's return to Level 2 or Level 3 licensure.

D. Returning educators who taught less than three consecutive years in a public or accredited private school shall complete the Early Years Enhancement requirements before moving from Level 1 to Level 2 licensure.

**R277-502-7. Professional Educator License Reciprocity.**

A. Utah is a member of the Compact for Interstate Qualification of Educational Personnel under Section 53A-6-201.

B. A Level 1 license may be issued to an individual holding a professional educator license in another state who has completed preparation equivalent to Board-approved standards and who has completed Board-approved testing, as required by R277-503-3.

(1) If the applicant has three or more continuous years of previous educator experience in a public or accredited private school, a Level 2 license may be issued upon the recommendation of the employing Utah LEA after at least one year.

(2) If the applicant has less than three years of previous educator experience in a public or accredited private school, a Level 2 license may be issued following satisfaction of the requirements of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.



**R277-502-8. Professional Educator License Fees.**

A. The Board shall establish a fee schedule for the issuance and renewal of licenses and endorsements consistent with 53A-6-105. All endorsements to which the applicant is entitled may be issued or renewed with the same expiration date for one licensing fee.

B. A fee may be charged for a valid license to be reprinted or for an endorsement to be added.

C. All costs for testing, evaluation, and course work shall be borne by the applicant unless other arrangements are agreed to in advance by the employing LEA.

D. Costs to review nonresident educator applications may exceed the cost to review resident applications due to the following:

(1) The review is necessary to ensure that nonresident applicants' training satisfies Utah's course and curriculum standards.

(2) The review of nonresident licensing applications is time consuming and potentially labor intensive[;].

[~~(3)~~]E. Differentiated fees [~~shall~~]may be set consistent with the time and resources required to adequately review all applicants for educator licenses.

**KEY: professional competency, educator licensing**  
**Date of Enactment or Last Substantive Amendment: [February 21,]2013**  
**Notice of Continuation: August 14, 2012**  
**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-104; 53A-1-401(3)**

Education, Administration  
**R277-705**  
 Secondary School Completion and  
 Diplomas

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 38007  
 FILED: 09/16/2013

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to remove Utah Basic Skills Competency Test (UBSCT) language because the statutory requirement was repealed.

SUMMARY OF THE RULE OR CHANGE: All references to UBSCT have been removed from 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 is no anticipated cost or savings to the state budget. UBSCT language was removed

from the rule because the statutory requirement was repealed.

♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government. UBSCT language was removed from the rule because the statutory requirement was repealed.

♦ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses. The amendments to this rule apply to public education and do not affect businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. UBSCT language was removed because the statutory requirement was repealed.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. UBSCT language was removed because the statutory requirement was repealed.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 EDUCATION  
 ADMINISTRATION  
 250 E 500 S  
 SALT LAKE CITY, UT 84111-3272  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2013

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2013

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

**R277. Education, Administration.**  
**R277-705. Secondary School Completion and Diplomas.**  
**R277-705-1. 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 Utah State Office of Education Accreditation Specialist.~~]

\_\_\_\_\_ A. "Accreditation" means the formal process for internal and external review and approval under the Standards for the Northwest Accreditation Commission, a division of Advance Education Inc., (AdvancED Northwest).

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

~~]~~ ~~C. "Cut score" means the minimum score a student must attain for each subtest to pass the UBSCT.~~

~~]~~ ~~[D]C. "Demonstrated competence" means subject mastery as determined by LEA standards and review. LEA review may include such methods and documentation as: tests, interviews, peer evaluations, writing samples, reports or portfolios.~~

~~[E]D. "Diploma" means an official document awarded by an LEA consistent with state and LEA graduation requirements and the provisions of this rule.~~

~~[F]E. "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).~~

~~[G]F. "LEA" means a local education agency, including local school boards/public school districts and schools, and charter schools.~~

~~[H]G. "Military child or children" means a K-12 public education student whose parent(s) or legal guardian(s) satisfies the definition of Section 53A-11-1401.~~

~~[I]H. "Secondary school" means grades 7-12 in whatever kind of school the grade levels exist. Grade 6 may be considered a secondary grade for some purposes.~~

~~[J]I. "Section 504 [P]plan" means a written statement of reasonable accommodations for a student with a qualifying disability that is developed, reviewed, and revised in accordance with Section 504 of the Rehabilitation Act of 1973.~~

~~[K]J. "Special purpose schools" means schools designated by regional accrediting agencies, such as ~~[the Northwest Accreditation Commission]~~ AdvancED Northwest. These schools typically serve a specific population such as students with disabilities, youth in custody, or schools with specific curricular emphasis. Their courses and curricula are designed to serve their specific populations and may be modified from traditional programs.~~

~~[L]K. "Supplemental education provider" means a private school or educational service provider which may or may not be accredited, that provides courses or services similar to public school courses/classes.~~

~~[M]L. "Transcript" means an official document or record(s) generated by one or several schools which includes, at a minimum: the courses in which a secondary student was enrolled, grades and units of credit earned, ~~[UBSCT scores and dates of testing, if applicable,]~~ citizenship and attendance records. The transcript is usually one part of the student's permanent or cumulative file which also may include birth certificate, immunization records and other information as determined by the school in possession of the record.~~

~~[N]M. "Unit of credit" means credit awarded for courses taken consistent with this rule or upon LEA authorization or for mastery demonstrated by approved methods.~~

~~[O. "Utah Basic Skills Competency Test (UBSCT)" means a test to be administered to Utah students beginning in the tenth grade (suspended through at least the 2011-2012 school year) to include at a minimum components on English, language arts, reading and mathematics. Utah students shall satisfy the requirements of the UBSCT in addition to state and LEA graduation requirements prior to receiving a high school diploma indicating a~~

~~passing score on all UBSCT subtests, for applicable school years (UBSCT requirements are suspended through at least the 2011-2012 school year).~~

~~P. "UBSCT Advisory Committee" means a committee that is advisory to the Board with membership appointed by the Board, including appropriate representation of special populations from the following:~~

- ~~(1) parents;~~
- ~~(2) high school principal(s);~~
- ~~(3) high school teacher(s);~~
- ~~(4) school district superintendent(s);~~
- ~~(5) Coalition of Minorities Advisory Committee;~~
- ~~(6) Utah State Office of Education staff;~~
- ~~(7) local school board(s);~~
- ~~(8) higher education.~~

~~(UBSCT requirements are suspended through at least the 2011-2012 school year.)~~

~~]~~

#### **R277-705-2. Authority and Purpose.**

A. This rule is authorized by Article X, Section 3 of the Utah Constitution, which places general control and supervision of the public schools under the Board; Section 53A-1-402(1)(b) and (c) which direct the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements; and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide consistent definitions, provide alternative methods for students to earn and schools to award credit, and to provide rules and procedures for the assessment of all students as required by law.

#### **R277-705-3. Required LEA Policy Explaining Student Credit.**

A. All Utah LEAs shall have a policy, approved in an open meeting by the governing board, explaining the process and standards for acceptance and reciprocity of credits earned by students in accordance with Utah state law. Policies shall provide for specific and adequate notice to students and parents of all policy requirements and limitations.

B. LEAs shall adhere to the following standards for credits or coursework from schools, supplemental education providers accredited by the Northwest Accreditation Commission, and accredited distance learning schools:

(1) Public schools shall accept credits and grades awarded to students from schools or providers accredited by the Northwest Accreditation Commission or approved by the Board without alteration.

(2) LEA policies may establish reasonable timelines and may require adequate and timely documentation of authenticity for credits and grades submitted.

C. LEA policies shall provide various methods for students to earn credit from non-accredited sources, course work or education providers. Methods, as designated by the LEA may include:

(1) Satisfaction of coursework by demonstrated competency, as evaluated at the LEA level;

(2) Assessment as proctored and determined at the school or school level;

(3) Review of student work or projects by LEA administrators; and

(4) Satisfaction of electronic or correspondence coursework, as approved at the LEA level.

D. LEAs may require documentation of compliance with Section 53A-11-102 prior to reviewing student home school or competency work, assessment or materials.

E. LEA policies for participation in extracurricular activities, awards, recognitions, and enhanced diplomas may be determined locally consistent with the law and this rule.

F. An LEA has the final decision-making authority for the awarding of credit and grades from non-accredited sources consistent with state law, due process, and this rule.

**R277-705-4. Diplomas and Certificates of Completion.**

A. LEAs shall award diplomas and certificates of completion.

~~]~~ ~~B.~~ Differentiated diplomas that reference the UBSCT before the 2010-2011 school year and after the 2012-2013 school year shall include:

~~(1) a high school diploma indicating on the diploma that a student successfully completed all state and LEA course requirements for graduation and passed all subtests of the UBSCT.~~

~~(2) a high school diploma indicating on the diploma that a student did not receive a passing score on all UBSCT subtests; the student shall have:~~

~~(a) met all state and LEA course requirements for graduation; and~~

~~(b) beginning with the graduating class of 2007, participated in UBSCT remediation consistent with LEA policies and opportunities; and~~

~~(c) provided documentation of at least three attempts to take and pass all subtests of the UBSCT unless the student took all subtests of the UBSCT offered while the student was enrolled in Utah schools (UBSCT requirements are suspended through at least the 2011-2012 school year).~~

~~]~~ ~~C.~~ LEAs shall establish criteria for students to earn a certificate of completion that may be awarded to students who have completed their senior year, are exiting the school system, and have not met all state or LEA requirements for a diploma.

**R277-705-5. Students with Disabilities.**

A. A student with disabilities served by special education programs shall satisfy high school completion or graduation criteria, consistent with state and federal law and the student's IEP.

B. A student may be awarded a certificate of completion ~~[or a differentiated diploma,]~~ consistent with state and federal law and the student's IEP or Section 504 Plan.

**R277-705-6. Adult Education Students.**

~~]~~ ~~A.~~ Students who are officially enrolled in a school district as adult education students shall not be required to have attempted or passed the UBSCT in order to qualify for an adult education diploma.

~~]~~ ~~B.~~ ~~A.~~ Adult education students are eligible only for an adult education secondary diploma.

~~]~~ ~~C.~~ ~~B.~~ An adult education diplomas cannot be upgraded or changed to traditional, high school-specific diplomas.

~~]~~ ~~C.~~ ~~C.~~ School districts shall establish policies:

(1) allowing or disallowing adult education student participation in graduation activities or ceremonies.

(2) establishing timelines and criteria for satisfying adult education graduation/diploma requirements.

~~[R277-705-7. Utah Basic Skills Competency Testing Requirements and Procedures (Suspended Through at Least the 2011-2012 School Year Consistent with Section 53A-1-611(6)(b)).~~

~~A.~~ All Utah public school students shall participate in Utah Basic Skills Competency testing, unless exempted consistent with R277-705-11, and unless alternate assessment is designated in accordance with federal law or regulations or state law.

~~B.~~ Timeline:

~~(1) Beginning with students in the graduating class of 2006, UBSCT requirements shall apply.~~

~~(2) No student may take any subtest of the UBSCT before the tenth grade year.~~

~~(3) Tenth graders should first take the test in the second half of their tenth grade year.~~

~~(4) Exceptions may be made to this timeline with documentation of compelling circumstances and upon review by the school principal and Utah State Office of Education assessment staff.~~

~~C.~~ UBSCT components, scoring and consequences:

~~(1) UBSCT consists of subtests in reading, writing and mathematics.~~

~~(2) Students who reach the established cut score for any subtest in any administration of the assessment have passed that subtest.~~

~~(3) Students shall pass all subtests to qualify for a high school diploma indicating a passing score on all UBSCT subtests unless they qualify under one of the exceptions of state law or this rule such as R277-705-7D.~~

~~(4) Students who do not reach the established cut score for any subtest shall have multiple additional opportunities to retake the subtest.~~

~~(5) Students who have not passed all subtests of the UBSCT by the end of their senior year may receive a diploma indicating that a student did not receive a passing score on all UBSCT subtests or a certificate of completion.~~

~~(6) Specific testing dates shall be calendared and published at least two years in advance by the Board.~~

~~D.~~ Reciprocity and new seniors:

~~(1) Students who transfer from out of state to a Utah high school after the tenth grade year may be granted reciprocity for high school graduation exams taken and passed in other states or countries based on criteria set by the Board and applied by the local board.~~

~~(2) Students for whom reciprocity is not granted and students from other states or countries that do not have high school graduation exams shall be required to pass the UBSCT before receiving a high school diploma indicating a passing score on all UBSCT subtests if they enter the system before the final administration of the test in the student's senior year.~~

~~(3) The UBSCT Advisory Committee following review of applicable documentation shall recommend to the Board the type of diploma that a student entering a Utah high school in the student's senior year after the final administration of the UBSCT may receive.~~

~~E.~~ Testing eligibility:

~~(1) Building principals shall certify that all students taking the test in any administration are qualified to be tested.~~

~~(2) Students are qualified if they:~~

~~(a) are enrolled in tenth grade, eleventh, or twelfth grade (or equivalent designation in adult education) in a Utah public school program; or~~

~~(b) are enrolled in a Utah private/parochial school (with documentation) and are least 15 years old or enrolled at the appropriate grade level; or~~

~~(c) are home schooled (with documentation required under Section 53A-11-102) and are at least 15 years old; and~~

~~(3) Students eligible for accommodations, assistive devices, or other special conditions during testing shall submit appropriate documentation at the test site.~~

~~F. Testing procedures:~~

~~(1) Three subtests make up the UBSCT: reading, writing, and mathematics. Each subtest may be given on a separate day.~~

~~(2) The same subtest shall be given to all students on the same day, as established by the Board.~~

~~(3) All sections of a subtest shall be completed in a single day.~~

~~(4) Subtests are not timed. Students shall be given the time necessary within the designated test day to attempt to answer every question on each section of the subtest.~~

~~(5) Makeup opportunities shall be provided to students for the UBSCT according to the following:~~

~~(a) Students shall be allowed to participate in makeup tests if they were not present for the entire UBSCT or subtest(s) of the UBSCT.~~

~~(b) LEAs shall determine acceptable reasons for student makeup eligibility which may include absence due to illness, absence due to family emergency, or absence due to death of family member or close friend.~~

~~(c) LEAs shall provide a makeup window not to exceed five school days immediately following the last day of each administration of the UBSCT.~~

~~(d) LEAs shall determine and notify parents in an appropriate and timely manner of dates, times, and sites of makeup opportunities for the UBSCT.~~

~~(6) Arrangements for extraordinary circumstances or exceptions to R277-705-5 shall be reviewed and decided by the UBSCT Advisory Committee on a case-by-case basis consistent with the purposes of this rule and enabling legislation.~~

~~(7) LEAs shall allow appropriate exams to substitute for UBSCT attempts or successful completion of UBSCT for military children consistent with Section 53A-11-1404(2).~~

~~(8) The graduating classes of 2011, 2012, 2013, and 2014 shall be exempt from the UBSCT requirement of Sections 53A-1-603(1)(b) and 53A-11-1404.~~

**R277-705-8. Security and Accountability.**

~~A. Building principals shall be responsible to secure and return completed tests consistent with Utah State Office of Education timelines.~~

~~B. LEAs testing directors shall account for all materials used, unused and returned.~~

~~C. Results shall be returned to students and parents/guardians no later than eight weeks following the administration of each test.~~

~~D. Appeals for failure to pass the UBSCT due to extraordinary circumstances:~~

~~(1) If a student or parent has good reason to believe, including documentation, that a testing irregularity or inaccuracy in scoring prevented a student from passing the UBSCT, the student or parent may appeal to the local board within 60 days of receipt of the test results.~~

~~(2) The local board shall consider the appeal and render a decision in a timely manner.~~

~~(3) The parent or student may appeal the local board's decision through the UBSCT Advisory Committee, under rules adopted by the Board.~~

~~(4) Appeals under this section are limited to the criteria of R277-705-8D(1).~~

**~~R277-705-9. Differentiated Diplomas and Certificates of Completion.~~**

~~A. Local boards of education and local charter boards may issue differentiated diplomas.~~

~~B. The requirement for differentiated diplomas under the UBSCT shall be suspended through at least the 2011-2012 school year.~~

~~C. As provided under Section 53A-1-611(2)(d), LEAs shall designate in express language at least the following types of diplomas or certificates:~~

~~(1) High School Diploma indicating a passing score on all UBSCT subtests.~~

~~(2) High School Diploma indicating that a student did not receive a passing score on all UBSCT subtests.~~

~~(3) Certificate of Completion.~~

~~(4) High school diploma indicating student achievement on assessments for LEAs exempted from UBSCT consistent with R277-705-11.~~

~~D. The designation of a differentiated diploma may be made on the face of the diploma or certificate of completion provided to students.~~

**~~JR277-705-[10]7. Student Rights and Responsibilities Related to Graduation, Transcripts and Receipt of Diplomas.~~**

~~A. LEAs shall supervise the granting of credit and awarding of diplomas, but may delegate the responsibility to schools within the LEA.~~

~~B. An LEA may determine criteria for a student's participation in graduation activities, honors, and exercises, independent of a student's receipt of a diploma or certificate of completion.~~

~~C. Diplomas or certificates, credit or unofficial transcripts may not be withheld from students for nonpayment of school fees.~~

~~D. LEAs shall establish consistent timelines for all students for completion of graduation requirements. Timelines shall be consistent with state law and this rule.~~

~~E. LEAs shall work with enrolled military children to evaluate the students' coursework or to assist students in completing coursework to allow military children to graduate with the students' age-appropriate graduating class consistent with Section 53A-11-1404.~~

~~F. Consistent with Section 53A-11-1404(3), if a Utah school is unable to facilitate a military child's receipt of diploma by evaluating coursework in Utah schools and previous schools~~

attended, the Utah school shall contact the military child's previous local education agency and aid, to the extent possible, the receipt of a diploma.

G. Graduation requirements are not retroactive.

**KEY: curricula**

**Date of Enactment or Last Substantive Amendment:** [~~August 8, 2011~~]**2013**

**Notice of Continuation:** September 13, 2013

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53A-1-402(1)(b); [~~53A-1-603 through 53A-1-611;~~] 53A-1-401(3)

**Environmental Quality, Air Quality  
R307-110-10**

**Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 37988

FILED: 09/12/2013

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** In 2006, EPA tightened the 24-hour PM2.5 national ambient air quality standard from 65 to 35 micrograms per cubic meter. Currently, seven Utah counties have been found by EPA to not meet the standard. The Utah Air Quality Board is proposing to expand Section IX, Part A of the State Implementation Plan (SIP) to address PM2.5. The new Section IX, Part A of the SIP needs to be incorporated into the Utah Air Quality rules. Section R307-110-10 currently does this. Both the SIP and the rule will have simultaneous public comment periods beginning October 1.

**SUMMARY OF THE RULE OR CHANGE:** The amendment changes the date of Section IX, Part A of the SIP most recently adopted by the Air Quality Board that is incorporated into the Utah Air Quality Rules. Section IX, Part A of the SIP is amended to add two sections to address PM2.5 in the Salt Lake City, UT and Provo, UT nonattainment areas. The new sections identify PM2.5 control strategies, the impact the control strategies have on PM2.5 concentrations in the nonattainment areas, and show how each area will meet the 2006 PM2.5 NAAQS by 2019.

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

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Updates Utah State Implementation Plan Section IX, Control Measures for Area and Point Sources,

Part A, Fine Particulate Matter, published by State of Utah Division of Air Quality, 12/04/2013

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** No costs or savings are anticipated with this rule change. No new requirements were created with this rule change that impact the state budget.
- ◆ **LOCAL GOVERNMENTS:** No costs or savings are anticipated with this rule change. No new requirements were created with this rule change that impact local government.
- ◆ **SMALL BUSINESSES:** No costs or savings are anticipated with this rule change. No new requirements were created with this rule change that impact small businesses. There are, however, costs associated with several of the control strategies that are in the State Implementation Plan (SIP) being incorporated into this rule. Many of the control strategies have been promulgated in the form of administrative rules, and cost information for those rules is addressed in each of those rule's individual rule analysis forms. Any of the costs associated with the individual RACT analysis will be addressed in the administrative documentation for Part H of the SIP when it is incorporated into the rules.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No costs or savings are anticipated with this rule change. No new requirements were created with this rule change that impact persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No costs or savings are anticipated with this rule change. No new requirements were created with this rule change that impact small businesses. There are, however, compliance costs associated with several of the control strategies that are in the State Implementation Plan (SIP) being incorporated into this rule. Many of the control strategies have been promulgated in the form of administrative rules, and cost information for those rules is addressed in each of those rule's individual Rule Analysis Forms. Any of the costs associated with the individual RACT analysis will be addressed in the administrative documentation for Part H of the SIP when it is incorporated into the rules.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No costs or savings are anticipated with this rule change. No new requirements were created with this rule change that impact small businesses. There are, however, compliance costs associated with several of the control strategies that are in the State Implementation Plan (SIP) being incorporated into this rule. Many of the control strategies have been promulgated in the form of administrative rules, and cost information for those rules is addressed in each of those rule's individual Rule Analysis Forms. Any of the costs associated with the individual RACT analysis will be addressed in administrative documentation for Part H of the SIP when it is incorporated into the rules.

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2013

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:  
 ♦ 10/08/2013 10:00 AM, Weber-Morgan Health Department Auditorium, 477 E 23rd Street, Ogden, UT  
 ♦ 10/09/2013 09:00 AM, Utah County Commission Chambers, 100 E Center Street, Suite #1400, Provo, UT  
 ♦ 10/15/2013 10:00 AM, DEQ Board Room, 195 N 1950 W, Room #1015, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 12/05/2013

AUTHORIZED BY: Bryce Bird, Director

**R307. Environmental Quality, Air Quality.**  
**R307-110. General Requirements: State Implementation Plan.**  
**R307-110-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter.**

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter, as most recently amended by the Utah Air Quality Board on [November 6, 2013] December 4, 2013, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**KEY: air pollution, PM10, PM2.5, ozone**  
**Date of Enactment or Last Substantive Amendment: 2013**  
**Notice of Continuation: February 1, 2012**  
**Authorizing, and Implemented or Interpreted Law: 19-2-104(3)**  
 (e)

Environmental Quality, Air Quality  
**R307-121**  
 General Requirements: Clean Air and  
 Efficient Vehicle Tax Credit

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 37990  
 FILED: 09/12/2013

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Utah Legislature revised the statute governing the state's Clean Fuel Tax Credit during the 2013 General Legislative Session. H.B. 96 (2013) modified the eligibility requirements to claim the tax credit.

**SUMMARY OF THE RULE OR CHANGE:** The following rule changes have been proposed: removing the definitions for "Fuel economy standards" and "Plug-in Electric Drive Motor Vehicle"; adding a definition for "Qualifying electric or hybrid vehicle"; and adding a requirement that the purchase order, customer invoice or receipt, and the current Utah vehicle registration be in the name of the taxpayer in order to receive the credit. In addition, other technical changes were made throughout the rule to clarify and help administer the Clean Fuel Tax Credit.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-1-402 and Section 19-2-104 and Section 59-10-1009 and Section 59-7-605

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** These rule changes are to align with the new requirements of H.B. 96 (2013). The changes may result in more applicants for the vehicle tax credit. However, any additional expenses associated with awarding more credits should not result in any additional costs to the state budget.

♦ **LOCAL GOVERNMENTS:** There are no new requirements for local government; therefore, there are no anticipated costs or savings.

♦ **SMALL BUSINESSES:** There are no new requirements for small businesses; therefore, there are no anticipated costs or savings.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no new requirements for persons other than small businesses, businesses, or local government entities; therefore, there are no anticipated costs or savings.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The changes to the demonstration of eligibility requirements do not result in any additional compliance costs.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no new requirements for businesses; therefore, the agency does not anticipate this rule change having a measurable fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON  
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO  
LATER THAN AT 5:00 PM ON 10/31/2013

THIS RULE MAY BECOME EFFECTIVE ON: 12/05/2013

AUTHORIZED BY: Bryce Bird, Director

### **R307. Environmental Quality, Air Quality.**

#### **R307-121. General Requirements: Clean Air and Efficient Vehicle Tax Credit.**

##### **R307-121-1. Authorization and Purpose.**

This rule is authorized by Sections 59-7-605 and 59-10-1009. These statutes establish criteria and definitions used to determine eligibility for an income tax credit. R307-121 establishes procedures to provide proof of purchase, in accordance with 59-7-605(3) or 59-10-1009(3), to the director for an OEM vehicle or the conversion of a motor vehicle or special mobile equipment for which an income tax credit is allowed under Sections 59-7-605 or 59-10-1009.

##### **R307-121-2. Definitions.**

~~[Definitions.]~~The following additional definitions apply to R307-121.

"Air quality standards" means air quality standards as defined in Subsection 59-7-605(1)(a) and 59-10-1009(1)(a).

"Clean fuel" means clean fuel as defined in Subsection 19-1-402(1).

"Clean fuel vehicle" means clean fuel vehicle as defined in Subsection 19-1-402(2).

"Conversion equipment" means a package ~~[which]~~that may include fuel, ignition, emissions control, and engine components that are modified, removed, or added to a motor vehicle or special mobile equipment to make that motor vehicle or equipment eligible for the tax credit.

~~["Fuel economy standards" means fuel economy standards as defined in Subsection 59-7-605(1)(f) and 59-10-1009(1)(f) or 31 miles per gallon equivalent for a plug-in electric drive motor vehicle.~~

~~"Miles per gallon equivalent" means the miles a vehicle can drive with the energy equivalent of one gallon of gasoline.~~

]"Motor Vehicle" means a motor vehicle as defined in 41-1a-102.

"Original equipment manufacturer(OEM) vehicle" means original equipment manufacturer(OEM) as defined in Subsection 19-1-402(8).

"Original purchase" means original purchase as defined in Subsection 59-7-605(1)(~~i~~)g and 59-10-1009(1)(~~i~~)g.

~~"Qualifying electric or hybrid vehicle" means qualifying electric or hybrid vehicle as defined in 59-7-605(1)(h) or 59-10-1009(1)(h).~~

~~["Plug-in Electric Drive Motor Vehicle" means plug-in electric drive motor vehicle as defined in Subsection 59-7-605(1)(a)(ii) or 59-10-1009(1)(a)(ii).~~

]"Window Sticker" means the label required by United States Code Title 15 Sections 1231 and 1232, as effective ~~[February 1, 2010]~~January 3, 2012.

##### **R307-121-3. Proof of Purchase to Demonstrate Eligibility for OEM ~~[Compressed]~~Natural Gas Vehicles.**

To demonstrate that an OEM ~~[Compressed N]~~natural [G]gas motor vehicle is eligible for the tax credit, proof of purchase shall be made in accordance with 59-7-605(3) or 59-10-1009(3), by submitting the following documents to the director:

(1)(a) a copy of the motor vehicle's window sticker, which includes its Vehicle Identification Number (VIN), or equivalent manufacturer's documentation showing that the motor vehicle is an OEM ~~[Compressed N]~~natural [G]gas vehicle, or

(b) a signed statement by either an Automotive Service Excellence (ASE)-certified technician or Canadian Standards Association (CSA) America CNG Fuel System Inspector that includes the vehicle identification number (VIN), the technician's ASE or CSA America certification number, and states that the motor vehicle is an eligible OEM vehicle;

(2) an original or copy of the purchase order, customer invoice, or receipt ~~that [including]~~includes the name of the taxpayer seeking the credit, the name of the seller of the motor vehicle, the VIN, purchase date, and price of the motor vehicle; and

(3) a copy of the current Utah vehicle registration in the name of the taxpayer seeking the credit.

##### **R307-121-4. Proof of Purchase to Demonstrate Eligibility for ~~[Motor Vehicles that meet Air Quality and Fuel Economy Standards]~~Qualifying Electric or Hybrid Vehicles.**

To demonstrate that a motor vehicle is ~~[eligible for the tax credit based on air quality and fuel economy standards]~~a qualifying electric or hybrid vehicle, proof of purchase shall be made, in accordance with 59-7-605(3) or 59-10-1009(3), by submitting the following documents to the director:

~~["(1) a copy of the motor vehicle's window sticker, which includes its VIN, or equivalent manufacturer's documentation;~~

]"(2)1 an original or copy of the odometer disclosure statement required in Utah Code Annotated Title 41 Chapter 1a Section 902 for the motor vehicle that was acquired as an original purchase;

(3)2 an original or copy of the purchase order, customer invoice, or receipt ~~that [including]~~includes the name of the taxpayer seeking the credit, the name of the seller of the qualifying electric or hybrid vehicle, the VIN, purchase date, and price of the motor vehicle;

(4)3 the underhood identification number or engine group of the motor vehicle; and

(5)4 a copy of the current Utah vehicle registration in the name of the taxpayer seeking the credit.

**R307-121-5. Proof of Purchase to Demonstrate Eligibility for Motor Vehicles Converted to a Clean Fuel~~[Natural Gas or Propane]~~.**

To demonstrate that a conversion of a motor vehicle to be fueled by a clean fuel~~[natural gas or propane]~~ is eligible for the tax credit, proof of purchase shall be made, in accordance with 59-7-605(3) or 59-10-1009(3), by submitting the following documentation to the director:

- ~~\_\_\_\_\_ (1) the VIN;~~
  - ~~\_\_\_\_\_ (2) the fuel type before conversion;~~
  - ~~\_\_\_\_\_ (3) the fuel type after conversion;~~
  - ~~\_\_\_\_\_ (4)(a) a copy of the motor vehicle inspection report from an approved county inspection and maintenance station showing that the converted motor vehicle meets all county emissions requirements for all installed fuel systems if the motor vehicle is registered within a county with an inspection and maintenance (I/M) program, or~~
  - ~~\_\_\_\_\_ (b) in all other areas of the State, a signed statement by an ASE-certified technician that includes the VIN, the technician's ASE certification number, and states that the conversion is functional;~~
  - ~~\_\_\_\_\_ (5) each of the following:~~
    - ~~\_\_\_\_\_ (a) the conversion equipment manufacturer;~~
    - ~~\_\_\_\_\_ (b) the conversion equipment model number;~~
    - ~~\_\_\_\_\_ (c) the date of the conversion; and~~
    - ~~\_\_\_\_\_ (d) the name, address, and phone number of the person that converted the motor vehicle;~~
  - ~~\_\_\_\_\_ (6) the EPA Certificate of Conformity, or equivalent documentation that is consistent with requirements outlined in 40 CFR Part 85 and 40 CFR Part 86, as published in Federal Register Volume 76 Page 19830 on April 8, 2011, or an Executive Order from the California Air Resources Board showing that the conversion will meet the proof of certification requirements in 59-10-1009(1)(e)(i)(C) or 59-7-605(1)(e)(i)(C);~~
- ~~]~~ ~~(7)1~~ an original or copy of the purchase order, customer invoice, or receipt that includes the name of the taxpayer seeking the credit, the name, address, and phone number of the person that converted the motor vehicle to run on a clean fuel; the VIN; the date of conversion; and the price of the conversion equipment installed on the motor vehicle; and
- ~~(8)2~~ a copy of the current Utah vehicle registration in the name of the taxpayer seeking the credit.

**~~R307-121-6. Proof of Purchase to Demonstrate Eligibility for Motor Vehicles Converted to Electricity.~~**

~~(1) To demonstrate that a conversion of a motor vehicle to be powered by electricity is eligible for the tax credit, proof of purchase shall be made, in accordance with 59-7-605(3) or 59-10-1009(3), by submitting the following documentation to the director:~~

- ~~\_\_\_\_\_ (a) the VIN;~~
- ~~\_\_\_\_\_ (b) the fuel type before conversion;~~
- ~~\_\_\_\_\_ (c) the fuel type after conversion;~~
- ~~\_\_\_\_\_ (d) each of the following:~~
  - ~~\_\_\_\_\_ (i) the conversion equipment manufacturer;~~
  - ~~\_\_\_\_\_ (ii) the conversion equipment model number;~~
  - ~~\_\_\_\_\_ (iii) the date of the conversion; and~~
  - ~~\_\_\_\_\_ (iv) the name, address, and phone number of the person that converted the motor vehicle;~~
- ~~\_\_\_\_\_ (e) an original or copy of the purchase order, customer invoice, or receipt; and~~

- ~~\_\_\_\_\_ (f) a copy of the current Utah vehicle registration.~~
- ~~\_\_\_\_\_ (2) If the converted motor vehicle does not have any auxiliary sources of combustion emissions, then the applicant shall submit a signed statement by an ASE-certified technician that includes the VIN, the technician's ASE certification number, and states that the conversion is functional, and that the converted motor vehicle does not have any auxiliary source of combustion emissions.~~
- ~~\_\_\_\_\_ (3) If the converted motor vehicle has an auxiliary source of combustion emissions, then the applicant shall submit:~~
  - ~~\_\_\_\_\_ (a) a copy of the vehicle inspection report from an approved county inspection and maintenance station showing that the converted motor vehicle meets all county emissions requirements for all installed fuel systems if the motor vehicle is registered within a county with an I/M program, or~~
  - ~~\_\_\_\_\_ (b) in all other areas of the State, a signed statement by an ASE-certified technician that includes the VIN, the technician's ASE certification number, and states that the conversion is functional, and~~
  - ~~\_\_\_\_\_ (c) Provide the EPA Certificate of Conformity or equivalent documentation that is consistent with requirements outlined in 76 FR 19830 April 8, 2011, or an Executive Order from the California Air Resources Board showing that the conversion will meet the proof of certification requirements in 59-10-1009(1)(e)(i)(C) or 59-7-605(1)(e)(i)(C).~~

**~~]~~ R307-121-~~7~~6. Proof of Purchase to Demonstrate Eligibility for Special Mobile Equipment Converted to Clean Fuels.**

To demonstrate that a conversion of special mobile equipment to be fueled by clean fuel is eligible for the tax credit, proof of purchase shall be made, in accordance with 59-7-605(3) or 59-10-1009(3), by submitting the following documentation to the director:

- ~~\_\_\_\_\_ (1) a description, including serial number, of the special mobile equipment for which credit is to be claimed;~~
- ~~\_\_\_\_\_ (2) the fuel type before conversion;~~
- ~~\_\_\_\_\_ (3) the fuel type after conversion;~~
- ~~\_\_\_\_\_ (4) the conversion equipment manufacturer and model number;~~
- ~~\_\_\_\_\_ (5) the date of the conversion;~~
- ~~\_\_\_\_\_ (6) the name, address and phone number of the person that converted the special mobile equipment]; and~~

~~(7)2~~ an original or copy of the purchase order, customer invoice, or receipt that includes the name of the taxpayer seeking the credit, the serial number, the date of conversion, and the price of the conversion equipment installed on the special mobile equipment.]; and

- ~~\_\_\_\_\_ (8) the EPA Certificate of Conformity, or an Executive Order from the California Resource Board showing that the conversion will meet the proof of certification requirements in 59-10-1009(1)(e)(ii)(B) or 59-7-605(1)(e)(ii)(B).~~

**~~R307-121-8. Applicability.~~**

~~(1) The definitions of plug-in electric drive motor vehicle and fuel economy standards in R307-121-2 shall apply to all purchases as of January 1, 2011.~~

~~(2) Provisions found in sections R307-121-5(6) and R307-121-6(3)(e) shall apply to all conversions as of April 8, 2011.~~

~~]~~ **KEY: air pollution, alternative fuels, tax credits, motor vehicles**  
**Date of Enactment or Last Substantive Amendment: [January 1, 2012]2013**



**Notice of Continuation: January 23, 2012**  
**Authorizing, and Implemented or Interpreted Law: 19-2-104; 19-1-402; 59-7-605; 59-10-1009**

**Environmental Quality, Air Quality**  
**R307-123**  
**General Requirements: Clean Fuels**  
**and Vehicle Technology Grant and**  
**Loan Program**

**NOTICE OF PROPOSED RULE**

(Amendment)  
 DAR FILE NO.: 37989  
 FILED: 09/12/2013

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** On 04/08/2011, EPA finalized a rulemaking to streamline and expand its process to allow for intermediate and out-of-useful-life vehicles to be converted to run on alternate fuels such as compressed natural gas. Additionally, Section 19-1-402 classifies electricity as an eligible clean fuel. In order for vehicles that are converted to run on electricity to qualify for the tax credit, there is a need to add demonstration of eligibility requirements to the rule.

**SUMMARY OF THE RULE OR CHANGE:** Language is added throughout the rule to allow for intermediate and out-of-useful-life vehicles to be converted to run on alternate fuels such as natural gas. Demonstration of eligibility requirements for vehicles converted to electricity are added to the rule. Furthermore, criteria are added for demonstration of eligibility for retrofitted vehicles in order to verify that the condition of the vehicle prior to the installation of the retrofit is compliant with the retrofit's certification criteria.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-104 and Section 19-2-401 and Section 59-10-1009 and Section 59-7-605

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There are no new requirements to the state; therefore, there are no anticipated costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** Because there are no changes to this rule that apply to local government, there are no anticipated costs or savings to local government.
- ◆ **SMALL BUSINESSES:** Because there are no changes to this rule that apply to small businesses, there are no anticipated costs or savings.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because there are no changes to this rule that apply to persons other than small businesses, businesses, or local

government entities, there are no anticipated costs or savings.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The changes to this rule will require additional documentation be provided in order to qualify for the grant or loan. However, any additional administrative costs to applicants will be minimal.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** While the additional documentation requirements in the rule could result in additional costs to businesses applying for a clean vehicle grant or loan, those costs will be minimal. Additionally, businesses that decide to convert their vehicles to electricity, will now be able to potentially qualify for a grant or loan, resulting in significant savings.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2013**

**THIS RULE MAY BECOME EFFECTIVE ON: 12/05/2013**

**AUTHORIZED BY: Bryce Bird, Director**

**R307. Environmental Quality, Air Quality.**

**R307-123. General Requirements: Clean Fuels and Vehicle Technology Grant and Loan Program.**

**R307-123-1. Authorization and Purpose.**

(1) This rule is authorized by Section 19-1-405, which establishes criteria and definitions used to determine eligibility for use of the Clean Fuels and Vehicle Technology Fund created in Section 19-1-403.

(2) R307-123 establishes procedures to provide proof of purchase to the Board for an OEM vehicle, or the conversion or retrofit of a vehicle for which a grant or loan made with the monies available in the Fund is allowed under Subsection 19-1-403(2)(a).

(3) Eligible technologies are required to meet the criteria and follow the procedures established in R305-4.

**R307-123-2. Definitions.**

Definitions. The following additional definitions apply to R307-123.

"Certified by the director" means that:

(1) A motor vehicle on which conversion equipment has been installed meets the criteria in Subsection 19-1-405(1)(a) and demonstrates a reduction in emissions as defined in Subsection 19-1-405(2); or

(2) A motor vehicle on which a retrofit has been installed meets the following criteria:

(a) the motor vehicle's emissions of regulated pollutants, when operating with the retrofit equipment, is less than the emissions were before the installation of the retrofit equipment; and

(b) a reduction in emissions under Subsection R307-123-2(2)(a) is demonstrated by:

(i) certification of the retrofit by the federal EPA or by a state whose certification standards are recognized by the Board; or

(ii) any other test or standard recognized by the Board.

"Clean fuel" means clean fuel as defined in Subsection 19-1-402(1).

"Clean fuel vehicle" means clean fuel vehicle as defined in Subsection 19-1-402(2).

"Conversion equipment" means a package which may include fuel, ignition, emissions control, and engine components that are modified, removed, or added to a motor vehicle or special mobile equipment to make that vehicle or equipment eligible.

"Manufacturer's Statement of Origin" means a certificate showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser.

"Original equipment manufacturer (OEM) vehicle" means OEM vehicle as defined in Subsection 19-1-402(8).

"Retrofit" means retrofit as defined in Subsection 19-1-402(11).

"Retrofit equipment" means a diesel oxidation catalyst, a diesel particulate filter, or a closed crankcase filtration system, that has been approved for use in engine retrofit programs by the federal EPA or by a state whose testing protocols are recognized by the Board.

### **R307-123-3. Demonstration of Eligibility for OEM Vehicles.**

To demonstrate that a vehicle is eligible, proof of purchase shall be made by submitting the following documentation to the director:

(1)(a) A copy of the Manufacturer's Statement of Origin or equivalent manufacturer's documentation showing that the vehicle is an OEM vehicle; or

(b) a signed statement by an Automotive Service Excellence (ASE) certified technician that includes the vehicle identification number (VIN) and states that the vehicle is an OEM vehicle;

(2) An original or copy of the purchase order, customer invoice, or receipt including the VIN; and

(3) A copy of the current Utah vehicle registration.

### **R307-123-4. Demonstration of Eligibility for Vehicles Converted to [Clean Fuels] Natural Gas or Propane.**

To demonstrate that a conversion of a motor vehicle fueled by ~~[clean fuel]~~ natural gas or propane is eligible, proof of purchase shall be made by submitting the following documentation to the director:

(1) the VIN;

(2) the fuel type before conversion;

(3) the fuel type after conversion;

(4)(a) ~~[If the vehicle is registered within a county with an inspection and maintenance (I/M) program,]~~ a copy of the vehicle

inspection report from an approved county inspection and maintenance station showing that the converted ~~[clean fuel]~~ motor vehicle meets all county emissions requirements for all installed fuel systems if the motor vehicle is registered within a county with an inspection and maintenance (I/M) program; or

(b) in all other areas of the [S]state, a signed statement by an ASE certified technician that includes the VIN and states that the conversion is functional;

(5) each of the following:

(a) the conversion equipment manufacturer,

(b) the conversion equipment model number,

(c) the date of the conversion, and

(d) the name, address, and phone number of the person that converted the vehicle;

(6) ~~[proof that the conversion is certified by the director;]~~ the EPA Certificate of Conformity, or equivalent documentation that is consistent with requirements outlined in 40 CFR Part 85 and 40 CFR Part 86, as published in Federal Register Volume 76 Page 19830 on April 8, 2011, or an executive order from the California Air Resources Board;

(7) an original or copy of the purchase order, customer invoice, or receipt; and

(8) a copy of the current Utah vehicle registration, which shows that the vehicle is registered in the applicant's name.

### **R307-123-5. Demonstration of Eligibility for Vehicles Converted to Electricity.**

To demonstrate that a conversion of a motor vehicle to be powered by electricity is eligible, proof of purchase shall be made by submitting the following documentation to the director:

(1) the VIN;

(2) the fuel type before conversion;

(3) the fuel type after conversion;

(4) each of the following:

(a) the conversion equipment manufacturer;

(b) the conversion equipment model number;

(c) the date of the conversion; and

(d) the name, address, and phone number of the person that converted the motor vehicle;

(5) an original or copy of the purchase order, customer invoice, or receipt;

(6) a copy of the current Utah vehicle registration; and

(7) a signed statement by an ASE-certified technician that includes the VIN, the technician's ASE certification number, and states that the conversion is functional and that the converted motor vehicle does not have any auxiliary source of combustion emissions.

### **R307-123-6. Demonstration of Eligibility for Retrofitted Vehicles.**

To demonstrate that a retrofit of a motor vehicle is eligible, proof of purchase shall be made by submitting the following documentation to the director:

(1) the VIN;

(2) each of the following:

(a) the retrofit type;

([a]b) the retrofit equipment manufacturer[;];

([b]c) the retrofit equipment model number[;];

([e]d) the date of the retrofit[;]; and

([d]e) the name, address, and phone number of the person that retrofitted the vehicle;

- ([5]3) proof that the retrofit is certified by the director;
- (4) proof that the vehicle condition prior to retrofit is compliant with the retrofit's certification criteria;
- ([6]5) an original or copy of the purchase order, customer invoice, or receipt; and
- ([7]6) a copy of the current Utah vehicle registration.

**R307-123-7. Applicability.**

Provisions found in sections R307-121-5(6) and R307-121-6(3)(c) shall apply to all conversions as of April 8, 2011.

**KEY: air pollution, alternative fuels, grants and loans, motor vehicles**

**Date of Enactment or Last Substantive Amendment: [~~November 8, 2012~~2014]**

**Notice of Continuation: August 8, 2013**

**Authorizing, and Implemented or Interpreted Law: 19-2-104; 19-1-401; 59-7-605; 59-10-1009**

## Environmental Quality, Air Quality **R307-403-1** Purpose and Definitions

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 37987  
FILED: 09/12/2013

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** On 05/01/2013, the Air Quality Board adopted revisions to Rule R307-403 which included the establishment of volatile organic compounds (VOCs) as PM2.5 precursors in Utah's PM2.5 nonattainment areas. This rule change neglected to establish the significance level for VOC that is used to determine whether a modification at a major source is a major modification.

**SUMMARY OF THE RULE OR CHANGE:** This proposed rule change establishes the significant emission rate for VOC compounds at 40 tons/year.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-104 and Section 19-2-108

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There are no changes to the rule that affect the state; therefore, there are no anticipated costs or savings to the state.
- ◆ **LOCAL GOVERNMENTS:** There are no changes that apply to local government; therefore, there are no anticipated costs or savings.
- ◆ **SMALL BUSINESSES:** The proposed rule changes do not apply to small businesses; therefore, there are no anticipated costs or savings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed rule changes do not apply to persons other than small businesses, businesses, or local government entities; therefore, there are no anticipated costs or savings.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** By adding a significance level to the rule, no longer would all modifications be considered major modifications. This will result in fewer major sources having major modifications and will result in lessened costs associated with modeling and applying for major modification permits.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** By adding a significance level to the rule, no longer would all modifications be considered major modifications. This will result in fewer major sources having major modifications and will result in lessened costs associated with modeling and applying for major modification permits.

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

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

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2013**

**THIS RULE MAY BECOME EFFECTIVE ON: 12/05/2013**

**AUTHORIZED BY: Bryce Bird, Director**

**R307. Environmental Quality, Air Quality.  
 R307-403. Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas.  
 R307-403-1. Purpose and Definitions.**

(1) Purpose. This rule implements the federal nonattainment area permitting program for major sources as required by 40 CFR 51.165. In addition, the rule contains new source review provisions for some non-major sources in PM10 nonattainment areas. This rule supplements, but does not replace, the permitting requirements of R307-401.

(2) Unless otherwise specified, all references to 40 CFR in R307-403 shall mean the version that is in effect on July 1, 2012.

(3) Except as provided in R307-403-1(4), the definitions in 40 CFR 51.165(a)(1) are hereby incorporated by reference.

(4)(a) "Reviewing authority" means the director.

(b) In the definition of "significant" in 40 CFR 51.165(a)(1)(x) add the following text at the end of the pollutant emission rate for PM2.5: "; and in the Logan, Salt Lake City, and Provo PM2.5 nonattainment areas as defined in the July 1, 2010 version of 40 CFR 81.345, 40 tpy of volatile organic compounds."

(c) In the definition of "regulated NSR pollutant" in 40 CFR 51.165(a)(1)(xxxvii) the following subparagraph is added to 51.165(a)(1)(xxvii)(4): "(i) Volatile organic compounds are precursors to PM2.5 and ammonia is not a precursor to PM2.5 in the Logan, Salt Lake City, and Provo PM2.5 nonattainment areas as defined in the July 1, 2010 version of 40 CFR 81.345."

(e)(d) The following definitions or portions of definitions that apply to the equipment repair and replacement provisions are not incorporated because these provisions were vacated by the DC Circuit Court of Appeals on March 17, 2006:

(i) in the definition of "major modification" in 40 CFR 51.165(a)(1)(v)(C), the second sentence in subparagraph (1);

(ii) the definition of "process unit" in 40 CFR 51.165(a)(1)(xlili);

(iii) the definition of "functionally equivalent component" in 40 CFR 51.165(a)(1)(xliv);

(iv) the definition of "fixed capital cost" in 40 CFR 51.165(a)(1)(xlv); and

(v) the definition of "total capital investment" in 40 CFR 51.165(a)(1)(xlvi).

**KEY: air quality, nonattainment, offset**

**Date of Enactment or Last Substantive Amendment:** ~~July 1,~~ 2013

**Notice of Continuation:** June 6, 2012

**Authorizing, and Implemented or Interpreted Law:** 19-2-104; 19-2-108

## Environmental Quality, Drinking Water R309-511 Hydraulic Modeling Requirements

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38013

FILED: 09/16/2013

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Engineering Section of the Division of Drinking Water was tasked to review the Drinking Water Rule R309-500 series rules for revisions, clarifications, corrections, updates, etc.

**SUMMARY OF THE RULE OR CHANGE:** The current Rule R309-511 language does not adequately define the intent of the hydraulic modeling report and certification submission requirements. For this reason, language has been modified to more clearly define when a full hydraulic modeling report is required and when a professional engineer's certification of

hydraulic modeling is adequate. Other miscellaneous revisions, clarifications, corrections, and updates have also been made.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 19-4-104(1)(a)(ii)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** This rule amendment makes revisions, clarifications, corrections, updates, etc. to Rule R309-511. Because this rule amendment only makes this type of changes, it should not significantly increase Division staff time in administering the amended rule. Therefore, there should be no significant cost or savings from the proposed rule amendment to the state budget.

♦ **LOCAL GOVERNMENTS:** The Division of Drinking Water regulates public drinking water systems and local governments are not part of the regulated community. Because of the type of this rule amendment, it should not affect local governments. Therefore, there should be no significant cost or savings from the proposed rule amendment to local government.

♦ **SMALL BUSINESSES:** The Division of Drinking Water regulates public drinking water systems and small businesses are not part of the regulated community. Because of the type of this rule amendment, it should not affect small businesses. Therefore, there should be no significant cost or savings from the proposed rule amendment to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Division of Drinking Water regulates public drinking water systems and persons other than small businesses, businesses, and local government entities are not part of the regulated community, unless they are a public water system. Because of the type of this rule amendment, it should not affect persons other than small businesses, businesses, or local government entities. Therefore, there should be no significant cost or savings from the proposed rule amendment to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The Division of Drinking Water regulates public drinking water systems. This rule amendment makes revisions, clarifications, corrections, updates, etc. to Rule R309-511. Because of the type of these changes in the rule, it should not significantly increase the time public drinking water systems and their engineering consultants spend in submitting projects for plan review and approval. Therefore, there should be no significant cost or savings from this rule amendment to the public water systems.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This proposed rule amendment will not impact businesses. These changes will not have a significant effect to Public Drinking Water systems and will clarify compliance with the drinking water rules.

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Bob Hart by phone at 801-536-0054, by FAX at 801-536-4211, or by Internet E-mail at bhart@utah.gov
- ◆ Tammy North by phone at 801-536-4293, by FAX at 801-536-4211, or by Internet E-mail at tnorth@utah.gov
- ◆ Ying-Ying Macauley by phone at 801-536-4188, by FAX at 801-536-4211, or by Internet E-mail at ymacauley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2013

THIS RULE MAY BECOME EFFECTIVE ON: 11/08/2013

AUTHORIZED BY: Ken Bousfield, Director

**R309. Environmental Quality, Drinking Water.**

**R309-511. Hydraulic Modeling Requirements.**

**R309-511-1. Purpose.**

The purpose of this rule is to ensure that the increased water demand created by new construction will not adversely affect existing or new water users. This ~~[purpose]~~ will be accomplished by requiring the public water system or its agent to evaluate the water delivery system using a hydraulic model and ~~[certify]~~ certifying to the Director that the project will not adversely impact the system. It is intended that the public water system or its agent will use the findings of the hydraulic model to design improvements providing satisfactory service to both existing and new water users. This rule requires the public water system or its agent to certify that the design meets minimum flow requirements of R309-510 and pressure requirements as set forth in rule R309-105-9.

**R309-511-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

**R309-511-3. Definitions.**

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

"The public water system or its agent" is the individual responsible for signing the certification and preparing the Hydraulic Modeling Design Elements Report. This individual shall be a registered professional engineer, licensed to practice in the State of Utah.

**R309-511-4. General.**

(1) Rule Applicability.

(a) This rule applies to public drinking water systems categorized as community water systems as defined by rule R309-100-4(2), and to non-transient non-community water systems that have system demands higher than required by R309-510 or with demands for fire suppression. All public drinking water systems are still required to comply with R309-550-5 with respect to water main design, which may require a hydraulic analysis. ~~[Further, Certifications as defined by this rule, shall be part of the submission of plans for any public drinking water project as defined in rule R309-500-5(1), except projects that meet one of the following criteria:]~~ Submission of the Hydraulic Model Report, as defined in R309-511-7 and 8, is not required for projects meeting one of the following criteria:

(i) ~~[Public]~~ public drinking water projects that will not result in negative hydraulic impact, such as, but not limited to[-]:

(A) addition of new sources in accordance with R309-515[-];

(B) adding disinfection, fluoridation, or other treatment facilities that do not adversely impact flow, pressure or water quality[-];

(C) storage tank repair or recoating[-];

(D) water main additions with no expansion of service ~~(i.e. e.g., looping lines)[-];~~

(E) adding transmission lines to storage or sources without adding service connections[-];

(F) adding pump station(s) from source or storage upstream of distribution service connections[-]; or

(G) public drinking water projects that have negligible hydraulic impact as determined by the Director.

(ii) ~~[Public]~~ public drinking water projects that are a part of a planned phase of a master plan previously approved by the Director per R309-500-6(3)(a)[-];

(iii) ~~[The]~~ the water system maintains and updates a hydraulic model of the system, and has designated a professional engineer responsible for overseeing the hydraulic analysis in meeting the requirements of R309-511 in writing to the Director[-]; or

(iv) ~~[The]~~ the water system has a means that is deemed acceptable by the Director to gather ~~[real-time]~~ real-time data indicative of hydraulic conditions in model scenarios of R309-511-5(9), and the ~~[real-time]~~ real-time data ~~[shows]~~ show the system is capable of meeting the flow and pressure requirements for the additional demands placed on the existing system.

(b) Professional Engineer's certification of the hydraulic modeling results, as defined in R309-511-4(2)(c) and R309-511-6(1), shall be part of the submission of plans for any public drinking water project as defined in R309-500-5(1) except for the projects listed under R309-511-4(1)(a)(i).

(c) A public water system must clearly identify the reason in the plan submittal if it wishes to demonstrate that R309-511 does not apply to a new construction project. In some cases, supporting documentation may be needed.

~~[(e)]~~ (d) If there are existing deficiencies in the water system, the Director may allow a new construction project to proceed in accordance with the plan review requirements in R309-

500 through 550 as long as the public water system demonstrates that the new construction project is located in a hydraulically separated area and does not adversely impact the existing deficiencies, or does not create new deficiencies within the water system.

(2) Rule Elements.

The public water system or its agent, in connection with the submission of plans and specifications to the Director, shall perform the following:

(a) ~~[Conduct]~~conduct a hydraulic modeling evaluation consistent with the requirements as set forth in this rule and R309-510. This model shall include either the entire public drinking water system or the specific areas affected by the new construction if hydraulically separated areas exist within the water system[-];

(b) ~~[Calibrate]~~calibrate the model using field measurements and observations[-];

(c) ~~[Certify]~~certify in writing to the Director that the design complies with the sizing requirements of R309-510 and the minimum water pressures of R309-105-9[-];

(d) ~~[Prepare]~~prepare and submit a Hydraulic Model Design Elements Report (see R309-511-7)[-]; and,

(f) ~~[Prepare]~~prepare a System Capacity and Expansion Report if required (see R309-511-8).

**R309-511-5. Requirements for the Hydraulic Model.**

The following minimum requirements must be incorporated into hydraulic models that are constructed to meet these requirements:

(1) ~~[Include]~~include at least 80 percent of the total pipe lengths in the distribution system affected by the proposed project[-];

(2) ~~[Account]~~account for 100 percent of the flow in the distribution system affected by the proposed project. Water demand allocation must account for at least 80 percent of the flow delivered by the distribution system affected by the proposed project if customer usage in the system is metered[-];

(3) ~~[Include]~~include all 8-inch diameter and larger pipes. Pipes smaller than 8-inch diameter shall also be included if they connect pressure zones, storage facilities, major demand areas, pumps, and control valves, or if they are known or expected to be significant conveyers of water such as fire suppression demand. Model piping does not need to include service lateral piping[-];

(4) ~~[Include]~~include all pipes serving areas at higher elevations, dead ends, remote areas of a distribution system, and areas with known under-sized pipelines[-];

(5) ~~[Include]~~include all storage facilities and accompanying controls or settings applied to govern the open/closed status of the facility that reflect standard operations[-];

(6) ~~[If]~~if applicable, include all pump stations, drivers (constant or variable speed), and accompanying controls or settings applied to govern their on/off/speed status that reflect various operating conditions and drivers[-];

(7) ~~[Include]~~include all control valves or other system features that could significantly affect the flow of water through the distribution system (~~[i.e.]~~e.g., interconnections with other ~~[systems;]~~systems and pressure reducing valves between pressure zones) reflecting various operating conditions[-];

(8) ~~[Impose]~~impose peak day and peak instantaneous demands to the water system's facilities. These demands may be peak day and peak instantaneous demands per R309-510, the reduced demand approved by the Director per R309-510-5, or the demands experienced by the water system ~~[which]~~that are higher than the values listed in R309-510. This may require multiple model simulations to account for the varying water demand conditions. In some cases, extended period simulations are needed to evaluate changes in operating conditions over time. This will depend on the complexity of the water system, extent of anticipated fire event and nature of the new expansion[-];

(9) ~~[Calibrate]~~calibrate the model to adequately represent the actual field conditions using field measurements and observations[-];

(10) ~~[If]~~if fire hydrants are connected to the distribution system, account for fire suppression requirements specified by local fire authority or use the default values stated in R309-510-9(4). For significant fire suppression demand, extended simulations must contain the run time for the period of the anticipated fire event. In some cases, a ~~[steady-state]~~steady-state model may be sufficient for residential fire suppression demand[-]; and,

(11) ~~[Account]~~account for outdoor use, such as irrigation, if the drinking water system supplies water for outdoor use.

**R309-511-6. Elements of the Public Water System or Its Agent's Certification.**

(1) The public water system or its agent's certification.

The Director relies upon the professional judgment of the registered professional engineer who certifies that the hydraulic analysis and evaluation have been done properly and that the flow and pressure requirements have been met. The public water system or its agent shall, after a thorough review, submit a document to the Director certifying that the following requirements have been met:

(a) ~~[The]~~the hydraulic model requirements as set forth in rule R309-511-5[-];

(b) ~~[The]~~the appropriate demand requirements as specified in this rule and rule R309-510 have been used to evaluate various operating conditions of the public drinking water system[-];

(c) ~~[The]~~the hydraulic model predicts that new construction will not result in any service connection within the new expansion area not meeting the minimum distribution system pressures as specified in R309-105-9[-];

(d) ~~[The]~~the hydraulic model predicts that new construction will not decrease the pressures within the existing water system ~~[to—]~~such that the minimum distribution system pressures are not met, as specified in R309-105-9~~[-are not met.]~~;

(e) ~~[The]~~the calibration methodology is described and the model is sufficiently accurate to represent conditions likely to be experienced in the water delivery system[-]; and,

(f) ~~[Identify]~~identify the hydraulic modeling method, and if computer software was used, the software name and version used.

(2) The format of the public water system or its agent's submission.

The public water system or its agent shall submit to the Director the following documentation:

(a) ~~[The]~~the certification as required in R309-511-6(1). The certification shall be signed, dated, and stamped by a registered professional engineer, licensed to practice in the State of Utah[-];

(b) ~~[A]~~a Hydraulic Model Design Elements Report (see R309-511-7). The document shall be signed, dated, and stamped by a registered professional engineer, licensed to practice in the State of Utah~~[-]; and~~.

(c) ~~[For]~~for community public water systems, the water system management shall certify that they have received a copy of input and output data for the hydraulic model with the simulation showing the worst case results in terms of water system pressure and flow.

(3) The submission of supporting documentation.

The public water system or its agent shall submit a System Capacity and Expansion Report (see R309-511-8) if requested by the Director. The document shall be signed, dated, and stamped by a registered professional engineer, licensed to practice in the State of Utah.

#### **R309-511-7. Hydraulic Model Design Elements Report.**

The public water system or its agent shall prepare a Hydraulic Model Design Elements Report along with, and in support of, the certification stated in R309-511-6(1). The Hydraulic Model Design Elements Report shall contain, ~~and~~but is not limited to, the following elements:

(1) ~~[If]~~if the public drinking water system provides water for outdoor use, the report must describe the criteria used to estimate this demand. If the irrigation demand map in R309-510-7(3) is not used, the report shall provide justification for the alternative demands used in the model. If the irrigation demands are based on the map in R309-510-7(3) the report must identify the irrigation zone number, a statement and/or map of how the irrigated acreage is spatially distributed, and the total estimated irrigated acreage. The indicated irrigation demands must be used in the model simulations~~[-];~~

(2) ~~[The]~~the total number of connections served by the water system including existing connections and anticipated new connections served by the water system after completion of the construction of the project~~[-];~~

(3) ~~[The]~~the total number of equivalent residential connections (ERC) including both existing connections as well as anticipated new connections associated with the project. The number of ~~[ERCs]~~ERCs must include high as well as ~~[low-volume]~~low-volume water users. The determination of the ~~[equivalent residential connections]~~ERCs shall be based on flow requirements using the anticipated demand as outlined in R309-510, or based on alternative sources of information that are deemed acceptable by the Director~~[-];~~

(4) ~~[Provide]~~the methodology used for calculating demand and allocating it to the model; a summary of pipe length by diameter; a hydraulic schematic of the distribution piping showing pressure zones, general pipe connectivity between facilities and pressure zones, storage, elevation and sources; and a list or ranges of values of the friction coefficient used in the hydraulic model according to pipe material and condition in the system. All coefficients of friction used in the hydraulic analysis shall be consistent with standard practices~~[-];~~

(5) ~~[A]~~a statement stating either "yes fire hydrants exist or will exist within the system" or "there are no fire hydrants connected to the system and there is no plan to add fire hydrants with this project." Either statement will require the identification of

the local fire authority's name, address, and contact information, as well as the fire flow quantity and duration if required~~[-];~~

(6) ~~[The]~~the locations of the lowest pressures within the distribution system, and areas identified by the hydraulic model as not meeting each scenario of the minimum pressure requirements in R309-105-9~~[-]; and~~

(7) ~~[Calibration]~~calibration method and quantitative summary of the calibration results (~~[i.e.]~~e.g., comparison tables, graphs).

#### **R309-511-8. System Capacity and Expansion Report.**

The public water system or its agent may be required to prepare a System Capacity and Expansion Report along with a Hydraulic Model Design Elements Report, as specified above, in support of the certification. It is intended that the System Capacity and Expansion Report be prepared, maintained, and used by the public water system's management to make informed decisions about its capability to provide water service to future customers and need only be submitted to the Division if requested by the Director. The System Capacity and Expansion Report shall consist of the elements described in R309-110-4 under the definition of "Master Plan" and shall be updated if significant growth or changes to the water system have occurred.

**KEY: drinking water, hydraulic modeling**

**Date of Enactment or Last Substantive Amendment: ~~[August 28, 2013]~~**

**Authorizing, and Implemented or Interpreted Law: 19-4-104**

## Environmental Quality, Drinking Water **R309-515** Facility Design and Operation: Source Development

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 38012

FILED: 09/16/2013

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Engineering Section of the Division of Drinking Water was tasked to review the Drinking Water Rule R309-500 series rules for revisions, clarifications, corrections, updates, etc.

**SUMMARY OF THE RULE OR CHANGE:** It has been several years since Rule R309-515 was reviewed and revised as a whole. This rule contains several outdated and incorrect references to the Division of Water Rights rules and AWWA standards. The proposed modifications to Rule R309-515 include the following: 1) clarify evidence of a legal right to divert water for drinking water sources; 2) clarify standby power requirements for community systems; 3) add well seal

depth requirement for drinking water wells equipped with pitless adapter or unit; 4) modify well gravel pack requirement to account for what is commercially available for use; 5) require well capping and abandonment be done in accordance to Division of Water Right's Rules; 6) define safe yield of a well. Outline a procedure to determine the safe yield of a spring; 7) restrict the well pump size to the pumping rate used for the constant-rate aquifer drawdown test; 8) clarify the required order of well head discharge components; 9) specify design requirement for the well pump-to-waste line; and 10) correct numerous outdated and incorrect references. Other miscellaneous revisions, clarifications, corrections, and updates have also been made.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-4-104(1)(a)(ii)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule amendment makes revisions, clarifications, corrections, updates, etc. to Rule R309-515. Because this rule amendment only makes this type of changes, it should not significantly increase division staff time in administering the amended rule. Therefore, there should be no significant cost or savings from the proposed rule amendment to the state budget.

◆ **LOCAL GOVERNMENTS:** The Division of Drinking Water regulates public drinking water systems and local governments are not part of the regulated community. Because of the type of this rule amendment, it should not affect local governments. Therefore, there should be no significant cost or savings from the proposed rule amendment to local government.

◆ **SMALL BUSINESSES:** The Division of Drinking Water regulates public drinking water systems and small businesses are not part of the regulated community. Because of the type of this rule amendment, it should not affect small businesses. Therefore, there should be no significant cost or savings from the proposed rule amendment to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Division of Drinking Water regulates public drinking water systems and persons other than small businesses, businesses, and local government entities are not part of the regulated community, unless they are a public water system. Because of the type of this rule amendment, it should not affect persons other than small businesses, businesses, or local government entities. Therefore, there should be no significant cost or savings from the proposed rule amendment to persons to other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The Division of Drinking Water regulates public drinking water systems. This rule amendment makes revisions, clarifications, corrections, updates, etc. to R309-515. Because of the type of these changes in the rule, it should not significantly increase the time public drinking water systems and their engineering consultants spend in submitting projects for plan review and approval. Therefore, there

should be no significant cost or savings from this rule amendment to the public water systems.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This proposed rule amendment will not impact businesses. These changes will not have a significant effect to Public Drinking Water systems and will clarify compliance with the drinking water rules.

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

ENVIRONMENTAL QUALITY  
DRINKING WATER

THIRD FLOOR

195 N 1950 W

SALT LAKE CITY, UT 84116-3085

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Bob Hart by phone at 801-536-0054, by FAX at 801-536-4211, or by Internet E-mail at bhart@utah.gov

◆ Tammy North by phone at 801-536-4293, by FAX at 801-536-4211, or by Internet E-mail at tnorth@utah.gov

◆ Ying-Ying Macauley by phone at 801-536-4188, by FAX at 801-536-4211, or by Internet E-mail at ymacauley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2013

THIS RULE MAY BECOME EFFECTIVE ON: 11/08/2013

AUTHORIZED BY: Ken Bousfield, Director

### **R309. Environmental Quality, Drinking Water.**

#### **R309-515. Facility Design and Operation: Source Development.**

##### **R309-515-4. General.**

(1) Issues to be Considered.

The selection, development, and operation of a public drinking water source must be done in a manner [which]that will protect public health and assure that all required water quality standards, as described in R309-200, are met.

(2) Communication with the Division.

Because of the issues described above in (1), engineers are advised to work closely with the Division to help assure that sources are properly sited, developed, and operated.

(3) Number of Sources and Quantity Requirements.

Community water systems [established after January 1, 1998]serving more than 100 connections shall have a minimum of two sources, except where served by a surface water treatment plant. [Community Water Systems established prior to that date, currently serving more than 100 connections, shall obtain a separate source no later than January 1, 2000.—]For all systems, the total developed source [capacity(ies)]capacity shall equal or exceed the peak day demand of the system. Refer to R309-510-7 of these rules for procedure to estimate the peak day demand.



## (4) Quality Requirements.

In selecting a source of water for development, the designing engineer shall demonstrate to the satisfaction of the Director that the source(s) selected for use in public water systems are of satisfactory quality, or can be treated in a manner so that the quality requirements of R309-200 can be met.

## (5) Initial Analyses.

All new drinking water sources, unless otherwise noted below, shall be analyzed for the following:

(a) ~~[A]a~~ all the primary and secondary inorganic contaminants listed in R309-200, Table 200-1 and Table 200-5 (excluding Asbestos unless it would be required by R309-205-5(2)) [;];

(b) Ammonia as N; Boron; Calcium; ~~[Chromium, Hex as Cr;]~~Copper; Lead; Magnesium; Potassium; Turbidity, as NTU; Specific Conductivity at 25 degrees Celsius, ~~[µ-]micro~~ mhos/cm; Bicarbonate; Carbon Dioxide; Carbonate; Hydroxide; Phosphorous, Ortho as P; Silica, dissolved as SiO<sub>2</sub>; Surfactant as MBAS; Total Hardness as CaCO<sub>3</sub>; and Alkalinity as CaCO<sub>3</sub>[;];

(c) ~~[Pesticides]~~pesticides, ~~[PCB's]~~PCBs and ~~[SOC's]~~SOCs as listed in R309-200-5(3)(a), Table 200-2 unless the system is a transient non-community ~~[pws]~~PWS or, if a community ~~[pws]~~PWS or non-transient non-community ~~[pws]~~PWS, ~~[they have]~~has received waivers in accordance with R309-205-6(1)(f). The following six constituents have been excused from monitoring in the State by the EPA, dibromochloropropane, ethylene dibromide, Diquat, Endothall, glyphosate and Dioxin[;];

(d) ~~[VOC's]~~VOCs as listed in R309-200-5(3)(b), Table 200-3 unless the system is a transient non-community ~~[pws]~~PWS; and,

(e) ~~[Radiologic]~~radiologic chemicals as listed in R309-200-5(4) unless the system is a non-transient non-community ~~[pws]~~PWS or a transient non-community ~~[pws]~~PWS.

All analyses shall be performed by a certified laboratory as required by R309-205-4 (Specially prepared sample bottles are required),

## (6) Source Classification.

Subsection R309-505-7(1)(a)(i) provides information on the classification of water sources. The Director shall classify all existing or new sources as either:

(a) ~~[Surface]~~surface water or ground water under direct influence of surface water which ~~[will require]~~requires conventional surface water treatment or an approved equivalent[;]; or as,

(b) ~~[Ground]~~ground water not under the direct influence of surface water.

## (7) Latitude and Longitude.

The latitude and longitude, to at least the nearest second, or the location by section, township, range, and course and distance from an established outside section corner or quarter corner of each point of diversion shall be submitted to the Director prior to source approval.

**R309-515-5. Surface Water Sources.**

## (1) Definition.

A surface water source, as is defined in R309-110, shall include, but not be limited, to tributary systems, drainage basins, natural lakes, artificial reservoirs, impoundments and springs or wells ~~[which]that~~ have been classified as being directly influenced

by surface water. Surface water sources will not be considered for culinary use unless they can be rendered acceptable by conventional surface water treatment or other equivalent treatment techniques acceptable to the Director.

## (2) Pre-design Submittal.

The following information must be submitted to the Director and approved in writing before commencement of design of diversion structures and/or water treatment facilities:

(a) ~~[A]a~~ copy of the chemical analyses required by R309-200 and described in R309-515-4(5) above[;]; and,

(b) ~~[A]a~~ survey of the watershed tributary to the watercourse along which diversion structures are proposed. The survey shall include, but not be limited to:

(i) determining possible future uses of impoundments or reservoirs[;];

(ii) the present stream classification by the Division of Water Quality, any obstacles to having stream(s) reclassified 1C, and determining degree of watershed control by owner or other agencies[;];

(iii) assessing degree of hazard to the supply by accidental spillage of materials that may be toxic, harmful or detrimental to treatment processes[;];

(iv) obtaining samples over a sufficient period of time to assess the microbiological, physical, chemical and radiological characteristics and variations of the water[;];

(v) assessing the capability of the proposed treatment process to reduce contaminants to applicable standards[;]; and,

(vi) consideration of currents, wind and ice conditions, and the effect of tributary streams at their confluence.

## (3) Pre-construction Submittal.

Following approval of a surface water source, the following additional information must be submitted for review and approval prior to commencement of construction:

(a) ~~[Evidence that the water system owner has a legal right to divert water from the proposed source for domestic or municipal purposes]~~acceptable evidence that the water system has a legal right to divert water for the proposed uses from the proposed sources;

(b) ~~[Documentation regarding the minimum firm yield]~~minimum quantity ~~[which]that~~ the ~~[watercourse]~~surface water source is capable of producing (see R309-515-5(4)(a) below); and

(c) ~~[Complete]~~complete plans and specifications and supporting documentation for the proposed treatment facilities ~~[so as]~~to ascertain compliance with R309-525 or R309-530.

## (4) Quantity.

The quantity of water from surface sources shall:

(a) ~~[Be]~~be assumed to be no greater than the low flow of a ~~[25-year]~~25-year recurrence interval or the low flow of record for these sources when 25 years of records are not available;

(b) ~~[Meet]~~meet or exceed the anticipated peak day demand for water as estimated in R309-510-7 and provide a reasonable surplus for anticipated growth; and,

(c) ~~[Be]~~be adequate to compensate for all losses such as silting, evaporation, seepage, and sludge disposal, which would be anticipated in the normal operation of the treatment facility.

## (5) Diversion Structures.

Design of intake structures shall provide for:

(a) ~~[Withdrawal]~~withdrawal of water from more than one level if quality varies with depth;

(b) [~~Intake~~intake] of lowest withdrawal elevation located at sufficient depth to be kept submerged at the low water elevation of the reservoir;

(c) [~~Separate~~separate] facilities for release of less desirable water held in storage;

(d) [~~Occasional~~occasional] cleaning of the inlet line;

(e) [~~A~~a] diversion device capable of keeping large quantities of fish or debris from entering an intake structure; and,

(f) [~~Suitable~~suitable] protection of pumps where used to transfer diverted water (refer to R309-540-5).

(6) Impoundments.

The design of an impoundment reservoir shall provide for, where applicable:

(a) [~~Removal~~removal] of brush and trees to the high water level;

(b) [~~Protection~~protection] from floods during construction;

(c) [~~Abandonment~~abandonment] of all wells, which may be inundated (refer to applicable requirements of the Division of Water Rights); and,

(d) [~~Adequate~~adequate] precautions to limit nutrient loads.

### R309-515-6. Ground Water - Wells.

(1) Required Treatment.

If properly developed, water from wells may be suitable for culinary use without treatment. A determination [~~as to~~concerning] whether treatment may be required can only be made after the source has been developed and evaluated.

(2) Standby Power.

Water suppliers [~~, particularly community water suppliers, should~~] shall assess the capability of their system in the event of a power outage. If [~~gravity fed spring sources are not available,~~] a community water system has no naturally flowing water sources, such as springs or flowing wells, one or more of the system's [~~well~~] sources shall be equipped for operation during power outages. In this event:

(a) [~~To~~to] ensure continuous service when the primary power has been interrupted, a redundant power supply shall be provided [~~through connection to at least two independent public power sources, or portable or in-place auxiliary power available as an alternative; and~~] A redundant power supply may include a transfer switch for auxiliary power such as a generator or a power supply service with coverage from two independent substations.

(b) [~~When~~when] automatic pre-lubrication of pump bearings is necessary, and an auxiliary power supply is provided, the pre-lubrication line shall be provided with a valved by-pass around the automatic control, or the automatic control shall be wired to the emergency power source.

(3) The Utah Division of Water Rights.

The Utah Division of Water Rights (State Engineer's Office) regulates the drilling of water wells. Before the drilling of a well commences, the well driller must receive a start card from the State Engineer's Office. For public drinking water supply wells, the rules of R655-4 [~~still~~] apply and [~~must~~shall] be followed in addition to these rules.

(4) Source Protection.

Public drinking water systems are responsible for protecting their sources from contamination. The selection of a well location shall only be made after consideration of the requirements of R309-600. Sources shall be located in an area [~~which~~that] will minimize threats from existing or potential sources of pollution.

Generally, sewer lines may not be located within zone one and zone two of a public drinking water system's source protection zones. However, if the following precautions are taken, sewer lines may be permitted within a public drinking water system's source protection zone one and zone two. Sewer lines shall meet the conditions identified in R309-600-13(3), and shall be specially constructed as follows throughout zone one in aquifers classified as protected, and zones one and two, if the aquifer is classified as unprotected [~~, as follows~~].

(a) [~~sewer~~Sewer] lines shall be constructed to remain watertight. The lines shall be [~~deflection tested~~deflection-tested] in accordance with the Division of Water Quality Rule R317-3. The lines shall be [~~video inspected~~video-inspected] for any defect following completion of construction and before being placed in service. The sewer pipe material shall be:

(i) high density polyethylene (HDPE) pipe with a PE3408 or PE4710 rating from the Plastic Pipe Institute and have a Dimension Ratio (DR) of 17 or less, and all joints shall be [~~fusion welded~~fusion-welded] or,

(ii) polyvinyl chloride (PVC) pipe meeting AWWA Specification C900 or C905 and have a DR of 18 or less. PVC pipe shall be either restrained gasketed joints or shall be [~~fusion~~fusion-welded]. Solvent cement joints shall not be acceptable. The PVC pipe shall be clearly identified when installed, by marking tape or other means as a sanitary sewer line [~~;~~]; or,

(iii) ductile iron pipe with ceramic epoxy lining, polyethylene encasement, restrained joints, and a minimum pressure class of 200.

(b) [~~procedures~~Procedures] for leakage tests shall be specified and comply with Division of Water Quality Rule R317-3 requirements.

(c) [~~lateral~~Lateral] to main connection shall be [~~fusion welded~~fusion-welded], [~~shop fabricated~~shop-fabricated], or saddled with a mechanical clamping watertight device designed for the specific pipe [~~;~~].

(d) [~~inlet~~Inlet] and outlet sewer pipes shall be joined to a manhole with a gasketed flexible watertight connection [~~;~~].

(e) [~~the~~The] sewer pipe shall be laid with no greater than 2 percent deflection at any joint [~~;~~].

(f) [~~backfill~~Backfill] shall be compacted to not less than 95 percent of maximum laboratory density as determined in accordance with ASTM Standard D-690 [~~;~~].

(g) [~~sewer~~Sewer] manholes shall meet the following requirements [~~;~~].

(i) [~~the~~The] manholes shall be constructed of reinforced concrete [~~;~~].

(ii) [~~manhole~~Manhole] base and walls, up to a point at least 12 inches above the top of the upper most sewer pipe entering the manhole, shall be fabricated in a single concrete pour without joints [~~;~~and].

(iii) [~~the~~The] manholes shall be air pressure tested after installation.

(h) ~~in~~ In unprotected aquifers, an impermeable cutoff wall shall be constructed in all sewer trenches on the up-gradient edge of zone two. In protected aquifers, an impermeable cutoff wall shall be constructed in all sewer trenches on the up-gradient edge of zone one.

(5) Outline of Well Approval Process.

(a) Well drilling shall not commence until both of the following items are submitted and receive a favorable review:

(i) a Preliminary Evaluation Report on source protection issues as required by R309-600-13, and

(ii) engineering plans and specifications governing the well drilling, prepared by a licensed well driller holding a current Utah Well Drillers ~~Permit if previously authorized by the Director~~ License or prepared, signed, and stamped by a licensed professional engineer or professional geologist licensed to practice in Utah.

(b) ~~Grouting~~ Inspection ~~During~~ of Well Sealing During Construction.

(i) Authorized Individuals

(A) The following individuals are authorized to witness the well sealing procedure for a public drinking water well:

(I) ~~An~~ An engineer or a geologist from the Division of Drinking Water~~;~~;

(II) ~~A~~ a district engineer of the Department of Environmental Quality~~;~~;

(III) ~~An~~ an authorized representative of the Division of Water Rights~~;~~ or,

(IV) ~~An~~ an individual having written authorization from the Director and meeting the below listed criteria.

(B) At the time of the well sealing an individual, who is authorized per (i)(A)(IV), shall present to the well driller a copy of the letter authorizing him or her to witness a well sealing on behalf of the Division of Drinking Water. A copy of this letter shall be appended to the witness certification letter.

(C) At least three days before the anticipated well ~~grouting~~ sealing, the well driller shall arrange for an authorized witness listed in (i)(A) above to witness the procedure. (See R309-515-6(6)(i)).

(ii) Obtaining Authorization

(A) To be authorized per (i)(A)(IV) above to witness a well sealing procedure, an individual must have no relationship to the driller or the well's owner ~~and~~. The individual must have at least five years professional experience designing wells, supervising well drilling or other equivalent experience associated with well drilling or well sealing that ~~are~~ is acceptable to the Director.

(B) Individuals, desiring the Director's authorization to witness a well ~~grouting~~ sealing procedure, shall provide the following information to the Director for review over his or her signature attesting to the correctness of the information:

(I) ~~A~~ a detailed description of the applicant's experience with well drilling projects, including number of years of experience and type of work. Three references confirming this professional experience are required.

(II) ~~Evidence~~ evidence of licensure as a professional engineer or professional geologist in Utah.

(III) ~~No~~ no relationship may exist between a person authorized to witness well sealings and a well driller that would serve as the basis for suspicion of favoritism, leniency, or punitive action in the performance of this task. Examples of such

relationships would be~~;~~ family; former ~~long~~ long-term employment associations; business partnerships, either formal or informal; etc. The Director's decision, with right of appeal as provided in R305-7, shall be accepted relative to what constitutes a conflict of interest or a relationship sufficient to disqualify an applicant from all or specific witness opportunities.

(IV) An acknowledgement that he/she would not be acting as an agent or employee of the State of Utah and any losses incurred while acting as a witness would not be covered by governmental immunity or Utah's insurance.

(VI) Willingness to follow established protocols and attend such training events as may be required by the Director.

(VII) Complete with a minimum 75~~%~~ percent passing grade, an examination on water well drilling rules, as offered by the Division of Water Rights.

(C) The Director may rescind the authorization if an individual fails to comply with the criteria or conditions of authorization listed above.

(iii) Well Seal Certification

The individual witnessing the well sealing procedure shall provide a signed letter, including the following information, to the Director within 30 days of the well sealing ~~including the following~~:

(A) ~~Certification~~ certification that the well sealing procedure met all the requirements of Rule R309-515-6(6)(i);

(B) ~~The~~ the water right under which the well was drilled and the well driller's license number;

(C) ~~The~~ the public water system name (if applicable);

(D) ~~The~~ the latitude and longitude of the well and method used for its determination;

(E) ~~The~~ the well head's approximate elevation;

(F) ~~Casing~~ casing diameter(s), length(s), and material(s);

(G) ~~The~~ the size of the annulus between the borehole and casing;

(H) ~~A~~ a description of the sealing process including the sealing material used, its volume, density, method of placement, and depth from surface; and,

(I) ~~The~~ the names and company affiliations of other individuals observing the sealing procedure including, but not limited to, the well driller, the well owner, and/or a consultant.

(c) After completion of the well drilling, the following information shall be submitted and receive a favorable review before water from the well can be introduced into a public water system:

(i) a copy of the "Report of Well Driller" as required by the State Engineer's Office which is complete in all aspects and has been stamped as received by the same;

(ii) a copy of the letter from the authorized individual described in R309-515-6(5)(b) above, indicating inspection and confirmation that the well was grouted in accordance with the well drilling specifications and the requirements of this rule;

(iii) a copy of the  ~~pump~~  aquifer drawdown test data, as a minimum, including the yield  ~~vs.~~  versus drawdown test  data, as described in R309-515-6(10)(b) along with comments  ~~/~~  and interpretation by a licensed professional engineer or licensed professional geologist of the graphic drawdown information required by R309-515-6(10)(b)(vi)(E);

(iv) a copy of the chemical analyses required by R309-515-4(5);

(v) ~~[documentation indicating that the water system owner has a right to divert water for domestic or municipal purposes from the well source]~~ acceptable evidence that the water system owner has a legal right to divert water for the proposed use(s) from the well source(s);

(vi) a copy of complete plans and specifications prepared, signed, and stamped by a licensed professional engineer covering the well housing, equipment, and diversion piping necessary to introduce water from the well into the distribution system; and

(vii) a bacteriological analysis of water obtained from the well after installation of permanent equipment, disinfection, and flushing.

(d) An Operation Permit shall be obtained in accordance with R309-500-9 before any water from the well is introduced into a public water system.

(6) Well Materials, Design, and Construction.

(a) ANSI/NSF Standards 60 and 61 Certification.

All interior surfaces must consist of products complying with ANSI/NSF Standard 61. This requirement applies to drop pipes, well screens, coatings, adhesives, solders, fluxes, pumps, switches, electrical wire, sensors, and all other equipment or surfaces which may contact the drinking water.

All substances introduced into the well during construction or development shall be certified to comply with ANSI/NSF Standard 60. This requirement applies to drilling fluids (biocides, clay thinners, defoamers, foamers, loss circulation materials, lubricants, oxygen scavengers, viscosifiers, weighting agents) and regenerants. ~~[This requirement also applies to well grouting and sealing materials which may come in direct contact with the drinking water.]~~

(b) Permanent Steel Casing Pipe shall:

(i) be new single steel casing pipe meeting AWWA Standard A-100, ASTM or API specifications and having a minimum weight and thickness as given in Table ~~[4]~~ 6 found in R655-4-~~[9.4]~~ 11.2.3 of the Utah Administrative Code (Administrative Rules for Water Well Drillers, adopted ~~[January 1, 2004]~~ April 11, 2011, Division of Water Rights);

(ii) have additional thickness and weight, if minimum thickness is not considered sufficient to assure reasonable life expectancy of the well;

(iii) be capable of withstanding forces to which it is subjected;

(iv) be equipped with a drive shoe when driven;

(v) have full circumferential welds or threaded coupling joints; and

(vi) project at least 18 inches above the anticipated final ground surface and at least 12 inches above the anticipated pump house floor level. At sites subject to flooding, the top of the well casing shall terminate at least three feet above the ~~[400-year]~~ 100-year flood level or the highest known flood elevation, whichever is higher.

(c) Non-Ferrous Casing Material.

The use of any non-ferrous material for a well casing shall receive prior approval of the Director based on the ability of the material to perform its desired function. Thermoplastic water well casing pipe shall meet ~~[ANSI/ASTM Standard F480-76]~~ AWWA Standard A100-06 and shall bear the logo NSF-wc indicating compliance with NSF Standard 14 for use as well casing.

(d) Disposal of Cuttings.

Cuttings and waste from well drilling operations shall not be discharged into a waterway, lake, or reservoir. The rules of the Utah Division of Water Quality must be observed with respect to these discharges.

(e) Packers.

Packers, if used, shall be of material that will not impart taste, odor, toxic substances, or bacterial contamination to the well water. Lead[-] or partial lead packers are specifically prohibited.

(f) Screens.

The use of well screens is recommended where appropriate and, if used, they shall:

(i) be constructed of material resistant to damage by chemical action of groundwater or cleaning operations;

(ii) have size of openings based on sieve analysis of formations or gravel pack materials;

(iii) have sufficient diameter to provide adequate specific capacity and low aperture entrance velocities;

(iv) be installed so that the operating water level remains above the screen under all pumping conditions; and,

(v) be provided with a bottom plate or wash-down bottom fitting of the same material as the screen.

(g) Plumbness and Alignment Requirements.

Every well shall be tested for plumbness and vertical alignment in accordance with AWWA Standard A100. Plans and specifications submitted for review shall:

(i) have the test method and allowable tolerances clearly stated in the specifications[-]; and,

(ii) clearly indicate any options the design engineer may have if the well fails to meet the requirements. Generally, wells may be accepted if the misalignment does not interfere with the installation or operation of the pump or uniform placement of grout.

(h) Casing Perforations.

The placement of perforations in the well casing shall:

(i) be ~~[so-]~~ located, [to permit-] as far as practical, to permit the uniform collection of water around the circumference of the well casing[-]; and,

(ii) be of dimensions and size to restrain the water bearing soils from entrance into the well.

(i) ~~[Grouting]~~ Well Sealing Techniques and Requirements.

For all public drinking water wells, the annulus between the outermost well casing and the borehole wall shall be ~~[grouted]~~ sealed with grout to a depth of at least 100 feet below the ground surface unless an "exception" is issued by the Director (see R309-500-4(1)). If more than one casing is used, including a conductor casing, the annulus between the outermost casing and the next inner casing shall be sealed with grout (meeting the ~~[grouting]~~ sealing materials requirements of R309-515-6(i)(ii) herein) or with a water tight steel ring having a thickness equal to that of the permanent well casing and continuously welded to both casings. If a public drinking water well will be equipped with a pitless adapter or unit, a well seal shall be installed to a minimum depth of 110 feet to take into account the top 10 feet of compromised seal interval.

~~[If a well is to be considered in a protected aquifer the grout seal shall extend from the ground surface down to at least 100 feet below the surface, and through the protective layer, as described in R309-600-6(1)(x) (see also R309-515-6(6)(i)(iii)(D)-below).]~~

The following ~~[applies]~~ shall apply to all drinking water wells:

(i) Consideration During Well Construction.

(A) Sufficient annular opening shall be provided to permit a minimum of two inches of grout between the outermost permanent casing and the drilled hole, taking into consideration any joint couplings.

~~[(B) Additional information is available from the Division for recommended construction methods for grout placement.]~~

~~[(C)](B)~~ The casing(s) must be ~~[provided with sufficient guides welded to the casing]~~ placed to permit unobstructed flow and uniform thickness of grout.

(ii) ~~[Grouting]~~ Sealing Materials.

(A) Neat Cement Grout.

Cement, conforming to ASTM Standard C150, and water, with no more than six gallons of water per sack of cement, shall be used for ~~[two-inch]~~ two-inch openings. Additives may be used to increase fluidity subject to approval by the Director.

(B) Concrete Grout.

Equal parts of cement conforming to ASTM Standard C150, and sand, with not more than six gallons of water per sack of cement, may be used for openings larger than two inches.

(C) Clay Seal.

Where an annular opening greater than six inches is available, a seal of swelling bentonite meeting the requirements of R655-4-~~[9.4.2]~~ 11.4.2 may be used when approved by the Director.

(iii) Application.

(A) When the annular opening is less than four inches, grout shall be installed under pressure, by means of a positive displacement grout pump, from the bottom of the annular opening to be filled.

(B) When the annular opening is four or more inches and 100 feet or less in depth, and concrete grout is used, it may be placed by gravity through a grout pipe installed to the bottom of the annular opening in one continuous operation until the annular opening is filled.

(C) All temporary construction casings shall be removed prior to or during the well sealing operation. Any exceptions shall be approved by the State Engineer's Office, and evidence of State Engineer's Office's approval shall be submitted to the Director (see R655-4-~~[9.4.3.1]~~ 11.4.3.1 for conditions ~~[surrounding]~~ concerning leaving temporary surface casing in place). A temporary construction casing is a casing not intended to be part of the permanent well.

(D) When a "well in a protected aquifer" classification is desired, the grout seal shall extend from the ground surface down to at least 100 feet below the surface, and through the protective clay layer (see R309-600-6(1)(x)).

(E) After cement grouting is applied, work on the well shall be discontinued until the cement or concrete grout has properly set~~[-]~~, usually a period of 72 hours.

(j) Water Entered Into Well During Construction.

Any water entering a well during construction shall not be contaminated and should be obtained from a chlorinated municipal system. Where this is not possible, the water must be ~~[dosed]~~ treated to ~~[give]~~ produce a 100 mg/l free chlorine residual~~[-. Refer also to the administrative rules of the Division of Water Rights in this regard.]~~ in accordance with R655-4-11.6.5.

(k) Gravel Pack Wells.

The following shall apply to gravel packed wells:

(i) the gravel pack material ~~[is to be]~~ shall be of ~~[well-rounded]~~ well-rounded particles, at least ~~[95]~~ 90 percent siliceous material, no more than five percent acid solubility, ~~[that are]~~ smooth and uniform, free of foreign material, properly sized, washed, and then disinfected immediately prior to or during placement~~[-]~~;

(ii) the gravel pack ~~[is]~~ shall be placed in one uniform continuous operation~~[-]~~;

(iii) refill pipes, when used, ~~[are]~~ shall be Schedule 40 steel pipe incorporated within the pump foundation and terminated with screwed or welded caps at least 12 inches above the pump house floor or concrete apron~~[-]~~;

(iv) refill pipes located in the grouted annular opening shall be surrounded by a minimum of 1.5 inches of grout~~[-]~~;

(v) protection shall be provided to prevent leakage of grout into the gravel pack or screen~~[-]~~; and,

(vi) any casings not withdrawn entirely shall meet requirements of R309-515-6(6)(b) or R309-515-6(6)(c).

(7) Well Development.

(a) Every well shall be developed to remove the native silts and clays, drilling mud, or finer fraction of the gravel pack.

(b) Development should continue until the maximum specific capacity is obtained from the completed well.

(c) Where chemical conditioning is required, the specifications shall include provisions for the method, equipment, chemicals, testing for residual chemicals, and disposal of waste and inhibitors.

(d) Where blasting procedures may be used, the specifications shall include the provisions for blasting and cleaning. Special attention shall be given to assure that the grouting and casing are not damaged by the blasting.

(8) Capping Requirements.

~~(a) [A welded metal plate or a threaded cap is the preferred method for capping a completed well until permanent equipment is installed.]~~ The well shall be securely capped in accordance with R655-4-14.1 until permanent equipment can be installed.

(b) At all times during the progress of work, the contractor shall provide protection to prevent tampering with the well or entrance of foreign materials.

(9) Well Abandonment.

(a) Test wells and groundwater sources, which ~~[are to]~~ will be permanently abandoned ~~[shall be sealed by such methods as necessary to restore the controlling geological conditions which existed prior to construction or as directed by the Utah Division of Water Rights.]~~ shall be abandoned in accordance with R655-4-14.

(b) Wells to be abandoned shall be sealed to prevent undesirable exchange of water from one aquifer to another. Preference shall be given to using a neat cement grout. Where fill materials are used, which are other than cement grout or concrete, they shall be disinfected and free of foreign materials. When an abandoned ~~[with]~~ well is filled with cement-grout or concrete, these materials shall be applied to the well- hole through a pipe, tremie, or bailer.

(10) Well Assessment.

(a) Step Drawdown Test.

Preliminary to the constant-rate test required below, it is recommended that a step-drawdown test (uniform increases in pumping rates over uniform time intervals with single drawdown

measurements taken at the end of the intervals) be conducted to determine the maximum pumping rate for the desired intake setting.

(b) Constant-Rate Test.

A "constant-rate" yield and drawdown test shall:

(i) be performed on every production well after ~~construction or subsequent treatment~~ well development and prior to placement of the permanent pump[;];

(ii) have the test methods clearly indicated in the specifications[;];

(iii) have a test pump with sufficient capacity that when pumped against the maximum anticipated drawdown, it will be capable of pumping in excess of the desired design discharge rate[;];

(iv) provide for continuous pumping for at least 24 hours or until stabilized drawdown has continued for at least six hours when test pumped at a "constant-rate" equal to the desired design discharge rate[;];

(v) provide the following data:

(A) capacity vs. head characteristics for the test pump (manufacturer's pump curve)[;];

(B) static water level (in feet to the nearest tenth, as measured from an identified datum; usually the top of casing)[;];

(C) depth of test pump intake[;]; and,

(D) time and date of starting and ending test(s)[;];

(vi) For the "constant-rate" test, provide the following at time intervals sufficient for at least ten essentially uniform intervals for each log cycle of the graphic evaluation required below:

(A) record the time since starting test (in minutes)[;];

(B) record the actual pumping rate[;];

(C) record the pumping water level (in feet to the nearest tenth, as measured from the same datum used for the static water level)[;];

(D) record the drawdown (pumping water level minus static water level in feet to the nearest tenth)[;];

(E) provide graphic evaluation on semi-logarithmic graph paper by plotting the drawdown measurements on the arithmetic scale at locations corresponding to time since starting test on the logarithmic scale[;]; and,

(vii) Immediately after termination of the constant-rate test, and for a period of time until there are no changes in depth to water level measurements for at least six hours, record the following at time intervals similar to those used during the constant-rate pump test:

(A) time since stopping pump test (in minutes),

(B) depth to water level (in feet to the nearest tenth, as measured from the same datum used for the pumping water level).

(c) Safe Yield.

If the aquifer drawdown test data show that the drawdown has stabilized, the Director will consider 2/3 of the pumping rate used in the constant-rate test as the safe yield of the well. The safe yield is used to determine the number of permanent residential connections or ERCs that a well source can support.

(11) Well Disinfection.

Every new, modified, or reconditioned well including pumping equipment shall be disinfected before being placed into service for drinking water use. These shall be disinfected according to AWWA ~~Standard C654 published by the American Water Works Association~~ Standards C654-03 and A100-06 as modified to incorporate the following as a minimum standard:

(i) the well shall be disinfected with a chlorine solution of sufficient volume and strength and so applied that a concentration of at least 50 parts per million is obtained in all parts of the well and ~~comes in contact with~~ the equipment installed in the well. This solution shall remain in the well for a period of at least eight hours[;]; and,

(ii) a satisfactory bacteriologic water sample analysis shall be obtained prior to the use of water from the well in a public water system.

(12) Well Equipping.

(a) Naturally Flowing Wells.

Naturally flowing wells shall:

(i) have the discharge controlled by valves[;];

(ii) be provided with permanent casing and sealed by grout[;]; and,

(iii) if erosion of the confining bed adjacent to the well appears likely, special protective construction may be required by the Director.

(b) ~~Line Shaft~~ Well Pumps.

~~Wells equipped with line shaft pumps shall:~~

~~(i) The design discharge rate of the well pump shall not exceed the rate used during the constant-rate aquifer drawdown test.~~

~~(ii) Wells equipped with line shaft pumps shall:~~

~~(i)A~~ have the casing firmly connected to the pump structure or have the casing inserted into the recess extending at least 0.5 inches into the pump base[;];

~~(ii)B~~ have the pump foundation and base designed to prevent fluids from coming into contact with joints between the pump base and the casing[;];

~~(iii)C~~ be designed such that the intake of the well pump is at least ten feet below the maximum anticipated drawdown elevation[;]; and,

~~(iv)D~~ avoid the use of oil lubrication for pumps with intake screens set at depths less than 400 feet (see R309-105-10(7) and/or R309-515-8(2) for additional requirements of lubricants).

~~(c) Submersible Pumps:~~

~~(iii) Where a submersible pump is used:~~

~~(i)A~~ ~~The~~ the top of the casing shall be effectively sealed against the entrance of water under all conditions of vibration or movement of conductors or cables[;];

~~(ii)B~~ ~~The~~ the electrical cable shall be firmly attached to the riser pipe at ~~20-foot~~ 20-foot intervals or less[;]; and,

~~(iii)C~~ ~~The~~ the intake of the well pump must be at least ten feet below the maximum anticipated drawdown elevation.

~~(d)e~~ Pitless Well Units and Adapters.

If the excavation surrounding the well casing allowing installation of the pitless unit compromises the surface seal, the competency of the surface seal shall be restored. ~~For~~ ~~cut~~ Torch-cut holes in the well casing shall be to neat lines closely following the outline of the pitless adapter and completely filled with a competent weld with burrs and fins removed prior to the installation of the pitless unit and adapter.

Pitless well units and adapters shall:

~~(i) not be used unless the specific application has been approved by the Director;~~

~~(ii)i~~ be used to make a connection to a water well casing that is made below the ground. A ~~below the ground~~ below-the-ground connection shall not be submerged in water during installation[;];

(~~iii~~ii) terminate at least 18 inches above final ground elevation or three feet above the highest known flood elevation, whichever is greater[;];

(~~iv~~iii) [~~pitless adapters or pitless units to be used shall~~] contain a label or [~~imprint~~]have a certification indicating compliance with the Water Systems Council Pitless Adapter Standard (PAS-97)[;];

(iv) have suitable access to the interior of the casing in order to disinfect the well[;];

(v~~i~~) have a suitable sanitary seal or cover at the upper terminal of the casing that will prevent the entrance of any fluids or contamination, especially at the connection point of the electrical cables[;];

(vi~~i~~) have suitable access so that measurements of static and pumped water levels in the well can be obtained[;];

(vii~~i~~) allow at least one check valve within the well casing[;];

(~~ix~~viii) be furnished with a cover that is lockable or otherwise protected against vandalism or sabotage[;];

(ix) be shop-fabricated from the point of connection with the well casing to the unit cap or cover[;];

(x~~i~~) be of watertight construction throughout[;];

(xi~~i~~) be constructed of materials at least equivalent to and having wall thickness compatible to the casing[;];

(xii~~i~~) have field connection to the lateral discharge from the pitless unit of threaded, flanged, or mechanical joint connection[;];

(xi~~iv~~ii) be threaded or welded to the well casing. If the connection to the casing is by field weld, the [~~shop~~]shop-assembled unit must be designed specifically for field welding to the casing. The only field welding permitted on the pitless unit [~~will be that needed~~]is to connect [~~a~~]the pitless unit to the casing[;]; and,

(xiv) have an inside diameter as great as that of the well casing, up to and including casing diameters of 12 inches, to facilitate work and repair on the well, pump, or well screen.

(e)d) Well Discharge Piping.

The discharge piping shall:

(i) be designed so that the friction loss will be low[;];

(ii) have control valves and appurtenances located above the pump house floor when an above-ground discharge is provided[;];

(iii) be protected against the entrance of contamination[;];

(iv) be equipped with [~~in order of placement from the well head~~]a [~~smooth-nosed~~]smooth-nosed sampling tap, a check valve, a pressure gauge, a means of measuring flow, and a shutoff valve (with the smooth-nosed sampling tap being the first item from the well head and the shut-off valve as the last item), unless it is a naturally flowing well which may need an alternative design[;];

(v) where a well pumps directly into a distribution system, be equipped with an air release vacuum relief valve located upstream from the check valve, with exhaust/relief piping terminating in a down-turned position at least six inches above the well house floor and covered with a No. 14 mesh corrosion resistant screen. [~~An exception to this requirement will be allowed provided~~]An air release vacuum relief valve is not required if the specific proposed well head valve and piping design includes provisions for pumping to waste all trapped air before water is introduced into the distribution system[;];

(vi) have all exposed piping valves and appurtenances protected against physical damage and freezing[;];

(vii) be properly anchored to prevent movement[~~, and~~];

(viii) be properly protected against surge or water hammer; and,

(ix) if a pump to waste line exists, it shall not be connected to a sewer/storm drain without a minimum 12-inch clearance to the flood rim, and the discharge end of the pump-to-waste line shall be downturned and covered with a No. 4 mesh corrosion resistant screen (refer to R309-545-10(1)).

(f)e) Water Level Measurement.

(i) Provisions shall be made to permit periodic measurement of water levels in the completed well.

(ii) Where permanent water level measuring equipment is installed, it shall be made using corrosion resistant materials attached firmly to the drop pipe or pump column and installed [~~in~~ such a manner as]to prevent entrance of foreign materials.

(g)f) Observation Wells.

Observation wells shall be:

(i) constructed in accordance with the requirements for permanent wells if they are to remain in service after completion of a water supply well[;]; and,

(ii) protected at the upper terminal to preclude entrance of foreign materials.

(h)g) Electrical Protection.

Sufficient electrical controls shall be placed on all pump motors to eliminate electrical problems due to phase shifts, surges, lightning, etc.

(13) Well House Construction.

The use of a well house is strongly recommended, particularly in installations utilizing above ground motors.

In addition to applicable provisions of R309-540, well pump houses shall conform to the following:

(a) Casing Projection Above Floor.

The permanent casing for all ground water wells shall project at least 12 inches above the pump house floor or concrete apron surface and at least 18 inches above the final ground surface. However, casings terminated in underground vaults may be permitted if the vault is provided with a [~~drain-to-daylight~~]drain-to-daylight" sized to handle in excess of the well flow and surface runoff is directed away from the vault access.

(b) Floor Drain.

Where a well house is constructed, the floor surface shall be at least six inches above the final ground elevation and shall be sloped to provide drainage. A "drain-to-daylight" shall be provided unless highly impractical.

(c) Earth Berm.

Sites subject to flooding shall be provided with an earth berm terminating at an elevation at least two feet above the highest known flood elevation or other suitable protection as determined by the Director.

(d) Well Casing Termination at Flood Sites.

The top of the well casing at sites subject to flooding shall terminate at least [~~3~~]three feet above the [~~+100 year~~]100-year flood level or the highest known flood elevation, whichever is higher (refer to R309-515-6(6)(b)(vi)).

(e) Miscellaneous.

The well house shall be ventilated, heated, and lighted in such a manner as to assure adequate protection of the equipment (refer to R309-540-5(2) (a) through (h)).

(f) Fencing.

Where necessary to protect the quality of the well water, the Director may require that certain wells be fenced in a manner similar to fencing required around spring areas.

(g) Access.

An access shall be provided either through the well house roof or sidewalls in the event the pump must be pulled for replacement or servicing the well.

### R309-515-7. Ground Water - Springs.

(1) General.

Springs vary greatly in their characteristics and they should be observed for some time prior to development to determine any flow and quality variations. Springs determined to be ~~["under the direct influence of surface water"]~~ will have to be given "surface water treatment" shall comply with surface water treatment requirements.

(2) Source Protection.

Public drinking water systems are responsible for protecting their spring sources from contamination. The selection of a spring shall only be made after consideration of the requirements of R309-515-4. Springs must be located in an area ~~[which]that~~ shall minimize threats from existing or potential sources of pollution. A Preliminary Evaluation Report on source protection issues is required by R309-600-13(2). If certain precautions are taken, sewer lines may be permitted within a public drinking water system's source protection zones at the discretion of the Director. When sewer lines are permitted in protection zones both sewer lines and manholes shall be specially constructed as described in R309-515-6(4).

(3) Surface Water Influence.

Some springs yield water ~~[which]that~~ has been filtered underground for years~~[-];~~ other springs yield water ~~[which]that~~ has been filtered underground only a matter of hours. Even with proper development, the untreated water from certain springs may exhibit turbidity and high coliform counts. This indicates that the spring water is not being sufficiently filtered in underground travel. If a spring is determined to be ~~["under the direct influence of surface water"]~~, it shall be ~~[given "conventional surface water treatment"]~~ treated to meet the surface water treatment requirements specified in ~~(refer to) R309-505-6~~[-].

(4) Pre-construction Submittal

~~Before [commencement of construction of spring development improvements]~~ beginning spring development construction, the following information ~~[must]~~ shall be submitted to the Director and approved in writing~~[-];~~:

(a) ~~[Detailed]~~ detailed plans and specifications covering the development work~~[-];~~:

(b) ~~[A]~~ if available, a copy of an engineer's or geologist's statement indicating:

(i) the historical record ~~[(if available)]~~ of spring flow variation~~[-];~~:

(ii) expected minimum flow and the time of year it will occur~~[-];~~:

(iii) expected maximum flow and the time of year it will occur~~[-];~~:

(iv) expected average flow~~[-]; and,~~

(v) the behavior of the spring during drought conditions~~[-];~~

~~[After evaluating this information, the Division will assign a "firm yield" for the spring which will be used in assessing the number of and type of connections which can be served by the spring (see "desired design discharge rate" in R309-110).~~

~~[A copy of documentation indicating the water system owner has a right to divert water for domestic or municipal purposes from the spring source]~~ acceptable evidence that the water system has a legal right to divert water for the proposed use(s) from the spring source(s)~~[-];~~

(d) ~~[A]~~ a Preliminary Evaluation Report on source protection issues as required by R309-600-13~~[-];~~

(e) ~~[A]~~ a copy of the chemical analyses required by R309-515-4(5) ~~[-]; and,~~

(f) ~~[An]~~ an assessment of whether the spring is ~~["under the direct influence of surface water"]~~ (refer to R309-505-7(1)(a)).

(5) Information Required after Spring Development.

After development of a ~~[eulinary]~~ spring as a drinking water source, the following information shall be submitted to the Director for review~~[-];~~

(a) ~~[Proof]~~ proof of satisfactory bacteriologic quality~~[-];~~

(b) ~~[Information]~~ information on the rate of flow developed from the spring.

Immediately after spring development, the water system shall collect monthly spring flow data during operating seasons when the spring is reasonably accessible, as a minimum, for three years, and submit spring flow data to the Director for determination of spring yield. After evaluating the spring flow information including seasonal and annual variations, the Director will determine a spring yield, which will be used in assessing the number of and type of connections that can be served by the spring. The spring yield typically is set at the 25th percentile of the spring flow data. If the spring exhibits significant seasonal or annual variations, the spring yield may be assessed on a case-by-case basis.

(c) ~~[As-built plans]~~ Record drawings of spring development.

(6) ~~[Operation]~~ Operating Permit Required.

Water from the spring can be introduced into a public water system only after it has been approved for use, in writing, as evidenced by the issuance of an Operating Permit by the Director (see R309-500-9).

(7) Spring Development.

The development of springs for drinking water purposes shall comply with the following requirements~~[-];~~:

(a) The spring collection device, whether it be collection tile, perforated pipe, imported gravel, infiltration boxes, or tunnels must be covered with a minimum of ~~[ten]~~ 10 feet of relatively impervious soil cover. Such cover must extend a minimum of 15 feet in all horizontal directions from the spring collection device. Clean, inert, non-organic material shall be placed in the vicinity of the collection device(s).

(b) Where it is impossible to achieve the ~~[ten]~~ 10 feet of relatively impervious soil cover, an acceptable alternate will be the use of an impermeable liner provided that:

(i) the liner has a minimum thickness of at least 40 mils~~[-];~~



(ii) all seams in the liner are folded or welded to prevent leakage[;];

(iii) the liner is certified as complying with ANSI/NSF Standard 61. This requirement is waived if certain that the drinking water will not contact the liner[;];

(iv) the liner is installed in such a manner as to assure its integrity. No stones, two inch or larger or sharp edged, shall be located within two inches of the liner[;];

(v) a minimum of two feet of relatively impervious soil cover is placed over the impermeable liner[;]; and

(vi) the soil and liner cover are extended a minimum of 15 feet in all horizontal directions from the collection devices.

(c) Each spring collection area shall be provided with at least one collection box to permit spring inspection and testing.

(d) All junction boxes and collection boxes, must comply with R309-545 with respect to access openings, venting, and tank overflow. Lids for these spring boxes shall be gasketed and the box adequately vented.

(e) The spring collection area shall be surrounded by a fence located a distance of 50 feet (preferably 100 feet if conditions allow) from all collection devices on land at an elevation equal to or higher than the collection device, and a distance of 15 feet from all collection devices on land at an elevation lower than the collection device. The elevation datum to be used is the surface elevation at the point of collection. The fence shall be at least "stock tight" (see R309-110). In remote areas where no grazing or public access is possible, [the]an exception to the fencing requirement may be [waived]granted by the Director. In populated areas, a [six-foot]six-foot high chain link fence with three strands of barbed wire may be required.

(f) Within the fenced area all vegetation [which has a]having deep roots [system-]shall be removed by a means not negatively affecting water quality.

(g) A diversion channel, or berm, capable of diverting all anticipated surface water runoff away from the spring collection area shall be constructed immediately inside the fenced area.

(h) A permanent [flow-]flow-measuring device shall be installed. Flow measurement devices such as critical depth meters or weirs shall be properly housed and otherwise protected.

(i) The spring shall be developed as thoroughly as possible [so as-]to minimize the possibility of excess spring water ponding within the collection area. Where the ponding of spring water is unavoidable, the excess shall be collected by shallow piping or french drain, and be routed beyond and down grade of the fenced area required above, whether or not a fence is in place.

**R309-515-8. Operation and Maintenance.**

(1) Spring Collection Area Maintenance.

(a) Spring collection areas shall be periodically (preferably annually) cleared of [deep-]deep-rooted vegetation to prevent root growth from clogging collection lines. Frequent hand or mechanical clearing of spring collection areas and diversion channel is strongly recommended. It is advantageous to encourage the growth of grasses and other shallow rooted vegetation for erosion control and to inhibit the growth of more detrimental flora.

(b) No pesticide (e.g., herbicide) may be applied on a spring collection area without the prior written approval of the Director. Such approval [shall be given]can be granted only when:

~~(1)(i)~~ [only when-]acceptable pesticides are proposed[;]

~~(2)(ii)~~ [when-]the pesticide product manufacturer certifies that no harmful substance will be imparted to the water[;] and,

~~(3)(iii)~~ [only when-]spring development construction meets the requirements of these rules.

(2) Pump Lubricants.

The U.S. Food and Drug Administration (FDA) has approved propylene glycol and certain types of mineral oil for occasional contact with or for addition to food products. These oils are commonly referred to as "food-grade mineral oils". All oil lubricated pumps shall utilize food grade mineral oil suitable for human consumption as determined by the Director.

(3) Algicide Treatment.

No algicide shall be applied to a drinking water source unless specific approval is obtained from the Director. Such approval will be given only if the algicide is certified as meeting the requirements of ANSI/NSF Standard 60, Water Treatment Chemicals - Health Effects.

**KEY: drinking water, source development, source maintenance**  
**Date of Enactment or Last Substantive Amendment: [August 28,]2013**  
**Notice of Continuation: March 22, 2010**  
**Authorizing, and Implemented or Interpreted Law: 19-4-104**

Health, Family Health and  
 Preparedness, Children with Special  
 Health Care Needs  
**R398-20**  
 Early Intervention

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 37984  
 FILED: 09/10/2013

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to implement the parent participation fee increase for the Baby Watch Early Intervention Program as modified in the 2013 General Legislative Session through S.B. 2.

**SUMMARY OF THE RULE OR CHANGE:** The change implements the parent participation fee for the Baby Watch Early Intervention Program under Part C of the Individuals with Disabilities Education Act. The change also simplifies the rule by eliminating unnecessary portions of the previous rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-10-2

## ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The Division does not anticipate any cost or savings to the state budget. The state budget only covers the cost of billing and collection of fees. These state budget costs will remain the same since they are independent of any applied fee schedule, including the new fee schedule.

◆ LOCAL GOVERNMENTS: Local governments entities who operate a Baby Watch program may see an increase in fee collections for some families. However, this increase may be offset by parents choosing to leave the program rather than pay a higher fee.

◆ SMALL BUSINESSES: Small businesses who operate a Baby Watch program may see an increase in fee collections for some families. However, this increase may be offset by parents choosing to leave the program rather than pay a higher fee.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Agencies operating a Baby Watch program may see an increase in fee collections for some families. However, this increase may be offset by parents choosing to leave the program rather than pay a higher fee. No individuals operate a Baby Watch program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Some parents of children enrolled in the program will be subject to a higher monthly fee. The new fee schedule adds five increments between monthly fees of \$100 to \$200, with corresponding modified income brackets.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no impact on business. This rule does not affect the provider reimbursement.

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

HEALTH  
FAMILY HEALTH AND PREPAREDNESS,  
CHILDREN WITH SPECIAL HEALTH CARE NEEDS  
44 N MARIO CAPECCHI DR  
SALT LAKE CITY, UT 84113  
or at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Susan Ord by phone at 801-584-8441, by FAX at 801-584-8496, or by Internet E-mail at [sord@utah.gov](mailto:sord@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/02/2013

THIS RULE MAY BECOME EFFECTIVE ON: 12/09/2013

AUTHORIZED BY: David Patton, PhD, Executive Director

**R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.****[R398-20. Early Intervention.****R398-20-1. Authority and Purpose:**

~~This rule implements the early intervention program under Part C of the Individuals with Disabilities Education Act (IDEA) and implementing regulations found at 34 CFR 303.500 for children with disabilities under three years of age, and their families. It is authorized by Utah Code Section 26-10-2.~~

~~The Utah Department of Health is designated as the lead agency responsible for the administration of the program.~~

**R398-20-2. Services:**

~~(1) The Department provides the following services to eligible individuals and their families, based on individual assessment as required by the IDEA implementing regulations:~~

- ~~(a) Assistive technology;~~
- ~~(b) Audiology services;~~
- ~~(c) Family training, counseling, and home visits;~~
- ~~(d) Health services;~~
- ~~(e) Medical services, but only for diagnostic or evaluation purposes;~~

- ~~(f) Nursing services;~~
- ~~(g) Nutrition services;~~
- ~~(h) Occupational therapy;~~
- ~~(i) Physical therapy;~~
- ~~(j) Psychological services;~~
- ~~(k) Service Coordination;~~
- ~~(l) Social work services;~~
- ~~(m) Special instruction;~~
- ~~(n) Speech-language pathology services;~~
- ~~(o) Transportation; and~~
- ~~(p) Vision services.~~

~~(2) Infants and toddlers from birth through to thirty-six months who are classified according to IDEA requirements as a person with a disability are eligible to receive services. These include children with a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay or who show delays at or below 1.5 Standard Deviations below the mean; or at or below the 7th percentile in one or more areas of development.~~

~~(3) Services must be based on the child's written Individualized Family Service Plan (IFSP) for providing services developed according to IDEA requirements.~~

**R398-20-3. Fees:**

~~(1) The parents of a eligible child shall pay a monthly fee for services according to the schedule established in the Fee Table. The monthly fee is applicable for any month in which a service is provided or scheduled and not timely canceled, except for the month in which the child attains 36 month of age. The Department shall not charge a fee for the following IDEA activities and services:~~

- ~~(a) implementation of child find, such as child developmental screening, or public awareness activities;~~
- ~~(b) evaluation and assessment;~~
- ~~(c) service coordination;~~
- ~~(d) activities to assist a child and the family to receive the rights, procedural safeguards, and authorized services;~~

- ~~(c) activities related to the development, review and evaluation of the Individual Family Service Plan;~~
- ~~(f) activities related to child and family rights, including the administrative complaint process and mediation; and~~
- ~~(g) specialized services related to sensory loss provided through the Utah Schools for the Deaf and Blind (USDB) Parent Infant Program or Deaf Blind services.~~
- ~~(2) The Department shall not charge a fee for services to a child if:~~
  - ~~(a) the child receives services only through the USDB pursuant to an ISFP;~~
  - ~~(b) the child is a ward of the state; or~~
  - ~~(c) the child's family meets Head Start income eligibility guidelines.~~
- ~~(4) The Department shall not charge a fee for services if the child or the child's family receives benefits under any of the following programs:~~
  - ~~(a) Medicaid;~~
  - ~~(b) Temporary Assistance to Needy Families (TANF);~~
  - ~~(c) Women Infants and Young Children (WIC);~~
  - ~~(d) Refugee Resettlement Program (RCA); and~~
  - ~~(e) Primary Care Network (PCN).~~
- ~~(3) The fee is a per family fee without regard to the number of eligible children receiving services.~~
- ~~(5) The monthly fee is as follows:~~

TABLE FEES			
Percent of poverty	186	200	250
Family fee	10.00	20.00	30.00
Family size ANNUAL INCOME			
2	22,543.00 or less	22,543.01 24,240.00	24,240.01 30,300.00
3	28,384.00 or less	28,384.01 30,520.00	30,520.01 38,150.00
4	34,224.00 or less	34,224.01 36,800.00	36,800.01 46,000.00
5	40,064.00 or less	40,064.01 43,080.00	43,080.01 53,850.00
6	45,905.00 or less	45,905.01 49,360.00	49,360.01 61,700.00
7	51,745.00 or less	51,745.01 55,640.00	55,640.01 69,550.00
8	57,586.00 or less	57,586.01 61,920.00	61,920.01 77,400.00
Add for each additional family member	5,840.00	6,280.00	7,850.00

PART TWO OF TABLE

Percent of poverty	300	400	500
Family fee	40.00	50.00	60.00

Family size ANNUAL INCOME			
2	30,300.01 36,360.00	36,360.01 48,480.00	48,480.01 60,600.00
3	38,150.01 45,780.00	45,780.01 61,040.00	61,040.01 76,300.00
4	46,000.01 55,200.00	55,200.01 73,600.00	73,600.01 92,000.00
5	53,850.01 64,620.00	64,620.01 86,160.00	86,160.01 107,700.00
6	61,700.01 74,040.00	74,040.01 98,720.00	98,720.01 123,400.00
7	69,550.01 83,460.00	83,460.01 111,280.00	111,280.01 139,100.00
8	77,400.01 92,880.00	92,880.01 123,840.00	123,840.01 154,800.00
Add for each additional family member	9,420.00	12,560.00	15,700.00

PART THREE OF TABLE

Percent of poverty	600	700
Family fee	80.00	100.00
Family size ANNUAL INCOME		
2	60,600.01 72,720.00	72,720.01 84,840.00
3	76,300.01 91,560.00	91,560.01 106,820.00
4	92,000.01 110,400.00	110,400.01 128,800.00
5	107,700.01 129,240.00	129,240.01 150,780.00
6	123,400.01 148,080.00	148,080.01 172,760.00
7	139,100.01 166,920.00	166,920.01 194,740.00
8	154,800.01 185,760.00	185,760.01 216,720.00
Add for each additional family member	18,840.00	21,980.00

**R398-20-4. Income Reporting-Fee Determination:**

- ~~(1) The child's family shall annually report the family income using the Fee Determination Form to determine the monthly family fee. The IFSP team shall review the form at its six-month review. The family may submit an updated form if there is a change in income.~~
- ~~(2) The Fee Determination Form provides guidelines to the family on what should be counted in its report of income.~~
- ~~(3) Completion of the form is voluntary. However, a child's parents who choose not to complete the Fee Determination Form must pay the maximum level on the fee schedule.~~

~~\_\_\_\_\_ (4) Upon request, the family must provide a copy of the most recent federal income tax filing to the Department and its early intervention providers to verify family income as reported by the child's parents. If the federal income tax filing is unavailable, the parents may submit the prior three months' check stubs to extrapolate annual income.~~

**R398-20-5. Hardship, Extenuating Circumstances.**

~~\_\_\_\_\_ (1) An eligible child shall not be denied service because of a family's inability to pay. If a family is able to pay, but chooses not to, the Department may withhold services.~~

~~\_\_\_\_\_ (2) The Department may waive all or part of the fee if there are extenuating family circumstances that affect a family's ability to pay, such as long-term hospitalization of a family member, casualty loss, moving expense, or other unusual expenses.]~~

**R398-20. Early Intervention.**

**R398-20-1. Authority and Purpose.**

~~\_\_\_\_\_ This rule implements the parent cost participation fee for the Baby Watch Early Intervention program under Part C of the Individuals with Disabilities Education Act(IDEA). This fee was mandated by the Utah State Legislature in the 2003 General Session, and modified in the 2013 General Session.~~

**R398-20-2. Definitions.**

~~\_\_\_\_\_ (1) "Department" means the Utah Department of Health.~~

~~\_\_\_\_\_ (2) "Provider" means a local direct service provider with whom the Department contracts to provide Part C services.~~

**R398-20-3. Fees.**

~~\_\_\_\_\_ (1) The parent or legal guardian of an eligible child shall pay a monthly cost participation fee if their child is enrolled in the early intervention program and receives fee eligible services. The monthly fee is applicable for any month in which at least one billable service is:~~

~~\_\_\_\_\_ (a) provided; or~~

~~\_\_\_\_\_ (b) scheduled and not canceled within required time frames.~~

~~\_\_\_\_\_ (2) Fees shall be charged based on a sliding fee schedule established by the Department. The sliding fee schedule shall begin at 185% of the most recently published federal poverty guidelines.~~

~~\_\_\_\_\_ (3) The maximum fee on the sliding fee schedule shall be \$200 per month.~~

~~\_\_\_\_\_ (4) The family cost participation fee shall not be charged if the child or the child's family receives benefits under any of the following programs:~~

~~\_\_\_\_\_ (a) Medicaid;~~

~~\_\_\_\_\_ (b) Temporary Assistance to Needy Families;~~

~~\_\_\_\_\_ (c) Family Employment Plan - Cash Assistance;~~

~~\_\_\_\_\_ (d) Women Infants and Young Children;~~

~~\_\_\_\_\_ (e) Early Head Start;~~

~~\_\_\_\_\_ (f) Primary Care Network; or~~

~~\_\_\_\_\_ (g) Children's Health Insurance Program~~

**R398-20-4. Income Reporting and Fee Determination.**

~~\_\_\_\_\_ (1) Each child's parent or legal guardian shall annually report the family income using the Department's Family Fee Determination Form to determine the monthly family fee.~~

~~\_\_\_\_\_ (2) Upon request, the parent or legal guardian must provide a copy of the most recent federal income tax filing to the~~

Department and its early intervention providers to verify family income as reported by the child's parent or legal guardian. If the federal income tax filing is unavailable, the parent or legal guardian may submit the prior three months' check stubs to extrapolate annual income.

\_\_\_\_\_ (3) Completion of the Family Fee Determination Form is voluntary. If a child's parent or legal guardian chooses not to complete the Family Fee Determination Form, the family must pay the maximum level on the fee schedule.

**R398-20-5. Hardship, Extenuating Circumstances.**

\_\_\_\_\_ (1) An eligible child shall not be denied service because of a family's inability to pay. The provider may waive all or part of the fee if there are extenuating family circumstances that affect a family's ability to pay, such as long-term hospitalization of a family member, casualty loss, moving expense, or other unusual expenses.

\_\_\_\_\_ (2) If a family is able to pay, but chooses not to pay, the Department may instruct the local early intervention program to withhold fee eligible services.

**R398-20-6. Services Not Subject to Fees.**

\_\_\_\_\_ (1) In accordance with Federal IDEA regulation, providers may not charge a fee for the following IDEA activities and services:

\_\_\_\_\_ (a) implementation of child find, such as child developmental screening, or public awareness activities;

\_\_\_\_\_ (b) evaluation and assessment;

\_\_\_\_\_ (c) service coordination;

\_\_\_\_\_ (d) activities to assist a child and the family to receive the authorized services;

\_\_\_\_\_ (e) activities related to the development, review and evaluation of the Individualized Family Service Plan;

\_\_\_\_\_ (f) activities related to child and family rights, including the administrative complaint process and mediation; or

\_\_\_\_\_ (g) specialized services related to sensory loss provided through the Utah Schools for the Deaf and the Blind Parent Infant Programs, or Deaf Blind services.

**KEY: early intervention, education, disabilities**

**Date of Enactment or Last Substantive Amendment: [August 6, 2003]2013**

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

**Authorizing, Implemented, or Interpreted Law: 26-10-2**

**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-1-5  
Incorporations by Reference**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 37976

FILED: 09/10/2013

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsection 26-18-3(2)(a) requires the Medicaid program to implement policy through administrative rules. The Department, in order to draw down federal funds, must have an approved State Plan with the Centers for Medicare and Medicaid Services (CMS). The purpose of this change, therefore, is to incorporate the most current Medicaid State Plan by reference and to implement by rule both the definitions and the attachment for the Private Duty Nursing Acuity Grid found in the Home Health Agencies Utah Medicaid Provider Manual, and to implement by rule ongoing Medicaid policy for services described in the Medical Supplies Utah Medicaid Provider Manual; Hospital Services Utah Medicaid Provider Manual with its attachments; Speech-Language Services Utah Medicaid Provider Manual; Audiology Services Utah Medicaid Provider Manual; Hospice Care Utah Medicaid Provider Manual; Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual; Personal Care Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services for Individuals 65 or Older Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services Autism Waiver Utah Medicaid Provider Manual; Office of Inspector General Administrative Hearings Procedures Manual; Pharmacy Services Utah Medicaid Provider Manual; Coverage and Reimbursement Code Look-up Tool; Certified Nurse - Midwife Services Utah Medicaid Provider Manual; CHEC Services Utah Medicaid Provider Manual with its attachments; Chiropractic Medicine Utah Medicaid Provider Manual; Dental Services Utah Medicaid Provider Manual; General Attachments for the Utah Medicaid Provider Manual; Indian Health Utah Medicaid Provider Manual; Laboratory Services Utah Medicaid Provider Manual with its attachments; Medical Transportation Utah Medicaid Provider Manual; Mental Health Centers/Prepaid Mental Health Plans Utah Medicaid Provider Manual; Non-Traditional Medicaid Health Plan Utah Medicaid Provider Manual with its attachments; Certified Family Nurse Practitioner and Pediatric Nurse Practitioner Utah Medicaid Provider Manual; Oral Maxillofacial Surgeon Services Utah Medicaid Provider Manual; Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual; Physician Services and Anesthesiology Utah Medicaid Provider Manual with its attachments; Podiatric Services Utah Medicaid Provider Manual; Primary Care Network Utah Medicaid Provider Manual with its attachments; Psychology Services Utah Medicaid Provider Manual; Rehabilitative Mental Health and

Substance Use Disorder Services Utah Medicaid Provider Manual; Rehabilitative Mental Health Services for Children Under Authority of Department of Human Services, Division of Child and Family Services or Division of Juvenile Justice Services Utah Medicaid Provider Manual; Rural Health Clinic Services Utah Medicaid Provider Manual with its attachments; School-Based Skills Development Services Utah Medicaid Provider Manual; Section I: General Information of the Utah Medicaid Provider Manual; Services for Pregnant Women Utah Medicaid Provider Manual; Substance Abuse Treatment Services and Targeted Case Management Services for Substance Abuse Utah Medicaid Provider Manual; Targeted Case Management for CHEC Medicaid Eligible Children Utah Medicaid Provider Manual; Targeted Case Management for the Chronically Mentally Ill Utah Medicaid Provider Manual; Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual; and Vision Care Services Utah Medicaid Provider Manual.

SUMMARY OF THE RULE OR CHANGE: Section R414-1-5 is changed to incorporate the State Plan and approved State Plan Amendments (SPAs) by reference to 10/01/2013. These SPAs include: SPA 13-008-UT, Psychologist Services, which updates and modifies the psychologist sections of the State Plan for clarification purposes; SPA 13-018-UT Medical Education Payments, which updates the graduate medical education payment pool methodology based on specified percentages to specified hospitals; and SPA 13-020-UT Preadmission Screening by Categorical Determination, which allows the Department to add the Short Stay Categorical Determination as a new category type. This new category allows an individual who suffers from an acute physical illness in a community setting to be admitted directly to a nursing facility for a short stay to stabilize the illness. This rule change also incorporates by reference the Medical Supplies Utah Medicaid Provider Manual; the Hospital Services Utah Medicaid Provider Manual with its attachments, effective 10/01/2013; incorporates by reference both the definitions and the attachment for the Private Duty Nursing Acuity Grid found in the Home Health Agencies Utah Medicaid Provider Manual, effective 10/01/2013; incorporates by reference the Speech-Language Services Utah Medicaid Provider Manual, effective 10/01/2013; incorporates by reference the Audiology Services Utah Medicaid Provider Manual, effective 10/01/2013; incorporates by reference the Hospice Care Utah Medicaid Provider Manual, effective 10/01/2013; incorporates by reference the Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual, with its attachments, effective 10/01/2013; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals 65 or Older Utah Medicaid Provider Manual, effective 10/01/2013; incorporates by reference the Personal Care Utah Medicaid Provider Manual, with its attachments, effective 10/01/2013; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Utah Medicaid Provider Manual, effective 10/01/2013; incorporates by reference the Utah Home and Community-Based Waiver

Services for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual, effective 10/01/2013; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Utah Medicaid Provider Manual, effective 10/01/2013; incorporates by reference the Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual, effective 10/01/2013; incorporates by reference the Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual, effective 10/01/2013; Utah Home and Community-Based Waiver Services Autism Waiver Utah Medicaid Provider Manual, effective 10/01/2013; Office of Inspector General Administrative Hearings Procedures Manual, effective 10/01/2013; Pharmacy Services Utah Medicaid Provider Manual with its attachments, effective 10/01/2013; Coverage and Reimbursement Code Look-up Tool, effective 10/01/2013; Certified Nurse - Midwife Services Utah Medicaid Provider Manual, effective 10/01/2013; CHEC Services Utah Medicaid Provider Manual with its attachments, effective 10/01/2013; Chiropractic Medicine Utah Medicaid Provider Manual; Dental Services Utah Medicaid Provider Manual, effective 10/01/2013; General Attachments for the Utah Medicaid Provider Manual, effective 10/01/2013; Indian Health Utah Medicaid Provider Manual, effective 10/01/2013; Laboratory Services Utah Medicaid Provider Manual with its attachments, effective 10/01/2013; Medical Transportation Utah Medicaid Provider Manual; Mental Health Centers/Prepaid Mental Health Plans Utah Medicaid Provider Manual, effective 10/01/2013; Non-Traditional Medicaid Health Plan Utah Medicaid Provider Manual with its attachments, effective 10/01/2013; Certified Family Nurse Practitioner and Pediatric Nurse Practitioner Utah Medicaid Provider Manual, effective 10/01/2013; Oral Maxillofacial Surgeon Services Utah Medicaid Provider Manual; Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, effective 10/01/2013; Physician Services and Anesthesiology Utah Medicaid Provider Manual with its attachments, effective 10/01/2013; Podiatric Services Utah Medicaid Provider Manual; Primary Care Network Utah Medicaid Provider Manual with its attachments, effective 10/01/2013; Psychology Services Utah Medicaid Provider Manual; Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual, effective 10/01/2013; Rehabilitative Mental Health Services for Children Under Authority of Department of Human Services, Division of Child and Family Services or Division of Juvenile Justice Services Utah Medicaid Provider Manual, effective 10/01/2013; Rural Health Clinic Services Utah Medicaid Provider Manual with its attachments, effective 10/01/2013; School-Based Skills Development Services Utah Medicaid Provider Manual, effective 10/01/2013; Section I: General Information of the Utah Medicaid Provider Manual, effective 10/01/2013; Services for Pregnant Women Utah Medicaid Provider Manual, effective 10/01/2013; Substance Abuse Treatment Services and Targeted Case Management Services for Substance Abuse Utah Medicaid Provider Manual, effective 10/01/2013; Targeted Case Management

for CHEC Medicaid Eligible Children Utah Medicaid Provider Manual, effective 10/01/2013; Targeted Case Management for the Chronically Mentally Ill Utah Medicaid Provider Manual, effective 10/01/2013; Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual, effective 10/01/2013; and Vision Care Services Utah Medicaid Provider Manual, effective 10/01/2013.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Updates Indian Health Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates School-Based Skills Development Services Utah Medicaid Provider Manual, October 1, 2013, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Physician Services and Anesthesiology Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Section I: General Information of the Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Chiropractic Medicine Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Dental Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Rehabilitative Mental Health Services for Children Under Authority of Department of Human Services, Division of Child and Family Services or Division of Juvenile Justice Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Hospital Services Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates CHEC Services Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Speech-Language Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Audiology Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Utah Medicaid Provider Manual,

published by Division of Medicaid and Health Financing, 10/01/2013

- ◆ Updates Definitions found in the Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Services for Pregnant Women Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Coverage and Reimbursement Code Look-up Tool, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Long-Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Hospice Care Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Non-Traditional Medicaid Health Plan Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Targeted Case Management for the Chronically Mentally Ill Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Certified Nurse - Midwife Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Vision Care Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Oral Maxillofacial Surgeon Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates General Attachments for the Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Psychology Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Rural Health Clinic Services Utah Medicaid Provider Manual with its attachments,

published by Division of Medicaid and Health Financing, 10/01/2013

- ◆ Updates Medical Transportation Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Medical Supplies Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Certified Family Nurse Practitioner and Pediatric Nurse Practitioner Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Utah Medicaid State Plan, published by Centers for Medicare and Medicaid Services, 10/01/2013
- ◆ Updates Substance Abuse Treatment Services and Targeted Case Management Services for Substance Abuse Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Utah Home and Community-Based Waiver Services Autism Waiver Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Services for Pregnant Women Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Mental Health Centers/Prepaid Mental Health Plans Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Primary Care Network Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Podiatric Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Laboratory Services Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals 65 or Older Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Office of Inspector General Administrative Hearings Procedures Manual, published by Division of Medicaid and Health Financing, 10/01/2013

- ◆ Updates Personal Care Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Targeted Case Management for CHEC Medicaid Eligible Children Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2013
- ◆ Updates Pharmacy Services Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 10/01/2013

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool does not create costs or savings to the Department or other state agencies.
- ◆ **LOCAL GOVERNMENTS:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool does not create costs or savings to local governments.
- ◆ **SMALL BUSINESSES:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool does not create costs or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool does not create costs or savings to Medicaid recipients and to Medicaid providers.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool does not create costs or savings to a single Medicaid recipient or to a Medicaid provider.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No impact on business. It simply ensures continuity and accuracy of Medicaid information.

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

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at [cdevashrayee@utah.gov](mailto:cdevashrayee@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2013

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2013

AUTHORIZED BY: David Patton, PhD, Executive Director

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-1. Utah Medicaid Program.**

**R414-1-5. Incorporations by Reference.**

The Department incorporates the ~~July~~October 1, 2013 versions of the following by reference:

- (1) Utah State Plan, including any approved amendments, under Title XIX of the Social Security Act Medical Assistance Program;
- (2) Medical Supplies Utah Medicaid Provider Manual, Section 2, Medical Supplies, as applied in Rule R414-70;
- (3) Hospital Services Utah Medicaid Provider Manual with its attachments;
- (4) Definitions found in the Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid;
- (5) Speech-Language Services Utah Medicaid Provider Manual;
- (6) Audiology Services Utah Medicaid Provider Manual;
- (7) Hospice Care Utah Medicaid Provider Manual;
- (8) Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments;
- (9) Personal Care Utah Medicaid Provider Manual with its attachments;
- (10) Utah Home and Community-Based Waiver Services for Individuals 65 or Older Utah Medicaid Provider Manual;
- (11) Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Utah Medicaid Provider Manual;
- (12) Utah Home and Community-Based Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual;
- (13) Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Utah Medicaid Provider Manual;



(14) Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual;

(15) Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual;

(16) Utah Home and Community-Based Waiver Services Autism Waiver Utah Medicaid Provider Manual;

(17) Office of Inspector General Administrative Hearings Procedures Manual;

(18) Pharmacy Services Utah Medicaid Provider Manual with its attachments;

(19) Coverage and Reimbursement Code Look-up Tool found at <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php>;

(20) Certified Nurse - Midwife Services Utah Medicaid Provider Manual;

(21) CHEC Services Utah Medicaid Provider Manual with its attachments;

(22) Chiropractic Medicine Utah Medicaid Provider Manual;

(23) Dental Services Utah Medicaid Provider Manual;

(24) General Attachments for the Utah Medicaid Provider Manual;

(25) Indian Health Utah Medicaid Provider Manual;

(26) Laboratory Services Utah Medicaid Provider Manual with its attachments;

(27) Medical Transportation Utah Medicaid Provider Manual;

(28) Mental Health Centers/Prepaid Mental Health Plans Utah Medicaid Provider Manual;

(29) Non-Traditional Medicaid Health Plan Utah Medicaid Provider Manual with its attachments;

(30) Certified Family Nurse Practitioner and Pediatric Nurse Practitioner Utah Medicaid Provider Manual;

(31) Oral Maxillofacial Surgeon Services Utah Medicaid Provider Manual;

(32) Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual;

(33) Physician Services and Anesthesiology Utah Medicaid Provider Manual with its attachments;

(34) Podiatric Services Utah Medicaid Provider Manual;

(35) Primary Care Network Utah Medicaid Provider Manual with its attachments;

(36) Psychology Services Utah Medicaid Provider Manual;

(37) Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual;

(38) Rehabilitative Mental Health Services for Children Under Authority of Department of Human Services, Division of Child and Family Services or Division of Juvenile Justice Services Utah Medicaid Provider Manual;

(39) Rural Health Clinic Services Utah Medicaid Provider Manual with its attachments;

(40) School-Based Skills Development Services Utah Medicaid Provider Manual;

(41) Section I: General Information of the Utah Medicaid Provider Manual;

(42) Services for Pregnant Women Utah Medicaid Provider Manual;

(43) Substance Abuse Treatment Services & Targeted Case Management Services for Substance Abuse Utah Medicaid Provider Manual;

(44) Targeted Case Management for CHEC Medicaid Eligible Children Utah Medicaid Provider Manual;

(45) Targeted Case Management for the Chronically Mentally Ill Utah Medicaid Provider Manual;

(46) Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual; and

(47) Vision Care Services Utah Medicaid Provider Manual.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment:** [~~August 7,~~ 2013

**Notice of Continuation:** March 2, 2012

**Authorizing, and Implemented or Interpreted Law:** 26-1-5; 26-18-3; 26-34-2

## Human Services, Substance Abuse and Mental Health, State Hospital **R525-4** Visitors

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 37969

FILED: 09/09/2013

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to update the format of the rule by adding the statutory rulemaking authority and purpose of the rule; and is to add procedural language that brings the rule into compliance with statute.

**SUMMARY OF THE RULE OR CHANGE:** The changes added the statutory rulemaking authority and purpose to the rule; and added language that gives the clinical treatment teams authorization to deny visitation as provided for in Section 62A-15-641.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-15-105 and Section 62A-15-641

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Because the changes in this amendment are only procedural and formatting in nature, there is no cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Because the changes in this amendment are only procedural and formatting in nature, there is no cost or savings to local government.

◆ **SMALL BUSINESSES:** Because the changes in this amendment are only procedural and formatting in nature, there is no cost or savings to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because the changes in this amendment are only procedural and formatting in nature, there is no cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the changes in this amendment are only procedural and formatting in nature, there is no compliance cost for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses because the changes brought in this amendment are only procedural and formatting in nature.

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

HUMAN SERVICES  
SUBSTANCE ABUSE AND MENTAL HEALTH,  
STATE HOSPITAL  
UTAH STATE HOSPITAL  
PROVO, UT 84603-0270  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at [jhjones@utah.gov](mailto:jhjones@utah.gov)  
◆ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at [raywinger@utah.gov](mailto:raywinger@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2013

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2013

AUTHORIZED BY: Doug Thomas, Acting Director

**R525. Human Services, Substance Abuse and Mental Health, State Hospital.**

**R525-4. Visitors.**

**R525-4-1. Authority and Purpose.**

(1) This rule is adopted under the authority of Section 62A-15-105.

(2) The purpose of this rule is to provide guidance on the visitation of patients at the Utah State Hospital.

**R525-4-[1]2. Patients May Have Visitors.**

[At the discretion]With the approval of the patients and their clinical treatment team, the patient's family, friends, and others[appropriate others] may visit patients at the Utah State Hospital (USH).

**R525-4-[2]3. Clergy and Legal Counsel.**

With respect to clergy and/or legal counsel visiting patients, the hospital abides by Subsection 62A-15-641(3).

**R525-4-[3]4. Visits May Be Denied or Limited.**

A physician may deny or limit a visit for safety, security, and/or therapeutic reasons.

**R525-4-[4]5. Visiting Minors.**

Persons desiring to visit minors must obtain approval from the parent/legal guardian and the unit clinical staff.

**R525-4-[5]6. Visiting Hours Are Posted.**

Each treatment unit shall post their visiting hours in an area that is accessible by the public.

**R525-4-[6]7. Visitor Slip.**

Upon arrival at USH, visitors must obtain a "visitor slip" from the switchboard located in the Heninger Administration Building.

**R525-4-[7]8. Visitor Slips Are Presented Upon Arrival at Unit.**

The visitor presents the visitor slip and proper identification upon arrival to the unit.

**R525-4-[8]9. Visitors Bringing Gifts.**

Visitors desiring to bring gift/items are required to obtain clearance from the patient's treatment team prior to bringing the gift/item on the unit.

**KEY: visitors**

**Date of Enactment or Last Substantive Amendment:** [~~May 25, 1998~~]2013

**Notice of Continuation:** January 23, 2013

**Authorizing, and Implemented or Interpreted Law:** 62A-15-[606]105; 62A-15-641(3)

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## Human Services, Juvenile Justice Services **R547-1** Residential and Nonresidential, Non- Secure Community Program Standards

### NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 37986

FILED: 09/12/2013

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The licensing responsibility was transferred from Juvenile Justice Services (JJS) to DHS Office of Licensing (OL). OL uses its own set of rules and does not use Rule R547-1.

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-7-701 and Subsection 62A-7-106(5)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--The licensing requirements are being taken care of by another agency.
- ◆ LOCAL GOVERNMENTS: None--The licensing requirements are being taken care of by another agency.
- ◆ SMALL BUSINESSES: None--The licensing requirements are being taken care of by another agency.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--The licensing requirements are being taken care of by another agency.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The licensing requirements are being taken care of by another agency.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact.

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:  
◆ Janene Parry by phone at 801-538-4413, by FAX at 801-538-4334, or by Internet E-mail at jclarsen@utah.gov  
◆ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2013

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2013

AUTHORIZED BY: Susan Burke, Director

**R547. Human Services, Juvenile Justice Services.**  
~~[R547-1. Residential and Nonresidential, Nonsecure Community Program Standards.~~  
~~R547-1-1. Authority.~~  
~~Section 62A-1-111 authorizes the Department of Human Services to adopt administrative rules.~~

**R547-1-2. Waiver Statement.**

- ~~\_\_\_\_\_ (1) A residential or nonresidential alternative program shall comply with all (relevant) requirements unless a waiver for specific requirement(s) has been granted by the designated certifying officer of Juvenile Justice Services with specific approval of the Director of the Division. The certifying officer shall specify the particular requirement(s) to be waived, the duration of the waiver, and the terms under which the waiver is granted.~~
- ~~\_\_\_\_\_ (2) The Division will submit to the Board of Juvenile Justice Services at least annually a listing with expiration dates of programs receiving waivers.~~
- ~~\_\_\_\_\_ (a) Waiver of specific requirements shall be granted only when the specific program or facility has documented that the intent of the specific requirement(s) to be waived will be satisfactorily achieved in a manner other than that prescribed by the requirement(s).~~
- ~~\_\_\_\_\_ (b) The waiver shall contain provisions for a regular review of the waiver.~~
- ~~\_\_\_\_\_ (c) When a program fails to comply with the waiver specifications, the waiver shall be subject to immediate cancellation.~~

**R547-1-3. Administration of Contracted Programs.**

- ~~\_\_\_\_\_ (1) Administration A residential or nonresidential alternative program contracting with the Division of Juvenile Justice Services, shall not accept a youth in custody without the formal approval of the Division.~~
- ~~\_\_\_\_\_ (2) A residential or nonresidential alternative program shall allow Juvenile Justice Services to inspect all aspects of the program's functioning which impact on youth and to interview any staff member of the program or any youth in care of the program.~~
- ~~\_\_\_\_\_ (3) The residential or nonresidential alternative program shall make any information which the facility is required to have under these requirements and any information reasonably related to assessment of compliance with these requirements available to the Division of Juvenile Justice Services.~~
- ~~\_\_\_\_\_ (4) A privately operated residential or nonresidential alternative program shall have documents which fully identify its ownership. A corporation, partnership, individual ownership, or association shall identify its officers and shall have, where applicable, the charter, partnership agreement, constitution, articles of association; and/or by laws of the corporation, partnership, individual ownership, or association.~~
- ~~\_\_\_\_\_ (a) Organizational structure of facility or program staff;~~
- ~~\_\_\_\_\_ (b) Job description of facility or program staff;~~
- ~~\_\_\_\_\_ (c) Names and positions of persons authorized to sign agreements, contracts and submit official documentation to Juvenile Justice Services;~~
- ~~\_\_\_\_\_ (d) Board structure and composition, with names and addresses and terms of memberships;~~
- ~~\_\_\_\_\_ (e) Existing purchase of service agreements;~~
- ~~\_\_\_\_\_ (f) Insurance coverage, required by contract;~~
- ~~\_\_\_\_\_ (g) Appropriate licensure to provide contracted services to include: Letters of compliance with existing sanitation, health and fire codes and reports of inspection and action taken;~~
- ~~\_\_\_\_\_ (h) Procedure for notifying interested parties of changes in the facility's policy and programs;~~
- ~~\_\_\_\_\_ (i) A master list of all social services providers which the facility uses; and~~

(j) Financial and program audits and reviews.

(5) A residential or nonresidential alternative program accepting any youth who resides in another state shall comply with the terms of the Interstate Compact on Juveniles, Section 55-12-100, and the Interstate Compact on the Placement of Children, Section 62A-4a-701.

(6) A residential or nonresidential alternative program shall have a representative present at all judicial, educational or administrative hearings which address the status of a youth in care of the program, if requested by the division or the court.

(7) A residential or nonresidential alternative program shall ensure that all entries in records are legible. All entries shall be signed, or initialed, by the person making the entry. All entries shall be accompanied by the date on which the entry was made.

(8) A residential or nonresidential alternative program shall have a governing body which is responsible for and has authority over the policies and activities of the program.

(9) The governing body shall have a set of by-laws or a constitution which describes its duties, responsibilities and authority. As a minimum, the agency by-laws include for the governing authority:

- (a) Memberships (types, qualifications, community representation, rights, duties) as required by all applicable laws, statutes and rules;
- (b) Size of the governing body;
- (c) Method of selection;
- (d) Terms of office;
- (e) Duties and responsibilities of officers;
- (f) Times authority will meet;
- (g) Committees;
- (h) Quorums;
- (i) Parliamentary procedures;
- (j) Recording of minutes;
- (k) Method of amending the by-laws;
- (l) Conflict of interest provisions; and
- (m) Specification of the relationship of the chief executive to the governing body.

(10) The governing authority of the agency shall hold meetings as prescribed in the by-laws.

(11) The governing body of the program shall be responsible for ensuring the program's continual compliance and conformity with the provisions of the program's charter.

(12) The governing body of a residential or nonresidential alternative program shall be responsible for ensuring the program's continual compliance and conformity with the terms of all leases, contracts or other legal agreements to which the program is a party.

(13) The governing body of a residential or nonresidential alternative program shall be responsible for ensuring the program's continual compliance and conformity with all relevant laws and/or regulations, whether federal, state, local or municipal, governing the operations of the program.

(14) The governing body of a residential or nonresidential alternative program shall designate a person to act as chief administrative officer of the program to whom all staff shall be responsible and shall delegate sufficient authority to such person as to implement policy and procedure and to manage the affairs of the program effectively.

(15) The governing body of the residential or nonresidential alternative program shall regularly evaluate the performance of the chief administrative officer to ensure that this officer's conduct of the program's business conforms with the program's charter, all relevant laws and regulations, and policies defined by the governing body.

(16) The governing body of the residential or nonresidential alternative program shall ensure that the program is housed, maintained, staffed, and equipped in such a manner as to implement the program effectively.

(17) The governing body of the residential or nonresidential alternative program shall, in consultation with the chief administrative officer, formulate and periodically review and update written policies and procedures concerning:

- (a) The program policies, goals and current services;
- (b) Personnel practices and job descriptions;
- (c) Organizational chart which reflects the structure of authority, responsibility and accountability;
- (d) Fiscal management; and
- (e) This written administrative manual must be available to all staff as well as the general public and residents, if requested, unless protected trade secrets would be revealed.

(18) The governing body of the residential or nonresidential alternative program shall ensure that the program has written policies and procedures to carry out ongoing internal evaluation of the services it offers and compiles a written report of such evaluation annually.

(19) The governing body of the program shall have access to and use an organized system of information collection, retrieval and review. The agency shall participate in the establishment of information needs and establish guidelines regarding the security of all information about participants.

(20) The governing body, in concert with the program administrator, shall use the findings of evaluation studies in decision-making and policy development.

(21) The program director or designee of the residential or nonresidential alternative program shall consult with Juvenile Justice Services prior to making any substantial alteration in the program provided by the facility and shall meet with representatives of Juvenile Justice Services whenever required to do so.

(22) The program director or designee cooperates with Juvenile Justice Services in evaluation of its operations in terms of written goals and objectives, program effectiveness, cost-benefit analysis and statistical analysis of program data.

(23) The governing body shall disclose all existing or potential and contemplated conflicts of interest and must be approved by the DHS/DJJS Director or designee.

(24) The residential or nonresidential alternative program shall have written minutes of all meetings of the governing body of the program.

(25) The program shall have a written policy which ensures that it conforms to governmental statutes and regulations relating to campaigning, lobbying, and political practices.

(26) A residential or nonresidential alternative program shall identify, document and publicize its tax status with the Internal Revenue Service.

(27) A residential or nonresidential alternative program shall have by-laws, approved by the governing authority, which are filed with the appropriate local, state, and/or federal body.

~~(28) The Chief Executive Officer of a residential or nonresidential alternative program or a person designated by that officer and authorized to act, as necessary, in place of that officer shall be readily assessable to the staff of the program and/or the authorized representatives of Juvenile Justice Services.~~

~~(29) A residential or nonresidential alternative program shall have a written statement specifying its philosophy, purposes, and program orientation and describing both short and long-term goals. The statement should identify the types of services provided and the characteristics of the youth to be served by the program. The statement of purpose shall be available to the public.~~

~~(30) A residential or nonresidential alternative program shall have a written program plan which describes the services provided by the facility. The statement shall include a description of the facility's plan for the provision of services as well as the assessment and evaluation procedures used in treatment planning and delivery. The plan shall make clear which services are provided directly by the facility and which will be provided in cooperation with community resources. If the facility administers several programs at different geographical sites, appropriate resources shall be identified for each site. The program description shall be available to the public on request with protected trade secrets deleted.~~

~~(31) A residential and nonresidential alternative program shall obtain the written informed consent of a youth, Juvenile Justice Services Case Manager, and the youth's parent(s) or guardian prior to involving the youth in any activity related to fund raising and/or publicity for the program.~~

~~(32) A residential and nonresidential alternative program shall have written policies and procedures regarding the photographing and audio or audio-visual recording of youth in care.~~

~~(33) The written consent of a youth and the youth's parent(s) or guardian shall be obtained before the youth is photographed or recorded for program publicity purposes.~~

~~(34) All photographs and recordings shall be used in a manner which respects the dignity and confidentiality of the youth.~~

#### **R547-1-4. Administration of Publicly Operated Programs.**

~~(1) A publicly operated residential or nonresidential alternative program shall have an advisory board which includes representatives of the community in which the program is located and representatives of the parents of the type of youth served.~~

~~(2) The members of the Advisory Board of a publicly operated residential or nonresidential alternative program shall be appointed for specific terms of office by the director of the agency operating the program.~~

~~(3) The Advisory Board of the publicly operated residential or nonresidential facility shall advise and assist the Administrative Officer.~~

~~(a) The Advisory Board shall have a set of by-laws which describe its duties, responsibilities and authority.~~

~~(b) The Advisory Board shall keep itself informed as to the operational policies and practices of the regional facility. The Advisory Board has the right and responsibility to consider all aspects of that facility's operations, and to make recommendations to the Administrative Officer. The Advisory Board shall make at least:~~

~~(i) Semi-annual visits to the residential or nonresidential alternative program.~~

~~(ii) The Advisory Board shall at least annually provide the Administrative Officer with a report on the program. This report shall~~

~~make recommendations for improving services provided by the program. The report shall be available to the public.~~

~~(iii) The Advisory Board of the publicly operated residential or nonresidential alternative program shall inform the Director in writing of any event or circumstance which the majority of the Advisory Board believes warrants correction.~~

~~(iv) In the event of serious unresolved disagreement between the Administrative Officer and the Advisory Board, the Advisory Board shall report to the Board of Juvenile Justice Services outlining the nature of the disagreement.~~

~~(v) A publicly residential or nonresidential alternative program shall have documents which identify the statutory basis for the existence of the program and the nature of the authorization of the program under existing laws. A publicly operated residential or nonresidential alternative program shall have documents which identify the statutory basis of its existence and the administrative framework of government within which it operates.~~

#### **R547-1-5. Fiscal Management.**

~~(1) The residential or nonresidential alternative program shall demonstrate that it is financially sound and manages its financial affairs prudently. All funds disbursed by the facility shall be expended in accordance with the program objectives as specified by the governing body and contractual agreements.~~

~~(2) The residential or nonresidential alternative program shall have a system of accountability which shall state funds allocated for each program function, funds spent for each, and specific cost of each service provided.~~

~~(3) The residential or nonresidential alternative program shall prepare a written budget of anticipated revenues and expenditures which is approved by the appropriate governing authority and included as part of the written contract.~~

~~(4) The program director shall participate in budget reviews conducted by the governing board or parent governmental agency.~~

~~(5) The program director shall present a budget request which is adequate to support the programs of the agency.~~

~~(6) The agency shall have written policies which govern revisions in the budget.~~

~~(7) A residential or nonresidential alternative program shall demonstrate fiscal accountability through regular recording of all income, expenditures and the submission of an annual independent audit.~~

~~(8) The residential or nonresidential alternative program shall prepare and distribute to its governing authority and appropriate agencies and individuals the following documents, at a minimum: income and expenditure statements, funding source financial reports, and independent audit reports.~~

~~(9) The residential or nonresidential alternative program shall have written fiscal policies and procedures adopted by the governing authority which include, at a minimum: internal controls; petty cash; bonding; signature control on checks; resident funds; and employee expense reimbursement.~~

~~(10) The residential or nonresidential alternative program shall have a written policy for inventory control of all property and assets.~~

~~(11) The residential or nonresidential alternative program shall have a written policy for purchasing and requisitioning supplies and equipment.~~

(12) The residential or nonresidential alternative program shall use a method which documents and authorizes wage payment to employees and consultants. Amount paid is authorized by administrative officer; salary for administrative officer is set and approved by Board of Directors and reviewed annually.

(13) A residential or nonresidential alternative program shall not permit public funds to be paid or committed to be paid to any corporation, firm, association, business or State agency or representative in which any members of the governing body of the program, the executive personnel of the program, or the members of the immediate families of members of the governing body or executive personnel have any direct or indirect financial interest, or in which one of these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive cost and under terms favorable to the program. The program shall have a written disclosure of any financial transaction with the program in which a member of the Board or his/her immediate family is involved.

(a) The program shall have a written policy to guard against conflicts of interest which adversely affect the program; this policy shall specifically state that no person connected with the program will use his or her official position to secure privileges or advantages for himself or herself.

(14) A residential or nonresidential alternative program shall ensure that all purchase of service agreements involving professional services to youth in care are in writing and available to Juvenile Justice Services. The program shall abide by all State and Federal regulations and laws related to the governing of contracting bodies. Purchase of service agreements shall contain all terms and conditions required to define the clients to be served, the services to be provided, program budget, the procedures for payment, the payment plan, and terms of agreement.

(15) A residential or nonresidential alternative program shall have copies of all leases into which the program has entered. These leases shall include the location of all property involved, the monthly or annual rent, the ownership of the property, the usable square footage and the terms of the lease.

(a) If a member of the governing body of a residential or nonresidential alternative program, any staff member of the program or any member of the immediate family of either staff member or member of the governing body of the program, has any financial interest in any property rented by the program, the program shall have a report detailing the nature and extent of the financial interest and identifying the party or parties having the interest. A conflict of interest must be approved by DHS/DJJS Director or designee.

(16) A residential facility or nonresidential alternative program which accepts payment of public funds, directly or indirectly, shall maintain adequate bonding. All persons delegated the authority to sign checks or manage funds shall be bonded at the program's expense.

(17) A residential or nonresidential alternative program shall carry adequate insurance covering fire and liability as protection for youth in care and other insurance coverage as required by Juvenile Justice Services, and other federal, state and local statutes and regulations for contracts. In addition, the program shall have insurance which covers liability to third parties or youth in care arising through the use of any vehicle, whether owned or not owned by the program, used by any of the program's staff or agents on the program's business.

(18) Provision should be made for indemnifying, bonding and insuring board members, trustees, officers, and employees of the

residential or nonresidential alternative program against liability incurred while acting properly in behalf of the agency.

(19) The insurance coverage of the program should be examined annually to assure adequate coverage.

#### **R547-1-6. Personnel/Volunteers.**

(1) A residential or nonresidential alternative program shall employ a sufficient number of qualified staff and delegate sufficient authority to such staff to carry out the responsibilities it undertakes and to adequately perform the following functions:

- (a) Administrative functions;
- (b) Fiscal functions;
- (c) Clerical functions;
- (d) Housekeeping, maintenance and food services functions (if residential);
- (e) Direct youth service functions;
- (f) Supervisory functions;
- (g) Record keeping and reporting functions;
- (h) Social service functions; and
- (i) Ancillary service functions.

(2) A residential or nonresidential alternative program shall ensure that all staff members are properly certified and/or licensed as legally required.

(3) Each residential or nonresidential alternative program as applicable will have or contract for a director of clinical services who shall be properly certified or licensed and who shall be responsible for approval of all treatment or service plans.

(4) A residential or nonresidential alternative program employing any person who does not possess usual qualifications for the position in which he/she is employed shall have a written statement justifying reasons for employing this person.

(5) A residential or nonresidential alternative program shall have a description of all staff assignments. This description shall provide complete information on roles, functions, lines of authority, lines of responsibility and lines of communication. This description shall be provided to all staff members as part of the orientation procedure and, on request, to Juvenile Justice Services.

(6) A residential or nonresidential alternative program shall have a written description of personnel policies and procedures. This description shall be provided to all staff members.

(7) The agency personnel policies include, at a minimum:

- (a) Organization chart;
- (b) Employment practices and procedures, including in-service training and staff development;
- (c) A DHS code of conduct for all staff that defines acceptable and nonacceptable conduct both on and off duty;
- (d) Job qualifications and job descriptions;
- (e) Grievance and appeal procedures;
- (f) Employee evaluation;
- (g) Promotion;
- (h) Personnel records;
- (i) Benefits;
- (j) Holidays;
- (k) Leave;
- (l) Hours of work;
- (m) Salaries (or the base for determining salaries);
- (n) Disciplinary procedures;
- (o) Termination; and
- (p) Resignation.

(8) The residential or nonresidential alternative program shall have a written policy which outlines experience and education substitutes if the agency permits such substitutions.

(9) A residential or nonresidential alternative program shall actively recruit, and, when possible, employ, qualified personnel broadly representative of the racial and ethnic groups it services.

(10) The residential or nonresidential alternative program shall have a policy which does not deliberately exclude employment of ex-offenders but requires a criminal background check be conducted, by the division, prior to hiring.

(11) A residential or nonresidential alternative program shall not hire, or continue to employ, any person whose health, educational achievement, emotional or psychological make-up impairs his/her ability to properly protect the health and safety of the youth or is such that it would endanger the physical or psychological well being of the youth.

(12) The residential or nonresidential alternative program shall require written personal and prior work references or written telephone notes on such references prior to hiring and criminal background checks conducted by the Division consistent with its policy.

(13) All residential or nonresidential alternative program participants employed outside the program either full or part-time shall comply with all legal and regulatory requirements.

(14) A residential or nonresidential alternative program shall have a written grievance procedure for employees which has been approved by Juvenile Justice Services.

(15) A residential or nonresidential alternative program shall ensure that youth care staff have regularly scheduled hours of work. Work schedules shall be provided at least a week in advance.

(16) A residential or nonresidential alternative program shall establish a written procedure, in accordance with applicable laws, regarding the discipline, suspension, lay-off or dismissal of its employees.

(17) The residential or nonresidential alternative program does not discriminate or exclude from employment women working in boys' programs or men working in girls' programs.

(18) The residential or nonresidential alternative program shall have a personnel file for each employee which shall contain:

(a) The application for employment and/or resume;

(b) Reference letters from former employer(s) and personal references or phone notes on such references;

(c) Any required medical examinations;

(d) Applicable professional credentials/certification;

(e) Periodic performance evaluations;

(f) Personnel actions, other appropriate material, incident reports and notes, commendations relating to the individual's employment with the facility;

(g) Wage and salary information; and

(h) Employee's starting and termination dates.

(19) The staff member shall have access to his/her file and shall be allowed to add any written statement he/she wishes to make to the file at any time.

(20) A written procedure shall exist whereby the employee can challenge information in his or her personnel file and have it corrected or removed if it proves to be inaccurate.

(21) Written policy and procedure shall ensure the confidentiality of the personnel record by restricting its availability only to the employee who is the subject of the record, Juvenile Justice

Services and other agency employees who have a need for the record in the performance of their duties.

(22) Records shall be kept locked to insure confidentiality. A residential or nonresidential alternative program shall not release a personnel file without the employee's written permission except under court order or to an authorized representative of Juvenile Justice Services.

(23) A residential or nonresidential alternative program shall maintain the personnel file of an employee who has been terminated for a period of five years.

(24) A residential or nonresidential alternative program shall have a comprehensive written staff plan for the orientation, on-going training, development, supervision and evaluation of all staff members.

(25) A residential or nonresidential alternative program shall ensure that each direct care staff member receives at least 25 hours of training within the first month of employment, and an additional 25 hours of training within the first 12 months of employment, and 30 hours of training activities during each subsequent full year of employment. Activities related to supervision of the staff member's routine tasks shall not be considered training activities for the purposes of this requirement.

(26) A residential or nonresidential alternative program shall document that direct care staff members receive appropriate training as specified in the DHS/DJJS contract.

(27) Inexperienced direct care staff shall be accompanied by experienced workers on initial tours of duty until such time as these staff are able to safeguard the health and safety of youth in care effectively.

(28) A residential or nonresidential alternative program shall ensure that a minimum of one evaluation/planning conference per year for each staff is held, documented and signed by the staff person and his/her immediate supervisor. There must be an opportunity for the employee to express agreement or disagreement with the evaluation in writing. The staff person shall be given a copy of the evaluation.

(29) Within the probationary period after employment, each new direct care or administrative employee shall have his/her first evaluation/planning conference with his/her supervisor for the purpose of evaluating performance and developing an individual training plan.

(30) The supervisor and the employee shall review strengths and weaknesses, set time-limited performance goals, devise training objectives to help meet the goal and establish a strategy that will allow achievement of these goals and objectives.

(31) The program staff shall maintain membership and participate in professional associations and activities on the local and national levels, where appropriate.

(32) A residential or nonresidential alternative program shall employ a staff of direct service workers sufficiently large and sufficiently qualified to implement the individual service plan of each youth in care with a minimum staffing ratio as required by contract.

(33) A residential or nonresidential alternative program shall have the required staff to youth ratio at all times as appropriate considering the time of day and the size and nature of the program.

(34) The staff pattern of the facility shall concentrate staff when most participants are available to use facility resources and meet staff gender contract requirements.

(35) There shall be at least one staff person who is readily available and responsive to resident needs on group home premises twenty-four hours a day in residential programs.

(36) A residential or nonresidential alternative program shall establish procedures to assure adequate communications among staff to provide continuity of services to youth. This system of communication shall include:

(a) A regular review of individual and aggregate problems of residents or clients including actions taken to resolve these procedures;

(b) Sharing of daily information noting unusual circumstances and other information requiring continued action by staff;

(c) Written reports maintained of all accidents, personal injuries and pertinent incidents related to implementation of youth's individual service plans, including notification to parents and Juvenile Justice case manager.

(37) Any employee of a residential or nonresidential alternative program working directly with youth in care shall have access to information from the youth's case records that is necessary for effective performance of the employee's assigned tasks.

(38) A residential or nonresidential alternative program shall establish procedures which facilitate participation and feedback by staff members in policy-making planning and program development.

(39) A residential or nonresidential alternative program shall obtain professional services required for the implementation of the individual service plan of a youth that is not available from employees of the program.

(40) The program shall ensure that a professional providing a direct service to a youth in care communicates with program staff as appropriate to the nature of the service.

(41) A residential or nonresidential alternative program shall have documentary evidence that all professionals providing services to the program, whether working directly with youth in care or providing consultation to employees of the program, are appropriately qualified; certified and/or licensed as appropriate to the nature of the service.

(42) A residential or nonresidential alternative program which utilizes volunteers on a regular basis, or utilizes volunteers to work directly with a particular youth or group of youth for an extended period of time, shall have a written plan for using such volunteers. This plan shall be given to all such volunteers. The plan shall indicate that all such volunteers shall:

(a) Be directly supervised by a paid staff member;

(b) Be oriented and trained in the philosophy of the program, and the needs of youth in care, and methods of meeting those needs; (There should be documentation of completion of orientation.)

(c) Be subject to character reference and criminal background investigation checks similar to those performed for employment applicants;

(d) Be aware of any staff who have input into the service plans for youth they are working with directly and be briefed on any special needs or problems of these youth.

(43) Volunteers shall be recruited from all cultural and socio-economic segments of the community.

(44) The residential or nonresidential alternative program shall designate a staff member who serves as supervisor of volunteer services for residents.

(45) The residential or nonresidential alternative program shall have a written policy specifying that volunteers perform professional services only when certified or licensed to do so.

(46) Written policy and procedure shall provide that the program director curtails, postpones or discontinues the services of a

volunteer or volunteer organization when there are substantial reasons for doing so.

(47) The residential or nonresidential alternative program administration shall provide against liability or tort claims in the form of insurance, signed waivers or other legal provisions, valid in the jurisdiction in which the program is located.

(48) A residential or nonresidential alternative program which accepts students for field placement shall have a written policy on student placements. Copies shall be provided to each student and his/her school. The policy shall include:

(a) Statement of the purpose of a student's involvement with the program and the student's role and responsibility; and

(b) A description of required qualifications for students, orientation and training procedures and supervision provided while the student is placed at the program.

(49) A residential or nonresidential alternative program shall ensure that students meet all of the criteria established by the program for student placement service.

(50) A residential or nonresidential alternative program shall ensure that students are supervised directly by an appropriate paid staff member who will act as a liaison between the program and the school making placements unless other appropriate arrangements are made.

(51) Where paraprofessionals are employed, the program shall have written policies and procedures for their recruitment and established career lines for their advancement in the organization. There are written guidelines for staff regarding the supervision of paraprofessional personnel.

#### **R547-1-7. Admission Policies and Procedures.**

(1) A residential or nonresidential alternative program shall have a written description of admissions policies and criteria which shall include the following information:

(a) Policies and procedures related to intake;

(b) The age and sex of youth in care;

(c) The needs, problems, situations or patterns best addressed by the program;

(d) Any other criteria for admission;

(e) Criteria for discharge; and

(f) Any preplacement requirements of the youth, the parent(s) or guardian and/or the placing agency.

(2) The written description of admissions policies and criteria shall be provided to all placing agencies and shall be available to the parent(s) of any youth referred for placement.

(3) A residential or nonresidential alternative program shall not refuse admission to any youth on the grounds of race, religion or ethnic origin.

(4) A residential or nonresidential alternative program shall not admit more youth into care than the number specified in their license.

(5) A residential or nonresidential alternative program shall not accept any youth for placement whose needs cannot be adequately met by the program.

(A) A residential facility shall not admit a youth on emergency placement if the presence of the youth to be admitted will be damaging to the on-going functioning of the group and/or the youth already in care.

(6) When refusing admission to a youth, a program shall provide a written statement of the reason for refusal of admission to the referring agency.



(7) A residential or nonresidential alternative program shall ensure that the youth, his or her parent(s) or guardian, the placing agency and others, as appropriate, are provided reasonable opportunity to participate in the admission process and decisions and that due consideration is given to their concerns and feelings regarding the placement. Where such involvement of the youth's parent(s) or guardian is not possible, or not desirable, the reasons for their exclusion shall be recorded in the admission study.

(8) A residential or nonresidential alternative program shall make its admission process as short in duration as possible.

(9) The program shall, when applicable, have policies and procedures governing self-admission. Such policies and procedures shall include procedures for notification of parent(s) or guardian.

(10) A residential or nonresidential alternative program with a sole source contract shall not consider any other youth for care under that sole source contract.

(11) A residential or nonresidential alternative program shall accept a youth into care only when a current comprehensive intake evaluation including social, health and family history, and if appropriate, psychological and developmental assessment has been completed, unless the admission is an emergency. This evaluation shall contain evidence that a determination has been made that the child cannot be maintained in a less restrictive (structured or highly supervised) environment within the community.

(12) A residential or nonresidential alternative program shall, consistent with the youth's maturity and ability to understand, make clear its expectations and requirements for behavior, and provide the youth referred for placement with an explanation of the program's criteria for successful participation in and completion of the program. Youth shall sign a Statement of Understanding.

(13) A residential or nonresidential alternative program shall ensure that a written placement agreement is completed. A copy of the placement agreement signed by all parties involved in its formulation shall be kept in the youth's case record and a copy shall be provided to each of the signing parties. The signing parties shall include: the placing agency, the residential or nonresidential program, the youth and the parent(s) or guardian.

(14) The placement agreement shall include by reference or attachment at least the following:

(a) The youth's and the parent(s) or guardian's expectations regarding family contact and involvement; the nature and goals of care; the religious orientations and practices of the youth; and anticipated discharge date and plan;

(b) A delineation of the respective roles and responsibilities of all agencies and persons involved with the youth and his/her family;

(c) Authorization to care for the youth;

(d) Authorization to obtain medical care for the youth;

(e) Resident rights to include at a minimum family contacts, religious services, mail, and telephone calls;

(f) Arrangements as to the nature of agreed upon reports and meetings involving the parent(s) or guardian and referral agency; and

(g) Provision for notification of parent(s) or guardian and/or the placing agency in the event of unauthorized absences, medical or dental problems and any significant events regarding the youth.

(15) Each youth in the care of a residential or nonresidential alternative program shall be assigned a staff person who carries out the function of an advocate staff in the program.

(16) A residential or nonresidential alternative program shall ensure that each youth, upon placement, shall be asked if she/he has

any physical complaints. If yes, appropriate treatment shall be provided, the results including any treatment provided shall be documented and kept in the youth's record.

(17) A residential program shall assign a staff member, preferably the youth's advocate staff, to orient the youth and his/her parent(s) or guardian, if they are available, to regulations, rules and expectations within the facility.

#### **R547-1-8. Service Planning and Child Management.**

(1) A residential or nonresidential alternative program shall have a written description of the methods of child management to be used at a program wide level. This description shall include:

(a) Definition of appropriate and inappropriate behaviors;

(b) Acceptable staff responses to inappropriate behaviors; and

(c) The description shall be provided to all program staff.

(2) There shall be a clear written list of rules and regulations governing conduct for youth in care of a residential program. These rules and regulations shall be posted in the facility and made available to each staff member, each youth in care, his/her parent(s) or guardian and placing agencies, as appropriate. Each participant should read, sign and date these rules.

(3) Where a language or literacy problem exists which can lead to participant misunderstanding of agency rules and regulations, assistance shall be provided to the participant either by staff or by another qualified individual under the supervision of a staff member.

(4) In co-educational programs, male and female participants shall have equal access to all agency programs and activities.

(5) Within 30 days of admitting a youth in care, a residential or nonresidential alternative program shall conduct a comprehensive assessment of the youth and, on the basis of this assessment, shall develop a written, time-limited, goal-oriented individual treatment plan for the youth.

(6) The assessment shall be conducted by a treatment team. This team shall include persons responsible for implementing the service plan on a daily basis. At least one member of the team shall have an advanced degree in psychology, psychiatry, child care work, social work or related field and experience in providing direct services to youth and be certified and licensed in that area or supervised by a licensed worker.

(7) The treatment team shall assess the needs and strengths of the child in the following areas:

(a) Health care;

(b) Education;

(c) Personal/social development;

(d) Family relationships;

(e) Vocational training;

(f) Recreation; and

(g) Life skills development; and

(h) Risk level and criminogenic needs.

(8) All means used in this assessment shall be appropriate considering the youth's age, cultural background and dominant language or mode of communication.

(9) A residential or nonresidential alternative program shall provide an opportunity for the following persons to participate in the planning process:

(a) The youth, unless contraindicated;

(b) His/her parent(s) or guardian, unless contraindicated;

~~(c) Representative(s) of the placing agency;~~  
~~(d) School personnel;~~  
~~(e) Other persons significant in the youth's life; and~~  
~~(f) When any of the above persons do not participate in the planning, the program shall have a written statement documenting its efforts to involve the person(s). When the involvement of parent(s) or guardian or youth is contraindicated, the reasons for the contradiction shall be documented.~~

~~(10) A residential or nonresidential alternative program shall have a written treatment plan. Any significant change in this plan shall be submitted to Juvenile Justice Services, the youth, parents or guardian, and/or other involved agencies for review prior to implementation. The written plan shall include the following:~~

~~(a) The name, position and qualifications of the person who has overall responsibility for the treatment program;~~  
~~(b) Staff responsibility for planning and implementation of the treatment methods;~~  
~~(c) Staff competencies and qualifications;~~  
~~(d) The measurable goals to address behaviors or conditions for which methods are to be used;~~  
~~(e) Restrictions on the use of coercive techniques to evoke an emotional response;~~  
~~(f) Assessment procedures for ensuring the appropriateness of the treatment for each youth;~~  
~~(g) Policies and procedures on involving and obtaining consent from the youth and parent(s) or guardian;~~  
~~(h) Requirements, where appropriate, for medical examination of a youth prior to implementation of the treatment on a regular basis;~~  
~~(i) Provisions for on-going monitoring and documentation;~~  
~~(j) Provisions for regular and thorough review and analysis of the treatment data, the individualized treatment goals;~~  
~~(k) Provisions for making appropriate adjustments in the treatment goals;~~  
~~(l) Policies and procedures encouraging termination of the treatment goals at the earliest opportunity in the event of achievement of goals, or when the procedures are proving to be ineffective or detrimental for a particular youth; and~~  
~~(m) Goals and preliminary plans for discharge and after care.~~

~~(11) The completed treatment plan shall be signed by the certified or licensed worker of the program, a representative of the child placing agency, the youth, if indicated, and the youth's parent(s) or guardian unless clearly not feasible.~~

~~(12) A residential or nonresidential alternative program shall review each treatment plan at least every six months or as specified in the DHS/DJJS contract and shall evaluate the degree to which the goals have been achieved. The treatment plan shall be revised as appropriate to the needs of the youth.~~

~~(13) Participant progress shall be reviewed at least monthly, either through staff meetings or by individual staff; the outcome of each review is documented.~~

~~(14) If a participant remains in a residential or nonresidential alternative program for six months, a written report shall be submitted by his/her case manager to the assistant program director and the committing authority stating the justification for keeping the juvenile in the program.~~

~~(15) Agreed upon progress reports shall be made available to the parent or legal guardian of each participant and to the referring agency.~~

~~(16) A residential or nonresidential facility shall have a statement describing the manner in which youth are arranged into groups within the facility and demonstrating that this manner of arranging youth into groups effectively addresses the needs of youth in care.~~

~~(17) A residential or nonresidential alternative program shall have written, comprehensive policies and procedures regarding discipline and control, which shall be explained to all youth, families, and staff and placing agencies. These policies shall include positive responses to appropriate behavior.~~

~~(18) A residential or nonresidential alternative program shall prohibit all cruel and unusual punishments including the following:~~

~~(a) Punishments including any type of physical hitting or any type of physical punishment inflicted in any manner upon the body;~~  
~~(b) Physical exercises such as running laps or any performing of push-ups, when used solely as a means of punishment, except in accordance with a youth's treatment plan when such activities are approved by a physician and carefully supervised by the facility administration;~~  
~~(c) Requiring or forcing the youth to take an uncomfortable position, such as squatting or bending, or requiring or forcing the youth to repeat physical movements when used solely as a means of punishment;~~  
~~(d) Group punishments for misbehaviors of individuals except in accordance with the program's written policy;~~  
~~(e) Punishment which subjects the youth to verbal abuse, ridicule or humiliation;~~  
~~(f) Excessive denial of on-going program services or denial of any essential program service solely for disciplinary purposes;~~  
~~(g) Withholding of any food included in the daily dietary requirements;~~  
~~(h) Denial of visiting or communication privileges with family solely as a means of punishment;~~  
~~(i) Denial of sufficient sleep;~~  
~~(j) Requiring the youth to remain silent;~~  
~~(k) Denial of shelter, clothing or bedding;~~  
~~(l) Withholding of emotional response or stimulation;~~  
~~(m) Chemical, mechanical or excessive physical restraint;~~  
~~(n) Exclusion of the youth from entry to the residence; and~~  
~~(o) Assignment of unduly physically strenuous or harsh work.~~

~~(19) Youth in care of a residential or nonresidential alternative program shall not punish other residents except as part of an organized therapeutic self-government program that is conducted in accordance with written policy and is supervised directly by staff.~~

~~(20) A residential or nonresidential alternative program shall ensure that all direct service staff members are trained in crisis behavior management and the appropriate use of verbal and physical restraint intervention methods.~~

~~(21) A residential or nonresidential alternative program shall not use any form of restraint other than those included in the approved crisis intervention and behavior management program identified by the resident and nonresident program.~~

~~(22) All cases of physical force or restraint shall be reported in writing, dated and signed by the staff person reporting the incident; the report shall be placed in the participant's case record and reviewed by supervisory and higher authority per DHS/DJJS Policy and Procedure incident report writing.~~

~~(23) A residential or nonresidential alternative program shall only use time-out (placement in locked or secure room) procedures when these procedures are in accordance with written policies of the facility. These policies shall include procedures for recording each incident involving the use of time-out. The facility policies shall outline other less restrictive responses to be used prior to using time-out.~~

~~(24) Each use of time-out procedures shall be directly supervised by direct care staff.~~

~~(25) The program's chief administrative officer, or designee, shall approve in writing any use of time-out procedures exceeding 30 minutes in duration.~~

~~(26) Written policy and procedure shall ensure that prior to room restriction or privileged suspension the youth has the reasons for the restriction explained to him/her, and has an opportunity to explain the behavior leading to the restriction.~~

~~(27) During room restriction staff contact shall be made with the youth at least every ten minutes to ensure the well-being of the youth; the youth assists in the determination of the end of the restriction period.~~

~~(28) Written policy and procedure shall ensure that prior to facility restriction for up to 48 hours the youth has the reasons for the restriction explained to him/her, and has an opportunity to explain the behavior leading to the restriction. Facility restriction may include lack of participation in any activities outside the facility except school, church, health and exercise needs.~~

~~(29) All instances of room restriction, privilege suspension and facility restriction shall be logged, dated and signed by staff implementing the discipline procedure; the log is reviewed by supervisory staff at least daily.~~

~~(30) In compliance with applicable laws, the program shall maintain and make public written policies and procedures for conducting searches of residents and all areas of the facility as standard operating procedure to control contraband and locate missing or stolen property.~~

~~(31) A written plan shall allow staff in residential or nonresidential alternative programs to monitor movement into and out of the facility, under circumstances specified in the plan.~~

~~(32) The program shall maintain a system of accounting for the whereabouts of its participants at all times.~~

~~(33) The program shall have written procedures for the detection and reporting of absconders to agency having jurisdiction; Juvenile Justice Services, and parents.~~

~~(34) The residential program shall use work assignments within the facility only insofar as they provide a constructive experience for youth and not as unpaid substitution for adult staff.~~

~~(35) Work assignments shall be in accordance with the age and ability of the youth and shall be scheduled so as not to conflict with other scheduled activities.~~

~~(36) A facility shall comply with all child labor laws and regulations in making work assignments.~~

~~(37) The residential or nonresidential alternative program shall ensure that any youth who is legally not attending school is either~~

~~gainfully employed or enrolled in a training program geared to the acquisition of suitable employment or necessary life skills.~~

~~(38) A residential or nonresidential alternative program shall have a written plan for ensuring that a range of indoor and outdoor recreational and leisure opportunities are provided for youth in care. Such opportunities shall be based on both the individual interests and needs of the youth and the composition of the living group. Approved activities shall comply with DHS/DJJS Policies and Procedures.~~

~~(39) A residential or nonresidential alternative program shall ensure appropriate staff involvement in recreational and leisure activities.~~

~~(40) A residential or nonresidential alternative program shall utilize the recreational resources of the community whenever appropriate. The residential or nonresidential alternative program shall arrange the transportation and supervision required for maximum usage of community resources.~~

~~(41) A residential or nonresidential alternative program which has recreation staff shall ensure that such staff are apprised of and, when appropriate, involved in the development and review of service plans.~~

#### **R547-1-9. Records.**

~~(1) A residential or nonresidential alternative program shall maintain a written record for each youth which shall include administrative, treatment and educational data from the time of admission until the time the youth leaves the facility. A youth's case record shall include at least the following, if available:~~

~~(a) Initial intake information form which shall include the following:~~

~~(i) The name, sex, race, religion, birth date of the child;~~

~~(ii) The name, address, telephone number and marital status of the parent(s) or guardian of the child;~~

~~(iii) Date of admission and source of referral;~~

~~(iv) When the child was not living with his/her parent(s) prior to admission the name, address, telephone number and relationship to the child of the person with whom the child was living;~~

~~(v) Date of discharge, reason for discharge, and the name, telephone number and address of the person or agency to whom the child was discharged;~~

~~(vi) The child's court status, if applicable;~~

~~(vii) All documents related to the referral of the child to the facility;~~

~~(viii) Documentation of the current custody and guardianship and legal authority to accept child;~~

~~(ix) A copy of the child's birth certificate or a written statement of the child's birth date including the source of this information;~~

~~(x) Consent forms signed by the parent(s) or guardian prior to placement allowing the facility to authorize all necessary medical care, routine tests, immunizations and emergency medical or surgical treatment;~~

~~(xi) Program rules and disciplinary procedures signed by participant;~~

~~(xii) Cumulative health records;~~

~~(xiii) Education records and reports;~~

~~(xiv) Employment records;~~

~~(xv) Treatment or clinical records and reports;~~

~~(xvi) Evaluation and progress reports;~~

~~(xvii) Records of special or critical incidents; including notification of parent and Juvenile Justice Services worker in case of medical emergency or AWOL of child; and~~

~~(xviii) Individual service plans and related materials which include referrals to other agencies, process recordings, financial disbursements such as allowance, clothing, holidays.~~

**R547-1-10. Communications.**

~~(1) A residential or nonresidential alternative program shall have a written description of its overall approach to family involvement.~~

~~(2) A residential or nonresidential alternative program shall make every possible effort to facilitate positive communication between a youth in care and his/her parents or legal guardians.~~

~~(3) A residential program shall provide conditions of reasonable privacy for visits and telephone contacts between youth in care and their families.~~

~~(4) Flexible visiting hours shall be provided for families who are unable to visit at the regular times.~~

~~(5) Residential or nonresidential alternative programs shall strive to:~~

~~(a) Maintain and develop youth-family relationships;~~

~~(b) Enable parents and siblings to recognize and involve the youth as a continuing member of the family; and~~

~~(c) Ensure that parents exercise their legal rights and responsibilities in a manner compatible with the youth's best interests.~~

~~(6) Written policy provides, whenever possible and appropriate, that while a youth is in a residential facility, staff members shall counsel parents or guardians in preparation for the youth's return to their home or other placement; provision is made for trial visits prior to such decisions.~~

~~(7) The residential or nonresidential alternative program shall have written policies and procedures which provide increasing opportunities and privileges for youth involvement with family and in community activities prior to final release.~~

~~(8) Residential or nonresidential alternative programs shall give consideration to the special needs of youth without families and youth for whom regular family contact is impossible.~~

~~(9) A residential or nonresidential alternative program shall have written policies and procedures with respect to:~~

~~(a) The relationship between the program and community;~~

~~(b) Involvement of youth in community activities;~~

~~(c) Participation of the program in community planning to achieve coordinated programs and services for families and youth; and~~

~~(d) Strategies for the optimum use of community resources.~~

~~(10) In its use of community resources, the residential or nonresidential alternative program shall maintain a periodic inventory and evaluation of functioning community agencies.~~

~~(11) Staff shall use community resources, either through referrals for service or by contractual agreement, to provide residents with the services to become appropriately self-sufficient.~~

~~(12) The residential or nonresidential alternative program shall collaborate, whenever possible, with criminal justice and human services agencies in programs of information gathering, exchange and standardization.~~

~~(13) A residential program shall have a written plan of basic daily routines which shall be available to all personnel. This plan shall be revised as necessary.~~

~~(14) Youth shall participate in planning daily routines.~~

~~(15) Daily routines shall not be allowed to conflict with the implementation of a youth's service plan.~~

~~(16) The residential or nonresidential alternative program shall have a written policy regarding visiting and other forms of youth's communication with family, friends and significant others.~~

~~(17) Visiting and communication policy shall be developed with the goals of encouraging healthy family interaction, maximizing the youth's growth and development and protecting youth, staff and residential programs from unreasonable intrusions.~~

~~(18) Visiting and communication policy shall be provided to youth, staff members, parent(s) or guardian and placing agencies.~~

~~(19) The residential program shall provide opportunities for a youth in care to visit with parent(s) or guardian and siblings.~~

~~(20) The residential program shall schedule or supervise visits in accordance with the youth's service plan.~~

~~(21) A residential program shall have written procedures for overnight visits outside the facility including: procedures for recording the youth's location, the duration of the visit, the name and address of the person responsible for the youth while absent from the facility and the time of youth's return.~~

~~(22) A residential or nonresidential alternative program, shall have procedures established in cooperation with Juvenile Justice Services for determining and reporting the absence without leave of youth in care. These procedures must include notification of the youth's parent(s) or guardian, the placing agency and the appropriate law enforcement official.~~

~~(23) A residential or nonresidential alternative program shall permit a youth in care to receive and send mail. Program staff shall not open or read youth's mail; however, mail may be inspected for contraband in the presence of the receiving youth. Written program policies and practices concerning youth's mail shall conform with applicable federal laws and DHS/DJJS Policies and Procedures.~~

~~(a) If requested, the residential or nonresidential alternative program shall provide postage for the mailing of a minimum of two letters per week for each resident.~~

~~(24) A residential program shall be equipped with a sufficient number of telephones for the youth's use and shall have procedures, including documentation of all calls, for youth's use of these telephones.~~

~~(25) When the right of a youth in care to communicate in any manner with a person outside the program must be curtailed, the program shall:~~

~~(a) Inform the youth of the conditions of and reasons for restriction or termination of his right to communicate with the specific individual(s);~~

~~(b) Inform the individuals over whom the restriction or termination of personal contact with the youth has been placed of the conditions of and reasons for that action; and~~

~~(c) Place a written report summarizing the conditions of and reasons for restricting or termination of the youth's contact with the specified individual(s) into the youth's case record and forward a copy of this report to the Division of Juvenile Justice Services and review this decision at least weekly.~~

~~(26) A residential or nonresidential alternative program shall not bar a youth's attorney, clergyman or an authorized representative of the responsible placing agency from visiting, corresponding with or telephoning the youth.~~

**R547-1-11. Education.**

~~(1) A residential or nonresidential alternative program contracting to serve State or local agency youth shall abide by all standards developed by the State Board of Education for education of youth in custody.~~

~~(2) A new residential or nonresidential alternative program or facility will coordinate with the local school district on the number of youth to be educated and continue to coordinate on all new students.~~

~~(3) A residential or nonresidential alternative program shall ensure that every youth in its care attends an appropriate educational program in accordance with state law.~~

~~(4) A residential or nonresidential alternative program shall have a written description of its educational program which shall be provided to the youth and his/her parent(s) or guardian prior to the youth's admission.~~

~~(5) A residential or nonresidential alternative program shall not place a youth in care in an on-ground educational program unless such program is appropriate to the youth's needs.~~

~~(6) A residential or nonresidential alternative program shall ensure routine communication between the direct care team involved with a youth in care and any educational program in which the youth is placed.~~

~~(7) A residential or nonresidential alternative program shall provide appropriate space and supervision for quiet study after school hours. The program shall ensure that the youth has access to necessary reference materials.~~

~~(8) A residential or nonresidential alternative program shall ensure that educational, vocational preparation services and/or life-skills training are available to a youth. Such training and services shall be appropriate to the age and abilities of the youth.~~

~~(9) Every attempt shall be made to ensure the continuity of educational programming for the youth.~~

~~(10) Prior to the youth's admission to the residential or nonresidential alternative program, the program shall attempt to secure the youth's previous educational records and shall create an appropriate educational program for the youth.~~

~~(11) The residential or nonresidential alternative program shall send the school of residence periodic reports of the youth's educational progress if it is likely that the youth will return to this school.~~

~~(12) Prior to discharge, the residential or nonresidential alternative program shall attempt to work with the youth's new school to ensure a smooth transition to the new educational environment.~~

**R547-1-12. Discharge and Aftercare.**

~~(1) At least three months or, as soon as possible, prior to planned discharge of a youth the treatment team (program advocate and case manager) shall formulate an aftercare plan specifying the supports and resources to be provided to the youth. Aftercare plans are to be kept in the youth's case record.~~

~~(2) Prior to discharge the treatment team shall ensure that the youth is aware of and understands his/her aftercare plan.~~

~~(3) When a youth is being placed in another residential or nonresidential alternative program following discharge, representatives of the treatment team shall, whenever possible, meet with representatives of that program prior to the youth's discharge to share information concerning the youth.~~

~~(4) A residential program shall have a written policy concerning emergency discharge and/or all other discharges not in~~

~~accordance with a youth's treatment plan. This policy shall ensure that emergency discharges take place only when the health and safety of a youth or other youth might be endangered by the youth's further placement at the program.~~

~~(5) The residential program shall give at least 72 hours notice of discharge to the responsible agency, the parent(s) or guardian and the appropriate educational authorities.~~

~~(6) Written policy and procedure shall require that all transfers from one community residential or nonresidential alternative program to another allow for objections on the part of the youth involved; where such transfers are to a more restrictive environment; due process safeguards are provided.~~

~~(7) When a youth in care is discharged, a residential or nonresidential program shall compile a complete written discharge summary within 15 days of the date of discharge, such summary to be included in the youth's case record and a copy sent to the referring agency. This summary shall include:~~

~~(a) The name, address, telephone number and relationship of the person to whom the youth is discharged;~~

~~(b) When the discharge date was in accordance with the youth's service plan;~~

~~(c) A summary of services provided during care;~~

~~(d) A summary of growth and accomplishments during care;~~

~~(e) The assessed needs which remain to be met and alternate service possibilities which might meet those needs; and~~

~~(f) A statement of an aftercare plan and identification of who is responsible for follow-up services and aftercare.~~

~~(8) When the discharge date was not in accordance with the youth's treatment plan, the following items shall be added to the summary:~~

~~(a) The circumstances leading to the unplanned discharge; and~~

~~(b) The actions taken by the program and the reason for these actions.~~

**R547-1-13. Confidentiality/Research.**

~~(1) A residential or nonresidential alternative program shall have written procedures for the maintenance and security of records specifying who shall supervise, who shall have custody of records, and to whom records may be released. Records shall be the property of Juvenile Justice Services and the program shall secure records against loss, tampering or unauthorized use.~~

~~(2) A residential or nonresidential alternative program shall maintain the confidentiality of all youths' case records. Employees of the program shall not disclose or knowingly permit the disclosures of any information concerning the youth or his/her family, directly or indirectly, to any unauthorized person. All case records shall be marked "confidential" and kept in locked files, which are also marked "confidential".~~

~~(3) Without the voluntary, written consent of the parent(s) or guardian, a residential or nonresidential alternative program shall not release any information concerning a youth in care except to the youth, his/her parent(s) or guardian, their respective legal counsel, the court or an authorized public official in the performance of his/her mandated duties. Any releases of information will conform with the Utah Government Records Access and Management Act, Title 63G, Chapter 2.~~

~~(4) A residential or nonresidential alternative program shall, upon request for information, refer the request to the case manager.~~

(5) A residential or nonresidential alternative program may not use material from case records for teaching or research purposes; development of the governing body's understanding, knowledge of the program's services or similar educational purposes without prior written approval from the DHS Institutional Review Board.

(6) Written policy and procedure shall prohibit participation in medical or pharmaceutical testing for experimental or research purposes.

#### **R547-1-14. Program Rules.**

(1) A residential or nonresidential program shall have a written description of its religious orientation, particular religious practices that are observed and any religious restrictions on admission. This description shall be provided to the youth, the parent(s) or guardian and the placing agency.

(2) During the admission process the religious orientation and policy of the residential or nonresidential alternative program shall be discussed with the youth and his/her parent(s) or guardian. At this time, the program shall determine the wishes of the parent(s) or guardian and the youth regarding the youth's religious training.

(3) Every youth shall have the opportunity to participate in religious activities and services in accordance with his/her own faith or that of the youth's parent(s) or guardian. The residential or nonresidential alternative program shall, when feasible, arrange transportation to services and activities in the community.

(4) Youth may be encouraged to participate in religious activities but they shall not be coerced to do so.

(5) The youth's family and Juvenile Justice case manager shall be consulted on any change in religious affiliation made by the youth while he/she is in care.

(6) A residential or nonresidential alternative program shall reflect consideration for and sensitivity to the racial, cultural, ethnic and/or religious backgrounds of youth in care.

(7) The residential or nonresidential alternative program shall involve a youth in cultural and/or ethnic activities, appropriate to his/her cultural and/or ethnic background.

(8) A residential program shall have set routines for waking youth and putting them to bed.

(9) A residential program shall ensure that each youth has ready access to a trained direct care staff member throughout the night.

(10) When the needs of a youth so dictate, there shall be an awake staff member near his/her sleeping area.

(11) A residential program shall ensure that the possessions and sleeping area of a youth are not disrupted or damaged during the youth's temporary absence from the facility.

(12) A residential program shall ensure that no youth occupies a bedroom with a member of the opposite sex.

(13) Juveniles and adults shall not share sleeping rooms.

(14) A residential program shall ensure that each youth in care has adequate clean, well fitting, attractive and seasonable clothing as required for health, comfort and physical well-being and as appropriate to age, sex and individual needs.

(15) A youth's clothing shall be identifiably his/her own and not shared in common unless provided by the program.

(16) A youth's clothing shall be kept clean and in good repair. The child shall be involved in the care and maintenance of his/her clothing. As appropriate, laundering, ironing and sewing facilities shall be accessible to the youth.

(17) A residential program shall ensure that discharge plans make provisions for clothing needs at the time of discharge. All personal clothing shall go with a youth when he/she is discharged.

(18) A residential program shall allow a youth in care to bring his/her personal belongings to the program and to acquire belongings of his/her own in accordance with the youth's treatment plan. However, the program shall, as necessary, limit or supervise the use of these items while the youth is in care. Where extraordinary limitations are imposed, the youth shall be informed by staff of the reasons, and the decisions and reasons shall be recorded in the youth's case record. Provisions shall be made for the storage for youth's property. A monthly inventory sheet shall be maintained and updated.

(19) A residential program shall establish procedures to ensure that youth receive training in good habits of personal care, hygiene and grooming appropriate to their age, sex, race and culture.

(20) The residential program shall ensure personal supervision by staff for proper grooming and physical cleanliness of the youth.

(21) The residential program shall ensure that youth are provided with all necessary toiletry items.

(22) A residential program shall permit and encourage a youth in care to have his/her own money either by giving an allowance and/or by providing opportunities for paid work within the facility.

(23) Money earned, received as a gift or received as allowance by a youth in care shall be deemed to be that youth's personal property and documented in the youth's file.

(24) Limitations may be placed on the amount of money a youth in care may possess or have unencumbered access to when such limitations are considered to be in the youth's best interests and are duly recorded in the youth's file.

(25) A residential program shall assist youth in care to assume responsibility for damage done by developing a restitution plan that may utilize earnings and is duly recorded in the youth's individual file. The program shall assist the youth to pay court ordered restitution or fines by developing a payment schedule from earnings, if employed, or by referring the youth to a Division sponsored restitution project.

(26) Written policy and procedure shall provide for establishment of personal fund accounts for youth.

(27) The residential program shall maintain a separate accounting system for youth's money.

(28) A residential or nonresidential alternative program shall have a written grievance and appeal policy and procedure for youth. This procedure shall be written in a clear and simple manner and shall allow youth to make complaints without fear of retaliation.

(29) The grievance procedure shall be explained to the youth by a staff member on admission and documented in the youth's individual file.

#### **R547-1-15. Physical Environment.**

(1) Any individual or organization seeking certification of a residential or nonresidential alternative facility shall provide the following documentation to Juvenile Justice Services at the time of application:

(a) Evidence that the proposed site location of the facility will be appropriate to youth to be served in terms of individual needs, program goals and access to service facilities.

(b) Evidence that the proposed facility will meet zoning laws of the municipality in which the site is located and Department of

Human Services regulations, including planning with local neighborhood counsels;

(c) A copy of the site plan and a sketch of the floor plan of the proposed facility; and

(d) A description of the way in which the facility will be physically harmonious with the neighborhood in which it is located considering such issues as scale, appearance, density and population.

(2) Every building or part of a building used as residential facility or nonresidential alternative program shall be constructed, used, furnished, maintained and equipped in compliance with all standards, regulations and requirements established by federal, state, local and municipal regulatory bodies.

(3) The governing authority shall designate who is permitted to live in the facility with concurrent authorization from the Division of Juvenile Justice Services.

(4) A residential or nonresidential facility shall ensure that all structures on the grounds of the facility are maintained in good repair and are free from any dangers to health or safety.

(5) A residential or nonresidential facility shall maintain the grounds of the facility in an acceptable manner and shall ensure the grounds are free from any hazard to health or safety;

(a) Garbage and rubbish which is stored outside shall be stored securely in nonecombustible, covered containers and shall be removed on a regular basis not less than once a week;

(b) Trash collection receptacles and incinerators shall be located as to avoid being a nuisance to neighbors;

(c) Fences shall be in good repair;

(d) Areas determined to be unsafe, including steep grades, cliffs, open pits, swimming pools, high voltage boosters, or high speed roads, shall be fenced off or have natural barriers to protect youth; and

(e) Recreational equipment shall be so located, installed and maintained as to ensure the safety of youth.

(6) A residential or nonresidential facility shall have access to outdoor recreational space and suitable recreational equipment.

(7) Shrubbery and lawns shall be properly tended and trimmed for safety and appearance.

(8) Ground shall adequately drain either naturally or through installed drainage systems.

(9) At a minimum each facility shall have nine square yards of available grounds space per child in care unless there is ready and safe access to other recreational areas.

(10) Signs which might tend to identify children in care in a negative manner shall not be used.

(11) A residential or nonresidential facility shall be structurally designed to accommodate the physical needs of each youth in care.

(12) Each residential facility shall contain space for the free and informal use of youth in care. This space shall be constructed and equipped in a manner consistent with the programmatic goals of the facility.

(13) Space to accommodate group meetings of the residents shall be provided in the facility.

(14) A visiting area shall be provided in the facility.

(15) The residential facility shall provide an appropriate variety of interior recreation spaces.

(16) A residential facility shall provide a dining area which permit youth and staff to eat together.

(17) The residential facility shall provide a dining area which is clean, well lighted, ventilated and attractively furnished.

(18) A residential facility shall ensure that each bedroom space in the facility has a floor area, exclusive of closets, of at least 60 square feet for each occupant in a multiple occupant bedroom and 80 square feet in a single occupant bedroom.

(19) A residential facility shall not use any room with a ceiling height of less than seven feet six inches as a youth's bedroom.

(20) A residential facility shall not permit more than four youth to occupy a designated bedroom space. Beds must be placed at least three feet apart on all sides.

(21) A residential facility shall not use any room which does not have a source of natural light and is properly ventilated as a bedroom space.

(22) Each youth in care of a residential facility shall have his/her own bed. This bed shall be a standard twin size and shall have a clean, comfortable, nontoxic, fire retardant mattress equipped with mattress cover, sheets, pillow, pillow case and blankets:

(a) Sheets and pillow cases shall be changed at least weekly but shall be changed more frequently if necessary.

(23) A residential program shall provide each youth in care with their own solidly constructed bed. Cot or other portable beds will not be used.

(24) A residential facility shall ensure that the uppermost mattress of any bunk bed in use shall be far enough from the ceiling to allow the occupant to sit up in bed.

(25) A residential facility shall provide each youth with his/her own dresser or other adequate storage space for private use, and a designated space for hanging clothing in proximity to the bedroom occupied by the youth.

(26) The decoration of sleeping areas in a residential facility shall allow some scope for the personal tastes and expressions of the youth.

(27) A residential facility shall have a minimum of one wash basin, one bath or shower with an adequate supply of hot and cold potable water for every six youth in care.

(a) Bathrooms shall be so placed as to allow access without disturbing other youth during sleeping hours;

(b) Bathrooms shall not open directly into any room in which food, drink or utensils are handled or stored;

(c) Each bathroom shall be properly equipped with toilet paper, towels, soap and other items required for personal hygiene unless youth are individually given such items and bath towels and wash cloths shall be changed weekly; and

(d) Tubs and showers shall have slip proof surfaces.

(28) The residential facility shall provide toilets and baths or showers which allow for individual privacy unless youth in care require assistance.

(29) A bathroom in a residential facility shall contain mirrors secured to the walls at convenient heights and other furnishings necessary to meet the youths basic hygienic needs.

(30) Toilets, wash basins, and other plumbing or sanitary facilities in a residential facility shall, at all times, be maintained in good operating condition, and shall be kept free of any materials that might clog or otherwise impair their operation.

(31) Kitchens used for meal preparation in a residential facility shall be provided with the necessary equipment for the preparation, storage, serving and clean up of all meals for all of the youth and staff regularly served by such kitchens. All equipment shall be maintained in working order.

~~(32) Kitchen facilities and equipment shall conform to all health, sanitation and safety codes.~~

~~(33) Kitchen areas in a facility shall be so constructed to allow staff to limit youth's access to kitchen when necessary.~~

~~(34) A residential facility utilizing live-in staff shall provide adequate separate living space for these staff.~~

~~(35) A facility shall provide a space which is distinct from youth's living areas to serve as an administrative office for records, secretarial work and bookkeeping.~~

~~(36) A residential or nonresidential facility shall have a designated space to allow private discussions and counseling sessions between individual youth and staff.~~

~~(37) A facility shall have comfortable customary furniture as appropriate for all living areas. Furniture for the use of youth shall be appropriately designed to suit the size and capabilities of these youth.~~

~~(38) There shall be evidence of routine maintenance and cleaning programs in all areas of the residential or nonresidential facilities.~~

~~(39) A residential or nonresidential alternative program shall replace or repair broken, run-down or defective furnishings and equipment promptly.~~

~~(a) Outside doors, windows and other features of the structure necessary for security and climate control shall be repaired within 24 hours of being found to be in a state of disrepair.~~

~~(40) Any designated bedroom space in a facility, where the bedroom is not equipped with a mechanical ventilation system, shall be provided with windows which have an openable area at least 5% as large as the total floor area of the bedroom space.~~

~~(41) A residential or nonresidential alternative program shall provide insect screening for all openable windows unless the facility is centrally air conditioned. This screening shall be readily removable in emergencies and shall be in good repair.~~

~~(42) A residential program shall ensure that all closets, bedrooms and bathrooms which have doors are provided with doors that can be readily opened from both sides.~~

~~(43) A residential or nonresidential alternative program shall ensure that there are sufficient and appropriate storage facilities.~~

~~(44) A residential or nonresidential alternative program shall have securely locked storage spaces for all potentially harmful/hazardous materials. Keys to such storage spaces shall be available only to authorized staff members.~~

~~(a) Poisonous, toxic, and flammable materials shall be stored in locked storage space that is not used for other purposes;~~

~~(b) The facility shall have only those poisonous or toxic materials required to maintain the facility; and~~

~~(c) Medications, personnel files and case records shall be kept in locked storage spaces and access to medications, personnel files and case records are to be carefully limited to authorized persons.~~

~~(45) A residential or nonresidential alternative program shall ensure that all electrical equipment, wiring, switches, sockets and outlets are maintained in good order and safe conditions.~~

~~(46) Any room, corridor or stairway within the residential or nonresidential alternative program shall be sufficiently illuminated.~~

~~(47) Corridors within the residential program's sleeping areas shall be illuminated at night.~~

~~(48) A residential or nonresidential alternative program shall provide adequate lighting of exterior areas to ensure the safety of youth and staff during the night.~~

~~(49) A residential or nonresidential alternative program shall take all reasonable precautions to ensure that heating elements, including hot water pipes, are insulated and installed in a manner that ensures the safety of youth.~~

~~(50) A residential or nonresidential alternative program shall maintain the spaces used by youth at temperatures in accordance with federal, state and local laws.~~

~~(51) Hot water accessible to youth in a facility shall be regulated to a temperature not in excess of 110 degrees F.~~

~~(52) A residential facility using water from any source other than public water supply shall ensure that such water is annually tested by the local public health authority. The most recent test report shall be kept on file.~~

~~(53) A residential or nonresidential facility shall not utilize any excessive rough surface or finish where this surface or finish may present a safety hazard to youth.~~

~~(54) A facility shall not have walls or ceiling surfaces with materials containing asbestos.~~

~~(55) A facility shall not use lead paint for any purpose within the facility or on the exterior or grounds of the facility nor shall the facility purchase any equipment, furnishings or decorations surfaced with lead paint.~~

~~(56) A facility shall use durable materials and wall surfaces.~~

~~(57) A facility shall, where appropriate, use carpeting to create a comfortable environment. Carpeting in use should be nontoxic and fire-retardant.~~

#### **547-1-16. General Safety.**

~~(1) The residential or nonresidential alternative program shall have written procedures and a system that helps provide for staff and participant safety and privacy needs, and assists in protecting and preserving personal property.~~

~~(2) Each residential and nonresidential alternative program shall have 24-hour telephone service. Emergency telephone numbers, including fire, police, physician, poison control, health agency and ambulance shall be conspicuously posted adjacent to the telephone.~~

~~(3) A residential or nonresidential program shall notify Juvenile Justice Services immediately of a fire or other disaster which might endanger or require the removal of youth for reasons of health and safety.~~

~~(4) All containers of poisonous, toxic and flammable materials kept in a facility shall be prominently and distinctly marked or labeled for easy identification as to contents and shall be used only in such manner and under such conditions as will not contaminate food or constitute hazards to the youth in care of staff.~~

~~(5) Porches, elevated walkways and elevated play areas within a facility shall have barriers to prevent falls.~~

~~(6) Every required exit, exit access and exit discharge in a facility shall be continuously maintained free of all obstructions or impediments to immediate use in the case of fire or other emergency.~~

~~(7) Power driven equipment used by the facility shall be kept in safe and good repair. Such equipment shall be used by youth only under the direct supervision of a staff member and according to the state law.~~

~~(8) A facility shall have procedures to ensure the facility is protected from infestation by pests, rodents or other vermin.~~

~~(9) Youth in care of a residential or nonresidential alternative program shall swim only in areas considered by responsible~~



staff as being safe. A certified individual shall be on duty when the youth are swimming. A certified individual is one who has a current water safety instructor certificate or senior lifesaving certificate from the Red Cross or its equivalent.

(10) All on-grounds pools shall be enclosed with safety fences and shall be regularly tested to ensure that the pool is free of contamination.

(11) On-ground pools shall comply with Department of Public Health requirements concerning swimming pools.

(12) A residential or nonresidential facility shall have written policy and procedure specify the facility's fire prevention regulations and practices to ensure the safety of staff, participants and visitors. These include, but are not limited to: provision for an adequate fire protection service; a system of fire inspection and testing of equipment by a local fire official at least annually; smoke detectors; fire extinguishers, alarm systems and fire exits.

(13) The facility shall comply with the regulations of the state or local fire safety authority, whichever has primary jurisdiction over the agency.

(14) A residential or nonresidential facility shall have written procedures for staff and youth to follow as written in the program's Emergency Management and Continuity Plan. These procedures shall include provisions as outlined in the current DHS/DJJS contract or the DHS/DJJS Emergency Response and Evacuation Procedures. Staff shall be trained at least annually on this plan.

(15) A residential or nonresidential alternative program shall conduct emergency drills which shall include actual evacuation of youth to safe areas at least quarterly. The program shall ensure that all personnel on all shifts are trained to perform assigned tasks during emergencies and ensure that all personnel on all shifts are familiar with the use of the fire-fighting equipment in the facility.

(a) A record of such emergency drills shall be maintained;

(b) All persons in the building shall participate in emergency drills;

(c) Emergency drills shall be held at unexpected times and under varying conditions to simulate the possible conditions in case of fire or other disasters;

(d) A residential or nonresidential alternative program shall make special provisions for evacuation of any physically handicapped youth in the facility; and

(e) The residential or nonresidential alternative program shall take special care to help emotionally disturbed or perceptually handicapped youth understand the nature of such drills.

(16) A residential or nonresidential alternative program shall maintain an active safety program including investigation of all incidents and recommendations for prevention.

(17) A residential or nonresidential alternative program shall ensure that each youth is provided with the transportation necessary for implementing the youth's treatment plan.

(18) A residential facility or nonresidential alternative program shall have means of transporting youth in case of emergency.

(19) Any vehicle used in transporting youth in care of the residential or nonresidential alternative program shall be properly licensed and inspected in accordance with state law.

(20) Any staff member of a residential or nonresidential alternative program or other person acting on behalf of the program operating a vehicle for the purpose of transporting youth shall be properly licensed to operate that class of vehicle according to state law.

(21) A residential or nonresidential alternative program shall not allow the number of persons in any vehicle used to transport youth to exceed the number of available seats in the vehicle. Seat belts will be available for each seat and use is mandatory.

(22) All vehicles used for the transportation of youth shall be maintained in a safe condition, be in conformity with all applicable motor vehicle laws, and be equipped in a fashion appropriate for the season.

(23) A residential or nonresidential alternative program shall ensure that there is adequate supervision in any vehicle used by the facility to transport youth in care.

(24) Identification of vehicles used to transport youth in care of a residential or nonresidential alternative program shall not be of such nature as to embarrass or in any way produce notoriety for the youth.

(25) A residential or nonresidential alternative program shall ensure that any vehicle used to transport youth has at least the minimum amount of liability insurance required by State law or DHS/DJJS contract.

(26) A residential or nonresidential alternative program shall ascertain the nature of any need or problem of a youth which might cause difficulties during transportation, such as seizures, a tendency towards motion sickness or a disability. The program shall communicate such information to the operator of any vehicle transporting youth in care.

(27) Youth in the care of a residential or nonresidential alternative program shall not engage in any potentially dangerous activity.

#### **R547-1-17. Food Service.**

(1) A residential or nonresidential alternative program shall ensure that a youth is, on a daily basis, provided with food of such quality and of such quantity as to meet the recommended daily dietary allowances adjusted for age, gender and activity of the Food Nutrition Board of the National Research Council.

(2) A person designated by the DJJS Program Director or Assistant Program Director of a program shall be responsible for the total food service of the facility.

(3) A person responsible for food service shall:

(a) Maintain a current list of youth with special nutritional needs;

(b) Have an effective method of recording and transmitting diet orders and changes;

(c) Record in the youth's medical records information relating to special nutritional needs; and

(d) Provide nutrition counseling to staff and youth.

(4) When the residential or nonresidential alternative program provides food service, food service staff shall develop advanced planned menus and substantially follow the schedule.

(5) A residential program shall ensure that a child in care is provided at least three meals or their equivalent available daily at regular times with not more than 14 hours between evening meal and breakfast. Between meal snacks of nourishing quality shall be offered.

(6) The residential or nonresidential alternative program shall ensure that the food provided to a youth in care by the program is in accord with his/her religious beliefs.

(7) No youth in care at a residential or nonresidential alternative program shall be denied a meal for any reason except according to a doctor's order.

~~\_\_\_\_\_ (8) A residential or nonresidential alternative program shall ensure that, at all meals served at the facility, staff members eat substantially the same food served to youth in care, unless special dietary requirements dictate differences in diet. Staff members shall be present to eat at youths' tables for the major meal of the day.~~

~~\_\_\_\_\_ (9) A residential or nonresidential alternative Programs that provide food service shall encourage youth to participate in the preparation, serving and clean up of meals and ensure that all food handlers comply with applicable State or local health laws and regulations.~~

~~\_\_\_\_\_ (10) When the residential or nonresidential alternative program provides food service, all food service personnel shall have clean hands and fingernails, wear hairnets or caps and clean, washable garments, are in good health and free from communicable disease and open infected wounds, and practice hygienic food handling techniques.~~

~~\_\_\_\_\_ (11) When the residential or nonresidential alternative program provides food service, all foods shall be properly stored at the completion of each meal.~~

~~\_\_\_\_\_ (12) A residential program shall not use disposable dinnerware at meals on a regular basis unless the facility documents that such dinnerware is necessary to protect the health or safety of youth in care.~~

~~\_\_\_\_\_ (13) A residential program shall ensure that all dishes, cups and glasses used by youth in care are free from chips, cracks or other defects.~~

#### **R547-1-18. Medical Care.**

~~\_\_\_\_\_ (1) A residential program shall ensure the availability of a comprehensive or preventive, routine and emergency medical and dental care plan for all youth in care. The program shall have a written plan for providing such care. The plan shall include:~~

~~\_\_\_\_\_ (a) A periodic health screening of each youth;~~

~~\_\_\_\_\_ (b) Establishment of an on-going immunization program;~~

~~\_\_\_\_\_ (c) Approaches that ensure that any medical treatment administered will be explained to the youth in language suitable to his/her age and understanding;~~

~~\_\_\_\_\_ (d) An on-going relationship with a licensed physician and dentist to advise the program concerning medical and dental care as required by the youth;~~

~~\_\_\_\_\_ (e) Availability of a physician on a 24 hours a day, seven days a week basis; and~~

~~\_\_\_\_\_ (f) The program shall show evidence of access to the resources outlined in the plan.~~

~~\_\_\_\_\_ (2) A residential program which provides services for emotionally disturbed youth in an open setting shall have well established psychiatric resources available on both an on-going and emergency basis.~~

~~\_\_\_\_\_ (3) A residential or nonresidential program will establish policies and procedures for serving youth with communicable diseases that are consistent with those standards by the Department of Human Services and follow public health guidelines.~~

~~\_\_\_\_\_ (4) A residential program shall arrange for a general medical examination by a physician for each youth in care within 30 days of admission unless the youth has received such an examination within six months before admission and the results of this examination are available to the facility.~~

~~\_\_\_\_\_ (5) The medical examination shall include:~~

~~\_\_\_\_\_ (a) An examination of the youth for physical injury and disease;~~

~~\_\_\_\_\_ (b) Vision and hearing tests; and~~

~~\_\_\_\_\_ (c) A current assessment of the youth's general health.~~

~~\_\_\_\_\_ (6) Whenever indicated, the youth shall be referred to an appropriate medical specialist for either further assessment or treatment.~~

~~\_\_\_\_\_ (7) A residential program shall arrange an annual physical examination of all youth.~~

~~\_\_\_\_\_ (8) A residential or nonresidential program shall ensure that youth receive timely, competent medical care when they are ill and that they continue to receive necessary follow-up medical care.~~

~~\_\_\_\_\_ (9) A residential program shall make every effort to maintain the youth in his/her normal environment during illness.~~

~~\_\_\_\_\_ (10) A residential program shall ensure that each youth has had a dental examination by a dentist within 60 days of the youth's admission unless the youth has been examined within 6 months prior to admission and the program has the results of that examination.~~

~~\_\_\_\_\_ (11) Each youth shall have dental examination as recommended by a dentist but shall not be less frequent than every 12 months.~~

~~\_\_\_\_\_ (12) A residential program shall ensure that the youth receives any necessary dental work.~~

~~\_\_\_\_\_ (13) A residential program shall make every effort to ensure that a youth in care who needs glasses, a hearing aid, a prosthetic device or a corrective device is provided with the necessary equipment or device.~~

~~\_\_\_\_\_ (14) A residential program shall ensure that the youth has received all immunizations and booster shots which are required by the Department of Health within 30 days of his/her admission.~~

~~\_\_\_\_\_ (15) A residential program shall not require a youth in care to receive any medical treatment when the parent(s) or guardian of the youth or the youth objects to such treatment on the grounds that it conflicts with the tenets and practices of a recognized church or religious denomination of which the parent(s), guardian or youth is an adherent. In potentially life threatening situations, the problem shall be referred to appropriate medical and legal authorities.~~

~~\_\_\_\_\_ (16) A residential program shall maintain complete health records of a youth including: A complete record of all immunizations provided, a record of any medication, records of vision, physical or dental examinations and a complete record of any treatment provided for specific illnesses or medical emergencies.~~

~~\_\_\_\_\_ (17) Upon discharge, the program shall provide a copy or summary of the youth's health record to the person or agency responsible for the future planning and care of the youth.~~

~~\_\_\_\_\_ (18) A residential program shall make every effort to compile a complete past medical history on every youth. This history shall, whenever possible, include:~~

~~\_\_\_\_\_ (a) Allergies to medication;~~

~~\_\_\_\_\_ (b) Immunization history;~~

~~\_\_\_\_\_ (c) History of serious illness, serious injury or major surgery;~~

~~\_\_\_\_\_ (d) Developmental history;~~

~~\_\_\_\_\_ (e) Current use of prescribed medication; and~~

~~\_\_\_\_\_ (f) Medication history.~~

~~\_\_\_\_\_ (19) The program health care plan shall specify that only licensed physicians, APRN and dentists prescribe treatment for participants' medical and dental needs. Medical treatment by medical personnel other than a physician shall be performed pursuant to written standing or direct orders issued by the physician.~~

~~\_\_\_\_\_ (20) A residential or nonresidential alternative program shall have written policies and procedures governing the use and administration of medication to youth. These policies and procedures shall be disseminated to all staff responsible for administering medication.~~

~~\_\_\_\_\_ (21) The written policies shall specify the conditions under which medications can be administered; who can administer medication; procedures for documenting the administration of medication and medication errors and drug reactions; and procedures for notification of the attending physician in cases of medication errors and/or drug reactions.~~

~~\_\_\_\_\_ (22) A residential or nonresidential alternative program shall inform a youth and his/her parents(s) or guardian of the potential side effects of prescribed medications.~~

~~\_\_\_\_\_ (23) A residential or nonresidential alternative program shall ensure that a youth is personally examined by the prescribing physician/APRN prior to receiving any medication. In cases of medical emergency, telephone orders for the administration of medication may only be placed by a licensed physician/APRN.~~

~~\_\_\_\_\_ (24) State licensure and certification requirements shall apply to health care personnel working in the residential or nonresidential alternative program the same as those in the community.~~

~~\_\_\_\_\_ (25) A residential or nonresidential alternative program shall maintain a cumulative record of all medication dispensed to youth including:~~

- ~~\_\_\_\_\_ (a) The name of the youth;~~
- ~~\_\_\_\_\_ (b) The type and usage of medication;~~
- ~~\_\_\_\_\_ (c) The reason for prescribing the medication;~~
- ~~\_\_\_\_\_ (d) The time and date medication is dispensed;~~
- ~~\_\_\_\_\_ (e) The name of the dispensing person; and~~
- ~~\_\_\_\_\_ (f) The name of the prescribing physician.~~

~~\_\_\_\_\_ (26) When a youth first comes into care, a residential or nonresidential alternative program shall ascertain all medication the youth is currently taking. At this time the facility shall carefully review all medication the youth is using and make plans, in consultation with a licensed physician/APRN, to either continue the medication or to reconsider the medication needs of the youth considering the changed living circumstances.~~

~~\_\_\_\_\_ (27) A residential or nonresidential alternative program shall have a written medication schedule for each youth to whom medication is prescribed. A youth's medication schedule shall contain the following information:~~

- ~~\_\_\_\_\_ (a) Name of youth;~~
- ~~\_\_\_\_\_ (b) Name of prescribing physician/APRN;~~
- ~~\_\_\_\_\_ (c) Telephone number at which prescribing physician/APRN may be reached in case of medical emergency;~~
- ~~\_\_\_\_\_ (d) Date on which medication was prescribed;~~
- ~~\_\_\_\_\_ (e) Generic and commercial name of medication prescribed;~~
- ~~\_\_\_\_\_ (f) Dosage level;~~
- ~~\_\_\_\_\_ (g) Time(s) of day when medication is to be administered;~~
- ~~\_\_\_\_\_ (h) Possible adverse side effects of prescribed medication;~~

~~and \_\_\_\_\_ (i) Date on which prescription will be reviewed.~~

~~\_\_\_\_\_ (28) A residential or nonresidential alternative program shall provide a copy of a youth's medication schedule to all staff members responsible for administering the medication to the youth and such schedule shall subsequently be placed in the youth's case record.~~

~~\_\_\_\_\_ (29) The agency shall have a written policy for the collection of urine samples and interpretation of results.~~

~~\_\_\_\_\_ (30) A residential or nonresidential alternative program shall not engage in the therapeutic use of psychotropic medications unless approval of such use by that program has been granted by Division of Juvenile Justice Services.~~

~~\_\_\_\_\_ (31) A residential program which uses psychotropic medications prescribed by an independent physician/APRN shall have a written policy governing the use of psychotropic medications at the facility. This policy shall include the following:~~

- ~~\_\_\_\_\_ (a) Identification of doctors/APRN permitted to prescribe psychotropic medications and their qualifications;~~
- ~~\_\_\_\_\_ (b) Identification of persons permitted to administer psychotropic drugs and their qualifications;~~
- ~~\_\_\_\_\_ (c) Criteria for the use of psychotropic medications;~~
- ~~\_\_\_\_\_ (d) A description of the program's medication counseling program;~~
- ~~\_\_\_\_\_ (e) Procedures for obtaining informed consent from the youth and the parent(s) or guardian where consent is required;~~
- ~~\_\_\_\_\_ (f) Procedures for monitoring and reviewing use of psychotropic medication;~~
- ~~\_\_\_\_\_ (g) Procedures for staff training related to the monitoring of psychotropic medication;~~
- ~~\_\_\_\_\_ (h) Procedures for reporting the suspected presence of undesirable side effects; and~~
- ~~\_\_\_\_\_ (i) Record keeping procedures.~~

~~\_\_\_\_\_ (32) Psychotropic medication policy shall be disseminated to all direct care staff.~~

~~\_\_\_\_\_ (33) A residential program which uses psychotropic medications shall maintain a routine medication counseling program designed to inform youth to whom medications are being administered and their parent(s) or guardian of the projected benefits and potential side effects of such medication.~~

~~\_\_\_\_\_ (34) Unless there is a court order to the contrary, a residential program shall ensure that the parent(s) or guardian of a youth for whom medication is prescribed give prior, informed, written consent to the use of that medication at a particular dosage.~~

~~\_\_\_\_\_ (35) When a youth is 14 years of age or older, the residential program shall also obtain prior, informed, written consent from the youth except when the youth lacks the capacity for informed consent.~~

~~\_\_\_\_\_ (36) Either the youth and his/her parent(s) or guardian shall have the right to revoke medication consent at any time. When consent is revoked, administration of the medication shall cease immediately. The residential program shall inform the prescribing physician/APRN and may, if indicated, seek a court order to continue medication.~~

~~\_\_\_\_\_ (37) When medication consent is revoked by a youth, the residential program shall notify the parent(s) or guardian.~~

~~\_\_\_\_\_ (38) A residential program shall immediately file a statement describing the circumstances under which medication consent has been revoked. This statement shall be provided to the youth, the parent(s) or guardian, and the responsible agency.~~

~~\_\_\_\_\_ (39) A residential program which uses psychotropic medications shall ensure that a youth is personally examined by the prescribing physician prior to commencing administration of a psychotropic drug.~~

~~\_\_\_\_\_ (40) The prescribing physician/APRN shall provide a written initial report detailing the reasons for prescribing the particular medication, expected results of the medication and alerting facility staff to potential side effects.~~

~~(41) Either the prescribing physician/APRN or another physician/APRN shall provide a written report on each youth receiving psychotropic medication at least every 30 days based on actual observation of the youth and review of the daily monitoring reports. This 30 day report shall detail the reasons medication is being continued, discontinued, increased in dosage, decreased in dosage or changed.~~

~~(42) A residential program which uses psychotropic medications shall ensure that usages of medication are in accordance with the goals and objectives of the youth's treatment plan.~~

~~(43) Psychotropic medications shall not be administered as a means of punishing or disciplining a youth.~~

~~(44) Psychotropic medications shall not be used unless less restrictive alternatives have either been tried and failed or are diagnostically eliminated.~~

~~(45) Licensed nurses or physicians/APRNs shall supervise the administration of all psychotropic medications.~~

~~(46) A residential program which uses psychotropic medications shall ensure that each youth who receives medication is the subject of a daily monitoring report completed by a facility staff member trained in the recognition of side effects of the medication prescribed. This report shall be submitted to the prescribing physician/APRN.~~

~~(47) A residential program which uses psychotropic medications shall maintain the following information in the case record of each youth receiving the medication:~~

~~(a) Medication history;~~

~~(b) Documentation of all less restrictive alternatives either used or diagnostically eliminated prior to use of medication since entry into the program;~~

~~(c) Description of any significant changes in the youth's appearance or behavior that may be related to the use of medication;~~

~~(d) Any medication errors;~~

~~(e) Monitoring reports; and~~

~~(f) Medication review reports.~~

~~(48) A residential program which uses psychotropic medications shall obtain an independent analysis of the facility's medication program at least annually.~~

~~(49) A residential or nonresidential alternative program shall have written procedures for staff members to follow in case of medical emergency. These procedures shall both define the circumstances that constitute a medical emergency, and include instructions to staff regarding their conduct once the existence of a medical emergency is suspected or has been established.~~

~~(50) A residential or nonresidential alternative program shall ensure that at all times, at least one staff member on duty is qualified to administer first aid.~~

~~(51) A residential or nonresidential alternative program shall maintain a list of first aid equipment and supplies to ensure sufficient availability of equipment and supplies at all times.~~

~~(52) A first aid kit shall be available in a nonresidential facility and in each living unit of a residential facility, with type, size and contents to be determined according to the American Red Cross' current guidelines.~~

~~(53) A residential or nonresidential alternative program shall immediately notify the youth's parent(s) or guardian and Juvenile~~

~~Justice Services of any serious illness, incident involving serious bodily injury or any severe psychiatric episode involving a youth.~~

~~(54) In the event of the death of a youth, a program shall immediately notify the youth's parent(s) or guardian, the placing agency and Juvenile Justice Services. The agency shall cooperate in arrangement made for examination, autopsy or burial.~~

~~(55) In the event of sudden death, a residential program shall notify the medical examiner or other appropriate authority, or law enforcement official, the placement agency, parent and Juvenile Justice Services.~~

#### **R547-1-19. Child Abuse and Neglect.**

~~(1) A residential or nonresidential alternative program shall require each staff member of the program or facility to read and sign a statement clearly defining child abuse and neglect and outlining the staff member's responsibility to report all incidents of child abuse or neglect according to state law, and the Department and Division Code of Conduct, and to report all incidents to the Program Director, the Division of Juvenile Justice Services, Program Director and Office of Internal Investigations.~~

~~(2) A residential or nonresidential alternative program shall have written policy and procedures for handling any suspected incident of child abuse including:~~

~~(a) A procedure for ensuring that the staff member involved does not work directly with the youth involved or any other youth in the Juvenile Justice Services licensed and/or contracted, or Juvenile Justice Services operated program or facility until the investigation is completed or formal charges filed and adjudicated;~~

~~(b) A procedure for disciplining any staff member found involved in an incident of child abuse or Code of Conduct Violation including termination of employment if found guilty of felony child abuse (misdemeanor guilty findings require Juvenile Justice Services Director approval for continued employment);~~

~~(c) R547-1-19(2)(a) and (b) apply to staff members accused of abuse of children other than in a Juvenile Justice Services licensed and/or contracted program or facility and/or outside their scope of employment.~~

~~(d) Failure to implement and comply with R547-1-19(2), A, B, and C may result in immediate suspension or revocation of the program license as required by the Utah Code, 62A-7-106.5 and 62A-2-113.~~

~~**KEY: diversion programs, juvenile corrections, licensing, prohibited items and devices**~~

~~**Date of Enactment or Last Substantive Amendment: June 11, 2009**~~

~~**Notice of Continuation: May 1, 2012**~~

~~**Authorizing, and Implemented or Interpreted Law: 62A-7-106.5]**~~

## Natural Resources, Wildlife Resources **R657-9** Taking Waterfowl, Common Snipe and Coot

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 37982

FILED: 09/10/2013

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the division's waterfowl program.

**SUMMARY OF THE RULE OR CHANGE:** The proposed revisions to the above listed rule allow the Wildlife Board to allow more than three shells as defined in the Guidebook of the Wildlife Board for taking Waterfowl, Common Snipe, and Coot; add Mills Meadow, Manti Meadows, and Blue Lake to the list of waterfowl management areas with firearms restrictions; add Units 1, 3, 4, and 5 to the list of waterfowl management areas restricted to the use of air-thrust or air-propelled boats; and allow for the use of electronic calls as defined in the Guidebook of the Wildlife Board for taking Waterfowl, Common Snipe, and Coot.

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

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This amendment clarifies waterfowl management areas that fall under certain restrictions, it does not make any changes to the process or employee workload, therefore the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** Since this amendment has minimal impact on individual hunters and no impact on the local governments, the division finds that this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment adds waterfowl management areas to a list of areas with special restrictions and allows the wildlife board the flexibility in allowing electronic calls and more shotgun shells in certain situations and therefore, does not have the potential to generate a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment adds waterfowl management areas to a list of areas with special restrictions and allows the wildlife board the flexibility in allowing electronic calls and more shotgun shells in certain situations and therefore, does not have the potential to generate a cost or savings impact to sportsmen or the other persons.

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

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

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

NATURAL RESOURCES  
WILDLIFE RESOURCES  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2013**

**THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2013**

**AUTHORIZED BY:** Gregory Sheehan, Director

**R657. Natural Resources, Wildlife Resources.****R657-9. Taking Waterfowl, Common Snipe and Coot.****R657-9-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, and in accordance with 50 CFR 20, 50 CFR 32.64 and 50 CFR 27.21, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking waterfowl, Common snipe, and coot.

(2) Specific dates, areas, limits, requirements and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot.

**R657-9-7. Firearms.**

(1) Migratory game birds may be taken with a shotgun or archery tackle.

(2) Migratory game birds may not be taken with a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, crossbow, except as provided in Rule R657-12, poison, drug, explosive or stupefying substance.

(3) Migratory game birds may not be taken with a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells, except as authorized by the Wildlife Board

and specified in the guidebook of the Wildlife Board for taking Waterfowl, Common snipe and Coot.

#### **R657-9-9. Use of Firearms on State Waterfowl Management Areas.**

(1) A person may not possess a firearm or archery tackle on the following waterfowl management areas any time of the year except during the specified waterfowl hunting seasons or as authorized by the division:

- (a) Box Elder County - Harold S. Crane, Locomotive Springs, Public Shooting Grounds, and Salt Creek;
- (b) Daggett County - Brown's Park;
- (c) Davis County - Farmington Bay, Howard Slough, and Ogden Bay;
- (d) Emery County - Desert Lake;
- (e) Juab County - Mills Meadow;
- (f) Millard County - Clear Lake, Topaz Slough;
- (~~f~~g) Sanpete County - Manti Meadows;
- (~~h~~) Tooele County - Blue Lake and Timpie Springs;
- (~~g~~h) Uintah County - Stewart Lake;
- (~~h~~i) Utah County - Powell Slough;
- (~~i~~k) Wayne County - Bicknell Bottoms; and
- (j)l) Weber County - Ogden Bay and Harold S. Crane.

(2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be in possession, except as provided in Rule R657-12.

(3) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

#### **R657-9-11. Airboats.**

(1) Air-thrust or air-propelled boats and personal watercraft are not allowed in designated parts of the following waterfowl management or federal refuge areas:

- (a) Box Elder County: Box Elder Lake, Bear River, that part of Harold S. Crane within one-half mile of all dikes and levees, Locomotive Springs, Public Shooting Grounds and Salt Creek, that part of Bear River Migratory Bird Refuge north of "D" line dike, and outside Units 1, 3, 4 and 5 as posted.
- (b) Daggett County: Brown's Park
- (c) Davis County: Howard Slough, Ogden Bay and Farmington Bay within diked units[~~:-~~] or as posted
- (d) Emery County: Desert Lake
- (e) Millard County: Clear Lake, Topaz Slough
- (f) Tooele County: Timpie Springs
- (g) Uintah County: Stewart Lake
- (h) Utah County: Powell Slough
- (i) Wayne County: Bicknell Bottoms
- (j) Weber County: Ogden Bay within diked units or as posted and [~~ah~~] the portion of Harold S. Crane Waterfowl Management Area that falls within the county line.

(2) "Personal watercraft" means a motorboat that is:

- (a) less than 16 feet in length;
- (b) propelled by a water jet pump; and
- (c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

#### **R657-9-15. Amplified Bird Calls.**

A person may not use recorded or electrically amplified bird calls or sounds or recorded or electronically amplified imitations of bird calls or sounds[~~-~~] except as authorized by the Wildlife Board and specified in the guidebook of the Wildlife Board for taking waterfowl, Common snipe and coot.

**KEY: wildlife, birds, migratory birds, waterfowl**

**Date of Enactment or Last Substantive Amendment:** [~~November 27, 2012~~]2013

**Notice of Continuation:** August 16, 2011

**Authorizing, and Implemented or Interpreted Law:** 23-14-19; 23-14-18; 50 CFR part 20

## Natural Resources, Wildlife Resources

### R657-10

### Taking Cougar

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 37978

FILED: 09/10/2013

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the division's cougar program.

**SUMMARY OF THE RULE OR CHANGE:** The proposed revision amends the seven-day waiting period for any cougar permit purchased after the season starts to three days.

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

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** This amendment only shortens the waiting period for cougar permits purchased after the season starts, therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget, since the changes will not increase workload and can be carried out with existing budget.

♦ **LOCAL GOVERNMENTS:** Since this amendment only shortens an already existing stipulation this should have no effect on the local government. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

♦ **SMALL BUSINESSES:** None--The amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--The amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments will not create additional costs for sportsmen wishing to hunt cougar in Utah. Therefore, the rule amendments do not create a cost or savings impact to individuals who participate in hunting cougar.

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

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

NATURAL RESOURCES  
WILDLIFE RESOURCES  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2013

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2013

AUTHORIZED BY: Gregory Sheehan, Director

### **R657. Natural Resources, Wildlife Resources.**

#### **R657-10. Taking Cougar.**

##### **R657-10-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking and pursuing cougar.

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking cougar.

##### **R657-10-28. Harvest Objective Permit Sales.**

(1) Harvest objective permits are available on a first-come, first-served basis beginning on the date published in the guidebook of the Wildlife Board for taking cougar.

(2) Any cougar permit purchased after the season opens is not valid until seven~~three~~ days after the date of purchase unless specifically authorized by the division.

(3) A person must possess a valid hunting or combination license to obtain a Harvest objective permit.

**KEY: wildlife, cougar, game laws**

**Date of Enactment or Last Substantive Amendment:** ~~October 24, 2011~~**2013**

**Notice of Continuation:** August 16, 2011

**Authorizing, and Implemented or Interpreted Law:** 23-14-18; 23-14-19

## Natural Resources, Wildlife Resources **R657-11** Taking Furbearers

### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 37977

FILED: 09/10/2013

#### **RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted for taking public input and reviewing the division's furbearer program.

**SUMMARY OF THE RULE OR CHANGE:** The amendment to this rule changes "snares" to "cable device", "leg hold" to "foot hold" and adds wording to address nuisance beaver.

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

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The amendments are technical in nature, therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be done with existing budget.

◆ **LOCAL GOVERNMENTS:** None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the amendment. Nor are local governments indirectly impacted because the amendment does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment makes technical changes, as well as offers protocol for taking nuisance beaver, the amendments do not impose any additional requirements on small businesses, nor generate a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment makes technical changes as well as offers protocol for taking nuisance beaver, the amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment changes wording for clarification and consistency with other division rules. Therefore, DWR determines that there is no additional compliance costs associated with the amendments.

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

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

NATURAL RESOURCES  
WILDLIFE RESOURCES  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2013

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2013

AUTHORIZED BY: Gregory Sheehan, Director

## **R657. Natural Resources, Wildlife Resources.**

### **R657-11. Taking Furbearers.**

#### **R657-11-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking furbearers.

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking furbearers.

#### **R657-11-10. Traps.**

(1) All long spring, jump, or coil spring traps must have spacers on the jaws which leave an opening of at least 3/16 of an inch when the jaws are closed, except;

- (a) rubber-padded jaw traps,
- (b) traps with jaw spreads less than 4.25 inches, and
- (c) traps that are not completely submerged under water when set.

(2) All cable devices (ie snares), except those set in water or with a loop size less than 3 inches in diameter, must be equipped with a breakaway lock device that will release when any force greater than 300 lbs. is applied to the loop. Breakaway snarescable devices must be fastened to an immovable object solidly secured to the ground. The use of drags is prohibited.

(3) On the middle section of the Provo River, between Jordanelle Dam and Deer Creek Reservoir, the Green River, between Flaming Gorge Dam and the Utah Colorado state line; and

the Colorado River, between the Utah Colorado state line and Lake Powell; and the Escalante River, between Escalante and Lake Powell, trapping within 100 yards of either side of these rivers, including their tributaries from the confluences upstream 1/2 mile, is restricted to the following devices:

(a) Nonlethal-set ~~[leg]~~foot hold traps with a jaw spread less than 5 1/8 inches, and nonlethal-set padded ~~[leg]~~foot hold traps. Drowning sets with these traps are prohibited.

(b) Body-gripping, killing-type traps with body-gripping area less than 30 square inches (i.e., 110 Conibear).

(c) Nonlethal dry land ~~[snares]~~cable devices equipped with a stop-lock device that prevents it from closing to less than a six-inch diameter.

(d) Size 330, body-gripping, killing-type traps (i.e. Conibear) modified by replacing the standard V-trigger assembly with one top side parallel trigger assembly, with the trigger placed within one inch of the side, or butted against the vertical turn in the Canadian bend.

(4) A person may not disturb or remove any trapping device, except:

(a) a person who possesses a valid, current furbearer license, the appropriate permits or tags, and who has been issued a trapper registration number, which is permanently marked or affixed to the trapping device; or

(b) peace officers in the performance of their duties; or

(c) as provided in Subsection (6).

(5) A person may not kill or remove wildlife caught in any trapping device, except:

(a) a person who possesses a valid, current furbearer license, the appropriate permits or tags, and who has been issued a trapper registration number, which is permanently marked or affixed to the trapping device; or

(b) as provided in Subsection (6).

(6) For the purposes of this section, "owner" means the person who has been issued a trap registration number, which is permanently marked or affixed to the trapping device.

(7) A person, other than the owner, may possess, disturb or remove a trapping device; or possess, kill or remove wildlife caught in a trapping device provided:

(a) the person possesses a valid, current furbearer license, the appropriate permits or tags; and

(b) has obtained written authorization from the owner of the trapping device stating the following:

(i) date written authorization was obtained;

(ii) name and address of the owner;

(iii) owner's trap registration number;

(iv) the name of the individual being given authorization;

(v) signature of owner.

(8) The owner of any trapping device, providing written authorization to another person under Subsection (6), shall be strictly liable for any violations of this guidebook resulting from the use of the trapping device by the authorized person.

(9) The owner of any trapping device, providing written authorization to another person under Subsection (6), must keep a record of all persons obtaining written authorization and furnish a copy of the record upon request from a conservation officer.

(10)(a) A person may not set any trap or trapping device on posted private property without the landowner's permission.



(b) Any trap or trapping device set on posted property without the owner's permission may be sprung by the landowner.

(c) Wildlife officers should be informed as soon as possible of any illegally set traps or trapping devices.

(11) Peace officers in the performance of their duties may seize all traps, trapping devices, and wildlife used or held in violation of this rule.

(12) A person may not possess any trapping device that is not permanently marked or tagged with that person's registered trap number while engaged in taking wildlife.

(13) All traps and trapping devices must be checked and animals removed at least once every 48 hours, except;

(a) killing traps striking dorso-ventrally,

(b) drowning sets, and

(c) lethal ~~[snares]~~ cable devices that are set to capture on the neck, that have a nonrelaxing lock, without a stop, and are anchored to an immovable object; which must be checked every 96 hours.

(14) A person may not transport or possess live protected wildlife. Any animal found in a trap or trapping device must be killed or released immediately by the trapper.

**R657-11-23. Depredation by Nuisance Beaver.**

(1) Beaver doing damage or other nuisance behaviors may be taken or removed during open and closed seasons with either a valid furbearer license or a nuisance permit.

(2) A nuisance permit to remove ~~[damaging]~~ beaver must first be obtained from a division office or conservation officer.

**KEY: wildlife, furbearers, game laws, wildlife law**

**Date of Enactment or Last substantive Amendment: [~~October 24, 2011~~]2013**

**Notice of Continuation: August 16, 2010**

**Authorizing, and Implementing or Interpreted Law: 23-14-18; 23-14-19; 23-13-17**

**Natural Resources, Wildlife Resources**

**R657-52**

**Commercial Harvesting of Brine Shrimp and Brine Shrimp Eggs**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 37980

FILED: 09/10/2013

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted for taking public input and reviewing the Division of Wildlife Resources' (DWR) commercial harvest program for brine shrimp and brine shrimp eggs.

**SUMMARY OF THE RULE OR CHANGE:** Amendments to this rule: 1) allow brine shrimp companies to keep "helper" cards in a secured bag with the Certificate of Registrations (COR) so they do not risk getting lost by the individual; 2) remove the requirement for drivers to carry "helper" cards; 3) create an online reporting system; 4) require harvest dates to be displayed on a tag containing harvested brine shrimp or brine shrimp eggs; 5) allow more than one COR marker to be displayed at a site with the other companies permission; 6) allow all unattended booms to be treated the same whether they are near shore, attached to a dike or in open water; 7) allow for a 300-yard encroachment protection regardless of harvest activity; and 8) allow for boats to drive through a streak providing it is not within the 300-yard encroachment protection area.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 23-14-18 and Section 23-14-19 and Section 23-14-3 and Section 23-15-7 and Section 23-15-8

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The amendments clarify requirements for taking brine shrimp and their eggs from the Great Salt Lake. Therefore, DWR determines that these amendments will not create any cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** These amendments clarify requirements for taking brine shrimp and their eggs. Therefore, this rule does not impose any additional financial requirements on persons, nor generate a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These amendments clarify requirements for taking brine shrimp and their eggs. Therefore, this rule does not impose any additional financial requirements on persons, nor generate a cost or savings impact to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The amendments are for clarification. DWR determines that there are no additional compliance costs associated with this amendment.

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

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

NATURAL RESOURCES  
WILDLIFE RESOURCES  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON  
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO  
LATER THAN AT 5:00 PM ON 10/31/2013

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2013

AUTHORIZED BY: Gregory Sheehan, Director

**R657. Natural Resources, Wildlife Resources.**

**R657-52. Commercial Harvesting of Brine Shrimp and Brine Shrimp Eggs.**

**R657-52-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-3, 23-14-18, 23-14-19, Sections 23-15-7 through 23-15-9, and 23-19-1(2), this rule provides the procedures, standards, and requirements for commercially harvesting brine shrimp and brine shrimp eggs.

(2) The objective of this rule is to protect, manage, and conserve the brine shrimp resource based upon the best available data and information and adequately preserve the Great Salt Lake ecosystem while recognizing the economic value of allowing the harvest of brine shrimp and brine shrimp eggs and maintaining a sustainable brine shrimp population.

**R657-52-9. Use of Helpers.**

(1)(a) Except as hereafter provided in Subsection (2), any person aiding the certificate of registration holder, a primary seiner, or alternate seiner in harvesting brine shrimp and brine shrimp eggs shall be in possession of a helper card.

(b) Three individual helper cards are issued with the certificate of registration.

(c) A helper card shall be deemed to be in possession if it is on the person or on the boat or at the harvest location from which the person is working.

(2)(a) A helper card is not required of any person engaged only in the retail sale or transportation of brine shrimp or brine shrimp eggs.

(b) A person directing harvest operations from a plane for a certificate of registration holder does not have to have a helper card.

(c) The driver of a truck transporting brine shrimp or brine shrimp eggs from the lake to a storage or processing plant does not have to have a helper card. Any crew member loading brine shrimp and brine shrimp eggs into a truck ~~[must]~~ does not need to have a helper card in possession.

(3) Helper cards are issued in the name of the certificate of registration holder and are transferable among individuals assisting the certificate of registration holder.

(4)(a) A helper may assist in the harvest of brine shrimp and brine shrimp eggs only while working under the direct supervision of a primary or alternate seiner.

(b) For purposes of this rule, "direct supervision" means to be physically present, either on a boat with the helper or within close proximity so as to be able to provide direct instructions to the helper.

(5) Twelve additional helper cards for each certificate of registration may be obtained from the wildlife registration office at any time during the year.

**R657-52-10. Records - Report of Activities.**

(1) Any person or business entity issued a certificate of registration to harvest brine shrimp and brine shrimp eggs shall keep accurate records of the weight harvested and to whom the product is sold.

(2) The records required under Subsection (1) shall be retained for at least five years and must be available for inspection upon division request.

(3) Certificate of registration holders shall submit the following reports to the Great Salt Lake Ecosystem Project office for each certificate of registration:

(a) A weekly harvest report documenting the total amount of brine shrimp and brine shrimp eggs, by raw weight, harvested each day of the reporting week. The reports must be prepared by a person working for the reporting company, and the reports must be received or postmarked by Monday of each week.

(b) A daily harvest report documenting the total amount of brine shrimp and brine shrimp eggs, by raw weight, harvested each day. The report shall be filed no later than 12 hours after the end of the previous calendar day. The report ~~[may be filed utilizing a voice mail system linked to a dedicated phone number provided or the report may be filed by fax to a dedicated phone number]~~ shall be filed utilizing an electronic communication medium approved by the Division after consultation with the certificate of registration holders. The report must be prepared or given by a person working for the reporting company.

(i) In the event the approved electronic communication medium malfunctions or is inoperable, daily harvest reports shall be filed no later than six hours after being notified that the system is operational.

(c) A weekly report of all landing receipts prepared pursuant to Section R657-52-14 during the reporting week. The report must be prepared or given by a person working for the reporting company, and must be received by the division or postmarked by Monday of each week.

(4) Report forms may be obtained from the division.

**R657-52-15. Identification of Equipment.**

(1)(a) Any boat used for harvesting operations must be identifiable from the air, water and land with either the company name, company initials or certificate of registration number. A camp or base of operations located on or near the shoreline must be marked so it is visible from the air and land with either the company

name, company initials, or certificate of registration number. Boat markings denoting the company name, company initials or certificate of registration number, must be visible from a distance of 500 yards when on the lake.

(b) The letters or numbers shall be visible at all times, written clearly and shall meet the following requirements:

(i) letters or numbers on the top of a boat shall be at least 36 inches in height;

(ii) letters or numbers used on the sides of a boat shall be at least 24 inches in height, except that boats with inflatable hulls may use letters and numbers that are 12 inches in height;

(iii) letters or numbers used on a camp or base of operations sign shall be at least 24 inches in height; and

(iv) all letters and numbers used for identification purposes shall be of reflective white tape with a solid black background.

(c) Identification may be done with a magnetic sign placed on top of and the sides of the vehicle or boat.

(d) Each continuous segment of boom that may be coupled together shall be marked to denote the company's name, initials, or certificate of registration number. The markings shall consist of letters or numbers at least three inches in height.

(e) All containers filled or partially filled with brine shrimp or brine shrimp eggs and left unattended on the shore or in a vehicle parked on the shore shall be individually marked with the harvest dates and either the company name, company initials or certificate of registration number under which the product was harvested. Each container shall be marked as follows:

(i) the company name, company initials or the certificate of registration number shall be permanently and legibly marked at a visible location on the exterior surface of the container; and

(A) the harvest dates marked on a durable, waterproof tag securely and visibly attached to the exterior surface of the container;  
or

(ii) the harvest dates and the company name, company initials or the certificate of registration number shall be permanently and legibly marked on a durable, waterproof tag securely and visibly attached to the exterior surface of the container.

(f) "Shore" for purposes of this section, shall include all lands within one mile of the body of water where the product was harvested. "Shore" does not include permanent structures affixed to the land and operated for purposes of storing or processing brine shrimp and brine shrimp eggs, provided the name of the structure's current owner or tenant is visibly marked on the exterior of the structure.

#### **R657-52-16. Certificate of Registration Markers.**

(1)(a) One certificate of registration marker corresponding to each certificate of registration shall be displayed at each harvest location as follows:

(i) on the boat with the certificate of registration on board;

(ii) on the harvest boat or attached to the boom;

(iii) in the water at the harvest location; or

(iv) on the shore while harvesting brine shrimp or brine shrimp eggs from shore.

(b) No more than one certificate of registration marker shall be displayed at each harvest location without permission from the company that first began harvesting at that location.

(c) An original certificate of registration shall be present at the harvest location where the corresponding certificate of registration marker is displayed.

(2) A certificate of registration marker shall consist of a piece of equipment, furnished by the harvesters, constructed in accordance with the following specifications:

(a) A six foot long piece of tubing with a weight at one end.

(b) This piece of tubing shall have a fluorescent orange ball that is a minimum of eighteen inches in diameter, mounted in the approximate center of the length of tubing. The fluorescent orange ball shall have the certificate of registration number, corresponding to the certificate of registration decal attached to the marker pursuant Subsection R657-52-16(2)(c), marked in two places with indelible black paint. The painted certificate of registration numbers shall be a minimum of twelve inches in height.

(c) Mounted above the orange ball towards the un-weighted end of the tubing shall be a decal issued by the division which denotes the certificate of registration in use and corresponding to the certificate of registration marker device.

(d) Mounted on the tubing between the orange ball and the un-weighted end of the tubing, shall be an aluminum radar reflector that is a minimum of fifteen inches square.

(e) Mounted above the radar reflector shall be a three-inch wide band of silver reflective tape.

(f) Mounted on the un-weighted end of this tubing shall be an amber light that at night is visible for up to one-half mile and flashes 30 times per minute, minimum.

(3) The certificate of registration marker must be displayed in a manner that is:

(a) visible in all directions at a distance of 500 yards; or

(b) displayed above the superstructure of any vessel that a certificate of registration is being used from.

(4) The amber light on a displayed marker device must be operating at all times between sunset and sunrise.

(5) A brine shrimp harvester shall not display an amber light at night, or an orange ball or other device which simulates the certificate of registration marker device, without having the corresponding, original certificate of registration at the harvest location.

(6) Brine shrimp or brine shrimp eggs may not be harvested in any manner, nor may a harvest location be claimed unless and until an original copy of the certificate of registration is at the harvest location and the corresponding certificate of registration marker is properly displayed as required in this section.

(7) The certificate of registration and corresponding certificate of registration marker shall not be transported to the harvest location by aircraft.

(a) "Aircraft" for purposes of this section, means any contrivance now known or in the future invented, used, or designed for navigation of or flight in the air.

(8) A person may not harvest any brine shrimp or brine shrimp eggs within a 300 yard radius of a certificate of registration marker displayed at a harvest location without permission from the company that first began harvesting in that location.

#### **R657-52-17. Use of Booms.**

(1)(a) A primary seiner, alternate seiner, or helper must remain within one mile of any boom attached to the shore, whether

open or closed, 24 hours a day so that an officer may easily locate the person tending the boom.

(b) A boom may be left unattended in the open water during the legal harvest season if:

(i) the boom is properly identified as provided in Subsection R657-52-15(1)(d);

(ii) the boom is closed;

(iii) the boom is marked with a certificate of registration marker as described in Subsections R657-52-16(2) and (3); and

(iv) the certificate of registration marker is lighted as described in Subsections R657-52-16(2)(f) and (4).

(2) On a causeway or dike where camping is not allowed, a primary seiner, alternate seiner, or helper must be stationed at the closest possible camping site, not more than 10 miles away, and that location must be clearly identified on a tag securely attached to the shore end of the boom.

(3)(a) A person may not harvest any brine shrimp or brine shrimp eggs within 300 yards of any certificate of registration marker displayed at a harvest location as provided in Subsection R657-52-16(8) without permission from the company that first began harvesting in that location.

(b) ~~[The]~~Notwithstanding Subsections (1) and (2), a primary seiner, alternate seiner, or helper must be located within 300 yards of the certificate of registration marker ~~[must be]~~ deployed as provided in Section R657-52-16 ~~[and accompanied by an individual at the harvest location]~~ to receive the 300 yard encroachment protection.

(c) The 300 yard encroachment protection radius is enforceable when the COR marker is properly deployed, regardless of the presence or level of actual harvest activity.

(4) Brine shrimp and brine shrimp eggs may be removed from another person's boom only with written permission from the person who owns the boom.

(5) A person may not deploy more than one continuous length of boom for each certificate of registration.

#### **R657-52-18. Use of Equipment.**

(1) A person may not intentionally drive a boat through or create a wake through the 300 yard encroachment protection area of a streak of brine shrimp eggs that another person is harvesting.

(2)(a) A person or business entity possessing a valid certificate of registration may test the equipment to be used in harvesting brine shrimp from March 1 through the official opening date of the brine shrimp harvest season, as declared by rule or the division.

(b) At least 48 hours before testing the equipment, the person must notify the division's Northern Regional Office.

(c) Any brine shrimp or brine shrimp eggs collected while testing the equipment must be immediately returned to the water, if collected from the water, or returned to the beach, if collected from the beach, within 1/4 mile of the location in which they were collected.

(3) Brine shrimp and brine shrimp eggs may not be taken to a storage facility, test site located greater than 1/4 mile from the location in which they were collected, or to shore, except as provided in Section R657-52-13(4).

#### **KEY: brine shrimp, commercialization**

**Notice of Enactment or Last Substantive Amendment:**  
~~[December 12, 2006]~~2013

**Notice of Continuation:** October 1, 2012

**Authorizing, and Implemented or Interpreted Law:** 23-14-3; 23-14-18; 23-14-19; 23-15-7; 23-15-8; 23-15-9; 23-19-1(2)

## Natural Resources, Wildlife Resources **R657-60** Aquatic Invasive Species Interdiction

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 37981

FILED: 09/10/2013

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is purposed to define procedures and regulations designed to prevent and control the spread of aquatic invasive species within the State of Utah.

**SUMMARY OF THE RULE OR CHANGE:** This amendment adds Lake Powell and sections of the Colorado River, Escalante River, Dirty Devil River, and San Juan River to the list of infested waters, and allows boats temporarily stored and then re-launched on the same body of water to bypass the decontamination protocol.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 23-14-18 and Section 23-14-19 and Section 23-27-401

### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division of Wildlife Resources (DWR) determines that these amendments do create a cost impact to the state budget or DWR's budget. The 2008 Utah Legislative Session appropriated \$2,500,000 to aid in the implementation costs associated with this rule.

◆ **LOCAL GOVERNMENTS:** This rule does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This rule may create a cost impact to boat owners and other water enthusiasts in Utah in that if Dreissena Mussels are found in Utah the cost to decontaminate boats and other conveyances will be at the expense of the owner.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule may create a cost impact to boat owners and other water enthusiasts in Utah in that if Dreissena Mussels are found in Utah the cost to decontaminate boats and other conveyances will be at the expense of the owner.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that this rule may create a cost impact to individuals who own water vessels and boat in infested waters, because they would be required to decontaminate the conveyance.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2013

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2013

AUTHORIZED BY: Gregory Sheehan, Director

**R657. Natural Resources, Wildlife Resources.  
 R657-60. Aquatic Invasive Species Interdiction.  
 R657-60-1. Purpose and Authority.**

(1) The purpose of this rule is to define procedures and regulations designed to prevent and control the spread of aquatic invasive species within the State of Utah.

(2) This rule is promulgated pursuant to authority granted to the Wildlife Board in Sections 23-27-401, 23-14-18, and 23-14-19.

**R657-60-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2 and 23-27-101.

(2) In addition:

(a) "Conveyance" means a terrestrial or aquatic vehicle, including a vessel, or a vehicle part that may carry or contain a Dreissena mussel.

(b) "Decontaminate" means to:

(i) Self-decontaminate equipment or a conveyance that has been in an infested water in the previous 30 days by:

(A) removing all plants, fish, mussels and mud from the equipment or conveyance;

(B) draining all water from the equipment or conveyance, including water held in ballast tanks, bilges, livewells, and motors; and

(C) drying the equipment or conveyance for no less than 7 days in June, July and August; 18 days in September, October,

November, March, April and May; 30 days in December, January and February; or expose the equipment or conveyance to sub-freezing temperatures for 72 consecutive hours; or

(ii) Professionally decontaminate equipment or a conveyance that has been in an infested water in the previous 30 days by:

(A) Using a professional decontamination service approved by the division to apply scalding water (140 degrees Fahrenheit) to completely wash the equipment or conveyance and flush any areas where water is held, including ballast tanks, bilges, livewells, and motors.

(c) "Detects or suspects" means visually identifying:

(i) a veliger Dreissena mussel through microscopy and confirming the identity of the organism as a Dreissena mussel through two independent polymerase chain reaction (PCR) tests; or

(ii) a juvenile or adult Dreissena mussel.

(d) "Dreissena mussel" means a mussel of the genus Dreissena at any life stage, including a zebra mussel, a quagga mussel and a Conrad's false mussel.

(e) "Controlling entity" means the owner, operator, or manager of a water body, facility, or a water supply system.

(f) "Equipment" means an article, tool, implement, or device capable of carrying or containing water or Dreissena mussel.

(g) "Facility" means a structure that is located within or adjacent to a water body.

(h) "Infested water" includes all the following:

(i) all coastal and inland waters in:

(A) Colorado;

(B) California;

(C) Nevada;

(D) Arizona;

(E) all states east of Montana, Wyoming, Colorado, and New Mexico;

(F) the provinces of Ontario and Quebec Canada; and

(G) Mexico;

(ii) Sand Hollow Reservoir in Washington County, Utah; [and]

(iii) Lake Powell and that portion of the:

(A) Colorado River between Lake Powell and Spanish Bottom in Canyonlands National Park;

(B) Escalante River between Lake Powell and the Coyote Creek confluence;

(C) Dirty Devil River between Lake Powell and the Highway 95 bridge; and

(D) San Juan River between Lake Powell and Clay Hills Crossing.

(iv) other waters established by the Wildlife Board and published on the DWR website.

(i) "Juvenile or adult Dreissena mussel" means a macroscopic Dreissena mussel that is not a veliger.

(j) "Veliger" means a microscopic, planktonic larva of Dreissena mussel.

(k) "Vessel" means every type of watercraft used or capable of being used as a means of transportation on water.

(l) "Water body" means natural or impounded surface water, including a stream, river, spring, lake, reservoir, pond, wetland, tank, and fountain.

(m) "Water supply system" means a system that treats, conveys, or distributes water for irrigation, industrial, wastewater

treatment, or culinary use, including a pump, canal, ditch or, pipeline.

(n) "Water supply system" does not include a water body.

**R657-60-5. Transportation of Equipment and Conveyances That Have Been in Infested Waters.**

(1) The owner, operator, or possessor of any equipment or conveyance that has been in an infested water or in any other water subject to a closure order under R657-60-8 or control plan under R657-60-9 that requires decontamination of conveyances and equipment upon leaving the water shall:

(a) immediately drain all water from the equipment or conveyance at the take out site, including water held in ballast tanks, bilges, livewells, motors, and other areas of containment; and

(b) immediately inspect the interior and exterior of the equipment or conveyance at the take out site for the presence of Dreissena mussels.

(2) If all water in the equipment or conveyance is drained and the inspection undertaken pursuant to Subsection (1)(b) reveals the equipment and conveyance are free from mussels or shelled organisms, fish, plants and mud, the equipment and conveyance may be transported in or through the state directly from the take out site to the location where it will be:

~~(a)~~ (a)(i) professionally decontaminated; ~~(b)~~

~~(b)~~ (ii) stored and self-decontaminated; or

(b) temporarily stored and subsequently returned to the same water body and take out site as provided in Subsection (5).

(3) If all the water in the equipment or conveyance is not drained or the inspection undertaken pursuant to Subsection (1)(b) reveals the equipment or conveyance has attached mussels or shelled organisms, fish, plants, or mud, the equipment and conveyance shall not be moved from the take out site until the division is contacted and written or electronic authorization received to move the equipment or conveyance to a designated location for professional decontamination.

(4) ~~[A]~~ Except as provided in Subsection (5), a person shall not place any equipment or conveyance into a water body or water supply system in the state without first decontaminating the equipment and conveyance when the equipment or conveyance in the previous 30 days has been in:

(a) an infested water; or

(b) other water body or water supply system subject to a closure order under R657-60-8 or control plan under R657-60-9 that requires decontamination of conveyances and equipment upon leaving the water.

(5) Decontamination is not required when a conveyance or equipment is removed from an infested water or other water body subject to decontamination requirements, provided the conveyance and equipment is:

(a) inspected and drained at the take out site, and is free from attached mussels, shelled organisms, fish, plants, and mud as required in Subsections (1) and (2);

(b) returned to the same water body and launched at the same take out site; and

(c) not placed in or on any other Utah water body in the interim without first being decontaminated.

**KEY: fish, wildlife, wildlife law**

**Date of Enactment or Last Substantive Amendment:** ~~August 9, 2010~~ 2013

**Notice of Continuation:** August 5, 2013

**Authorizing, and Implemented or Interpreted Law:** 23-27-401; 23-14-18; 23-14-19

**Natural Resources, Wildlife Resources  
R657-66  
Military Installation Permit Program**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 37979

FILED: 09/10/2013

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This purpose of this rule is to establish the protocol for entering into memorandum of understanding (MOU) with military installations units for the purpose of hunting big game. These agreements will open access to new hunting areas for qualified military personnel and the general public.

**SUMMARY OF THE RULE OR CHANGE:** This rule sets the criteria for which a MOU maybe entered into, as well as the number of hunting permits that will be made available to the general public through the division's annual bucks and bulls online draw process.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 23-14-18 and Section 23-14-19 and Section 23-14-3

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This new rule outlines the process and protocol for military installations to enter into a MOU with the division for the issuance of big game permits. The Division of Wildlife Resources (DWR) determines that these amendments will not create any cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** This new rule sets criteria under which military installations can create and administer hunting opportunities on the installations. This filing will not create a direct cost or savings impact to the military installations that choose to participate in the program. Other local governments are not indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** Since this new rule sets the criteria to be followed when creating a MOU between the military

installation wishing to participate and the division, DWR finds that this filing does not have the potential to create a direct cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Since this new rule sets the criteria to be followed when creating a MOU between the military installation wishing to participate and the division, DWR finds that this filing does not have the potential to create a direct cost or savings impact to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** DWR determines that this new rule will not create a cost or savings impact to individuals in Utah wishing to participate in hunting on military installations that have a MOU with the division.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The amendments to this rule will not create an impact on military installations wishing to enter into an MOU with DWR.

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

NATURAL RESOURCES  
WILDLIFE RESOURCES  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2013

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2013

AUTHORIZED BY: Gregory Sheehan, Director

**R657. Natural Resources, Wildlife Resources.**

**R657-66. Military Installation Permit Program.**

**R657-66-1. Purpose and Authority.**

Under the authority of Sections 23-14-1, 23-14-3, 23-14-18, and 23-14-19, this rule establishes the standards and procedures for providing hunting opportunity on military installations to military installation personnel and to members of the public.

**R657-66-2. Definitions.**

- (1) Terms used in this rule are defined in Section 23-13-2.  
(2) In addition:  
(a) "Military Installation" means real property in excess of 10,000 contiguous acres that is:  
(i) Owned and managed by a military branch of the Department of Defense, including the Utah National Guard;  
(ii) Located within the State of Utah  
(iii) Closed to the public for hunting access;

(iv) Has a clearly discernible and described property boundary; and

(v) Supports a huntable population of wildlife.

(b) "Commander" means base commander of a Military Installation.

(c) "Military Installation Unit" or "MIU" means a contiguous area of land located on a Military Installation that is open to hunting because of the Installation's participation in the Military Installation Permit Program.

(d) "Permit voucher" means a document issued by the Division to the Commander which may be assigned to qualifying military installation personnel authorizing that individual to purchase a permit to hunt wildlife on the military installation.

**R657-66-3. Creation of a Military Installation Unit.**

(1) The Commander may request to create an MIU by submitting a written request to the Division.

(2) If the Division determines that the creation of an MIU will not endanger the wildlife resource and is otherwise in the best interest of the Division and its constituents, the Division and the Commander may enter into a cooperative agreement describing the procedures and restrictions for the creation of the MIU.

(3) The cooperative agreement shall define the following items:

(a) the boundaries of the MIU;

(b) the species which may be hunted;

(c) a description of how Division input and guidance will be used in establishing the requested number of MIU permits;

(d) the weapon types allowed;

(e) the season dates during which the MIU will be open to hunting;

(f) a description of eligibility requirements for military personnel to receive a permit voucher;

(g) the means by which the Commander will distribute permit vouchers;

(h) measures necessary to ensure security of the Military Installation during the hunt; and

(i) other measures necessary deemed appropriate by the Division and the Commander.

(4) An MIU may not be established without the guarantee of public hunting opportunity on the MIU.

(5) The Military Installation, Commander, and agents, employees, personnel and contractors of the same shall not profit off of the creation or operation of an MIU.

**R657-66-4. Military Installation Permit Numbers, Permit Boundaries, Season Lengths, and Legal Weapons.**

(1) The Commander shall submit requested permit allocations to the Wildlife Board by September 1 annually.

(2) The Wildlife Board shall have authority to approve, reduce, or deny the number of MIU permits available from the number requested by the Commander, consistent with the following:

(a) The number of permit vouchers available shall be based on the species population trend, size, and distribution to protect the long-term health of the population; and

(b) For each MIU having permit vouchers approved by the Wildlife Board, at least one (1) permit per approved species, or 20% of the total number of permits approved per species rounded

up to the nearest whole number, whichever is greater, shall be made available to members of the general public via the Division's permit drawing.

(3) The boundaries of the MIU dictated in the cooperative agreement shall be clearly described and discernible on the ground of the military installation and shall be considered the general permit boundaries for hunting permits issued pursuant to this Rule.

(4) The season dates for hunting under a Military Installation Permit shall include a maximum of September 1 to October 31 annually.

(5) Season dates may be shortened and boundaries of the MIU may be modified by definition in the cooperative agreement or by written declaration of the Commander prior to issuance of a Military Installation Permit for the season date in question.

(6) The Commander may further restrict the weapon types allowed on the MIU from what is identified in the cooperative agreement prior to the distribution of the permit vouchers.

(7) All weapons allowed for a Military Installation hunt shall conform to the rules and regulations describing legal weapons used in the taking of protected wildlife.

(8) The Commander is responsible for communicating all modifications of season dates, MIU boundaries, and legal weapon choices to the Division and those participating in an MIU hunt.

**R657-66-5. Distribution of Military Installation Permit Vouchers and Permits.**

(1) The Division shall distribute permit vouchers approved by the Wildlife Board to the Commander, retaining the number of permits as defined in Utah Administrative Rule R657-66-4(2)(b) to distribute via the Division's annual permit drawing.

(2) The Commander shall assign permit vouchers received from the Division using the scheme described in the cooperative agreement outlining the creation of the MIU.

(3) The distribution scheme used by the Commander shall be fair and equitable and shall comply with state and federal laws.

(4) Neither the Commander nor the Military Installation may sell or receive compensation of any kind for a permit voucher or for allowing hunting access on the Military Installation under this Rule.

(5) MIU permits and permit vouchers may not be donated, auctioned, sold, traded, or otherwise transferred to third parties, except as provided for by state law, administrative rule, or proclamation of the Wildlife Board.

(6) An individual receiving a Military Installation Permit Voucher may redeem the voucher for a Military Installation Permit by:

(a) Paying the appropriate permit fee to the Division;

(b) Possessing a valid Utah hunting or combination license; and

(c) Being otherwise legally qualified to hunt in Utah.

(7) An individual may apply for a Military Installation Permit made available to the public by:

(a) Submitting an application in the permit drawing administered by the Division; and

(b) paying the associated application fee.

(8) An individual who successfully draws a Military Installation Permit in the permit drawing may redeem their permit by:

(a) Paying the appropriate permit fee to the Division;

(b) Possessing a valid Utah hunting or combination license; and

(c) Being otherwise legally qualified to hunt in Utah.

(9) As a condition of being issued an Military Installation Permit, the hunter recognizes the inherent risks associated with Military Installations, and agrees to comply with the terms and conditions established in the cooperative agreement, those issued by the Commander, and the laws and regulations pertaining to hunting in the state of Utah.

(10) Waiting periods and bonus points do not apply to military personnel participating in the distribution scheme administered by the Commander, nor are waiting periods incurred or existing points lost upon obtaining a permit.

(11) Waiting periods and bonus points apply to military personnel and members of the public who apply for a Military Installation Permit through the permit drawing.

(12) A member of the military who may otherwise qualify to receive a Military Installation Permit voucher may apply for a Military Installation Permit through the permit drawing, but becomes subject to the rules and regulations applicable to a member of the general public in the event that they successfully draw a permit.

(13) An individual who harvests an animal during a Military Installation hunt may not harvest another animal of the same species during that license year, except as described in the cooperative agreement establishing the MIU or as provided for by the Wildlife Board.

(14) Either the Division or the Commander can discontinue participation in the Military Installation Permit Program by providing prior written notice to the other party.

**R657-66-6. Replacement Vouchers and Permits; Refunds.**

(1) Military Installation Permits shall be considered limited entry permits for the purposes of variances, permit surrender, refunds, and accommodations for people with disabilities in the event that a designated recipient of a voucher or permit is unable to participate in the hunting activity.

(2) The Division may reissue an assigned permit voucher to the Commander for issuance to another qualifying person, provided:

(a) The original recipient surrenders to the Division the permit voucher and any corresponding hunting permit; and

(b) The surrender is made prior to the permit holder undertaking any hunting activity.

(3) The Division shall not be responsible for interference with the public's hunt on the MIU by members of the military or other third parties.

(4) In the event that the individual receiving a permit voucher and/or permit under this Rule cannot participate in the hunt due to military service obligations, that individual may pursue a refund for fees paid consistent with Utah Code Ann. Section 23-19-38.2.

**R657-66-7. Administrative Access During Hunting Seasons; Collection of Harvest Data.**

(1) Division law enforcement officers may access the military installation to regulate hunting related activities thereon.



(2) Those participating in the military installation permit program shall complete a harvest report within 30 days after the hunt ends.

(3) Harvest reporting is required even if an animal is not harvested.

**KEY: wildlife, military installations**

**Date of Enactment or Last Substantive Amendment: 2013**

**Authorizing, and implemented or Interpreted Law: 23-14-1; 23-14-3; 23-14-18; 23-14-19**

Professional Practices Advisory  
Commission, Administration  
**R686-100**  
Professional Practices Advisory  
Commission, Rules of Procedure:  
Complaints and Hearings

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)  
DAR FILE NO.: 38008  
FILED: 09/16/2013

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R686-100 is repealed and reenacted to remove a number of sections from the rule to limit the rule to complaints and final disciplinary actions. A number of sections in the rule are provided for in new rules to make this rule more manageable and clear. Also, this rule is now consistent with Rule R277-517.

SUMMARY OF THE RULE OR CHANGE: The reenacted rule provides language specific to notification to educators, complaints, and final disciplinary actions. Sections R686-100-5 through R686-100-21 of the rule are now in additional rules that have been created.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-6-306(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There is no anticipated cost or savings to the state budget. The reenacted rule provides procedures for the Utah Professional Practices Advisory Commission (UPPAC) and the Utah State Board of Education (Board), many of which were in the repealed rule; this does not result in a cost or savings.
- ◆ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government. The repealed and reenacted rule applies to procedures for UPPAC and the Board and changes will be handled within existing budgets.
- ◆ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses. The repealed and reenacted

rule applies to procedures for UPPAC and the Board and does not affect businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. The reenacted rule is procedural and affects UPPAC and the Board.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Many of the UPPAC and Board procedures that were in the repealed rule are now in the reenacted rule.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
PROFESSIONAL PRACTICES ADVISORY  
COMMISSION  
ADMINISTRATION  
250 E 500 S  
SALT LAKE CITY, UT 84111  
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 10/31/2013

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2013

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

**R686. Professional Practices Advisory Commission, Administration.**

**[R686-100. Professional Practices Advisory Commission, Rules of Procedure: Complaints and Hearings.**

**R686-100-1. Definitions.**

~~A. "Allegation of misconduct" means a written or oral report alleging that an educator has engaged in unprofessional, eriminal, or incompetent conduct; is unfit for duty; has lost his license in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or has committed some other violation of standards of ethical conduct, performance, or professional competence.~~

~~B. "Applicant for a license" means a person seeking a new license or seeking reinstatement of an expired, surrendered, suspended, or revoked license.~~

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

~~D. "Chair" means the Chair of the Commission.~~

E. "Commission" means the Utah Professional Practices Advisory Commission (UPPAC) as defined and authorized under Section 53A-6-301 et seq.

F. "Complaint" means a written allegation or charge against an educator.

G. "Complainant" means the Utah State Office of Education.

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

- (1) personal directory information;
- (2) educational background;
- (3) endorsements;
- (4) employment history;
- (5) professional development information; and
- (6) a record of disciplinary action taken against the educator.

All information contained in an individual's CACTUS file is available to the individual, but is classified private or protected under Section 63G-2-302 or 305 and is accessible only to specific designated individuals:

I. "Criminal conduct" means a criminal offense the conviction for which would likely create, or has created, a substantial and adverse impact on the educator's ability to perform the duties of his employment, including his duty as a role model for students.

J. "Days": in calculating any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included; the last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. Saturdays, Sundays and legal holidays shall not be included in calculating the period of time if the period prescribed or allowed is less than seven days, but shall be included in calculating periods of seven or more days.

K. "Educator" means a person who currently holds a license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training, to obtain a license.

L. "Executive Committee" means a subcommittee of the Commission consisting of the Executive Secretary, Chair, Vice-Chair, and one member of the Commission at large. All Executive Committee members, excluding the Executive Secretary, shall be selected by the Commission. Substitutes may be appointed from within the Commission by the Executive Secretary as needed.

M. "Executive Secretary" means an employee of the Utah State Office of Education who is appointed by the State Superintendent of Public Instruction to serve as the executive officer, and a non-voting member, of the Commission.

N. "Final action" means any action by the Commission or the Board which concludes an investigation of an allegation of misconduct against a licensed educator.

O. "Hearing" means a proceeding in which allegations made in a complaint are examined, where each party has the opportunity to present witnesses and evidence relevant to the complaint and respond to witnesses or evidence presented by the other party. At the conclusion of a hearing, the hearing officer, after consulting with members of the Commission assigned to assist in

the hearing, prepares a hearing report and submits it to the Executive Secretary.

P. "Hearing Officer" means a person who is experienced in matters relating to administrative procedures, education and education law and is either a member of the Utah State Bar Association or a person not a member of the bar who has received specialized training in conducting administrative hearings, and is appointed by the Executive Secretary at the request of the Commission to manage the proceedings of a hearing. The Hearing Officer may not be an acting member of the Commission. The Hearing Officer has broad authority to regulate the course of the hearing and dispose of procedural requests but shall not have a vote as to the recommended disposition of a case.

Q. "Hearing Panel" means a Hearing Officer and three or more members of the Commission agreed upon by the Commission to assist the Hearing Officer in conjunction with the hearing panel in conducting a hearing and preparing a hearing report.

R. "Hearing report" means a report prepared by the Hearing Officer consistent with the recommendations of the hearing panel at the conclusion of a hearing. The report includes a recommended disposition, detailed findings of fact and conclusions of law, based upon the evidence presented in the hearing, relevant precedent, and applicable law and rule.

S. "Informant" means a person who submits information to the Commission concerning alleged misconduct by a person who may be subject to the jurisdiction of the Commission.

T. "Investigator" means a person who is knowledgeable about matters which could properly become part of a complaint before the Commission, as well as investigative procedures and rules and laws governing confidentiality, who is appointed by the Utah State Office of Education's Investigations Unit at the request of the Executive Secretary to investigate an allegation of misconduct.

U. "Jurisdiction" means the legal authority to hear and rule on a complaint.

V. "License" means a teaching or administrative credential, including endorsements, which is issued by a state to signify authorization for the person holding the license to provide professional services in the state's public schools.

W. "Licensing file" means a file that is opened and maintained on an educator following a written complaint to the Commission.

X. "National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator Information Clearinghouse" means a database maintained by NASDTEC for its members regarding persons whose licenses have been suspended or revoked.

Y. "Office" means the Utah State Office of Education.

Z. "Party" means the complainant or the respondent.

AA. "Recommended disposition" means a recommendation for resolution of a complaint.

BB. "Prosecutor" means the attorney designated by the Board to represent the complainant and present evidence in support of the complaint.

CC. "Request for agency action" means a document prepared by the Executive Secretary, containing one or more allegations of misconduct by an educator, a recommended course of action, and related information.

DD. "Respondent" means the party against whom a complaint is filed or an investigation is undertaken.

EE. "Serve" or "service," as used to refer to the provision of notice to a person, means delivery of a written document or its contents to the person or persons in question. Delivery may be made in person, by mail or by other means reasonably calculated, under all of the circumstances, to apprise the interested person or persons to the extent reasonably practical or practicable of the information contained in the document. Service of a complaint upon an educator shall be by mail to the address of the educator as shown upon the records of the Commission.

FF. "State" means the United States or one of the United States; a foreign country or one of its subordinate units occupying a position similar to that of one of the United States; or a territorial unit, of the United States or a foreign country, with a distinct general body of law.

GG. "Stipulated Agreement" means an agreement between a Respondent and the Board or a Respondent and the Commission under which disciplinary action against an educator's license status has been taken, in lieu of a hearing. At anytime after an investigative letter has been sent, a stipulated agreement may be negotiated between the parties, approved by the Commission, and becomes binding when approved by the Board, if necessary.

**R686-100-2. Authority and Purpose.**

A. This rule is authorized by Section 53A-6-306(1)(a) directing the Commission to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to establish procedures regarding complaints against educators and licensing hearings for the Commission to follow. The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63G-4-102(2)(d). However, the Commission has the right to invoke and use sections or provisions of the Utah Administrative Procedures Act as found in Section 63G-4 as necessary to adjudicate an issue.

**R686-100-3. Receipt of Allegations of Misconduct and Disposition by Commission and Records of Allegations.**

A. Initiating Proceedings Against an Educator: The Executive Secretary may initiate proceedings against an educator upon receiving an allegation of misconduct or upon the Executive Secretary's own initiative.

(1) An Informant may be asked to submit information in writing, including the following:

(a) Name, position (e.g. administrator, teacher, parent, student), telephone number and address of the informant;

(b) Name, position (e.g. administrator, teacher, candidate), and if known, the address and telephone number of the educator against whom the allegations are made;

(c) The facts on which the allegations are based and supporting information;

(d) A statement of the relief or action sought from the agency;

(e) Signature of the Informant and date.

(2) If an Informant submits a written allegation of misconduct as provided in Section R686-100-3A(1) above, the Informant shall be told he may receive notification of final actions taken by the Commission or the Board regarding the allegations by

filing a written request for information with the Executive Secretary.

(3) Information received through telephone calls, letters, newspaper articles, notices from other states or other means may also form the basis for initiating proceedings against an educator.

B. At the discretion of the Commission, all written allegations and subsequent dismissal or disciplinary action of a case against an educator may be maintained permanently in the individual's paper licensing file.

**R686-100-4. Review of Request for Agency Action.**

A. Initial Review: On reviewing the request for agency action, the Executive Secretary or the Executive Committee or both shall recommend one of the following to the Commission:

B. Dismiss: If the Executive Committee determines that the Commission lacks jurisdiction or that the request for agency action does not state a cause of action that the Commission should address, the Executive Committee shall recommend that the Commission dismiss the request.

C. Initiate an Investigation: If the Executive Secretary and the Executive Committee determine that the Commission has jurisdiction and that the request states a cause of action which may be appropriately addressed by the Commission, the Executive Secretary shall appoint an investigator to gather evidence relating to the allegations.

(1) The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations.

(2) The investigator shall prepare a written report of the findings of the investigation.

(3) If the investigator discovers additional evidence of unprofessional conduct which should have been included in the original request, it may be included in the investigation report.

(4) The completed report shall be submitted to the Executive Secretary, who shall review the report with the Commission.

(5) The investigation report shall become part of the permanent case file.

D. Prior to the initiation of any investigation, the Executive Secretary shall send a letter to the educator to be investigated, a copy of the letter to the district of current employment, and to the district where the alleged activity occurred, with information that an investigation has been initiated. The letter shall indicate to the educator and the district(s) that an investigation will take place and is not evidence of unprofessional conduct.

E. Secondary Review: The Executive Committee shall review the investigation report and upon completing its review shall recommend one of the following to the Commission:

(1) Dismiss: If the Executive Committee determines no further action should be taken, it shall recommend to the Commission that the request for agency action be dismissed as provided in Section R686-100-4B, above; or

(2) Prepare and Serve COMPLAINT: If the Executive Committee determines further action is appropriate, the Executive Committee shall recommend that the Commission direct the Prosecutor to prepare and serve a Complaint and a copy of these rules upon the Respondent. The Complaint shall have a heading similar to that used for the request for agency action, and shall include:

~~\_\_\_\_\_ (a) A statement of the legal authority and jurisdiction under which the action is being taken;~~

~~\_\_\_\_\_ (b) A statement of the facts and allegations upon which the complaint is based;~~

~~\_\_\_\_\_ (c) Other information which the Prosecutor believes to be necessary to enable the Respondent to understand and address the allegations;~~

~~\_\_\_\_\_ (d) A statement of the potential consequences should the allegations be found to be true or substantially true;~~

~~\_\_\_\_\_ (e) A statement that, the Respondent shall respond to the Complaint, request a hearing, or discuss a stipulated agreement, within 30 days of the date the Complaint was mailed to the Respondent, by filing a written response addressed to the Executive Secretary of the Professional Practices Advisory Commission, at the mailing address for the Office. The statement shall advise the Respondent of the potential consequences if the Respondent fails to respond to the Complaint within the designated time;~~

~~\_\_\_\_\_ (f) Notice that, if a hearing is requested, the hearing shall be scheduled not less than 25 days, nor more than 180 days, after receipt of the Respondent's response, unless a different date is agreed to by both parties in writing. On his own motion, the Executive Secretary, or designee with notice to the parties, may reschedule a hearing date.~~

~~\_\_\_\_\_ (3) A Stipulated Agreement between the parties.~~

~~\_\_\_\_\_ (4) That the action be taken by the Commission.~~

~~\_\_\_\_\_ F. RESPONSE to the Complaint: Any response to the complaint shall be made by filing a written response signed by the Respondent or his representative with the Executive Secretary within 30 days after the Complaint was mailed. The answer may include a request for a hearing or a stipulated agreement and shall include:~~

~~\_\_\_\_\_ (1) The file number of the Complaint;~~

~~\_\_\_\_\_ (2) The names of the parties;~~

~~\_\_\_\_\_ (3) A statement of the relief that the Respondent seeks; and~~

~~\_\_\_\_\_ (4) A statement of the reasons that the relief requested should be granted.~~

~~\_\_\_\_\_ (5) Final Review: As soon as reasonably practicable after receiving the answer, or no more than 30 days after the answer was due, the Executive Secretary shall review any response received, the investigative report, and other relevant information with the Executive Committee. The Executive Committee shall recommend one of the following to the Commission:~~

~~\_\_\_\_\_ (a) Enter a Default: If the Respondent fails to file an answer, fails to request a hearing, fails to request or respond to a proffered Stipulated Agreement within 30 days after service of the Complaint, or surrenders a license in the face of allegations of misconduct without benefit of a stipulated agreement, the Executive Committee shall recommend that the Commission direct the Prosecutor to prepare findings in default and a recommended disposition for submission to the Commission in accordance with Section R686-100-16.~~

~~\_\_\_\_\_ (b) Dismiss the Complaint: If the Executive Committee determines that there are insufficient grounds to proceed with the complaint, the Executive Committee shall recommend to the Commission that the complaint be dismissed. If the Commission votes to uphold the dismissal, the Informant and Respondent shall each be served with notice of the dismissal.~~

~~\_\_\_\_\_ (c) Schedule a Hearing: If the Respondent requests a hearing, the Commission shall direct the Executive Secretary to schedule a hearing as provided in Section R686-100-5.~~

~~\_\_\_\_\_ (d) Respond to a request for a Stipulated Agreement: Respondent may agree to a Stipulated Agreement at any time after an investigative letter has been sent. No Stipulated Agreement shall be final until authorized by the Commission and, if the Agreement is for suspension or revocation, acted on by the Board.~~

~~\_\_\_\_\_ G. A Stipulated Agreement shall, at minimum, include:~~

~~\_\_\_\_\_ (1) A summary of the facts, the allegations, the evidence relied upon by the Commission in its decision, and the Respondent's response, if any;~~

~~\_\_\_\_\_ (2) A statement that the Respondent agrees to limitations on his license or surrenders his license rather than contest the charges and the Respondent accepts the facts recited in the Stipulated Agreement as true;~~

~~\_\_\_\_\_ (3) A commitment from the Respondent that he shall not seek or provide professional services in a public school in any state, or otherwise seek to obtain or use a license in any state, or work or volunteer in a public K-12 setting in any capacity unless or until the Respondent first obtains a valid Utah license or authorization from the Board to obtain such a license, or satisfy other provisions provided in the Stipulated Agreement;~~

~~\_\_\_\_\_ (4) Provision for surrender of Respondent's license or evidence in a form acceptable to the Commission that the Respondent does not have a paper copy of the license;~~

~~\_\_\_\_\_ (5) A statement that the surrender and the Stipulated Agreement shall be reported to other states through the NASDTEC Educator Information Clearinghouse; and~~

~~\_\_\_\_\_ (6) Other provisions applicable to the case, such as remediation, counseling, rehabilitation, and conditions if any under which the Respondent may request a reinstatement hearing or resissuance of his license.~~

~~\_\_\_\_\_ (7) A statement that the Respondent waives his right to a hearing to contest the allegations in the Complaint, or the contents of the Stipulated Agreement, and that the Respondent agrees to the terms of the Stipulated Agreement.~~

~~\_\_\_\_\_ (8) A statement that Respondent waives any right to contest the facts stated in the Stipulated Agreement at a subsequent reinstatement hearing, if any.~~

~~\_\_\_\_\_ (9) A statement that all records related to the Stipulated Agreement shall remain permanently in the educator's licensing file at the Office.~~

~~\_\_\_\_\_ (a) The Stipulated Agreement shall be forwarded to the Commission for approval.~~

~~\_\_\_\_\_ (b) If the Commission rejects the request or the Stipulated Agreement, the Respondent shall be served with notice of the decision, which shall be final, and the proceedings shall continue from the point under these procedures at which the request was made, as if the request had not been submitted.~~

~~\_\_\_\_\_ (c) If the Commission accepts the Stipulated Agreement, the agreement shall be forwarded to the Board for consideration.~~

~~\_\_\_\_\_ (d) If the Board rejects the agreement, the Executive Secretary shall notify the parties of the decision and the proceedings shall continue from the point under these procedures at which the request was made, as if the request had not been submitted.~~

~~\_\_\_\_\_ (e) If, after requesting a Stipulated Agreement, a Respondent fails to sign or respond to a proffered Agreement within~~

30 days after the Agreement is mailed, the Executive Committee shall recommend that the Commission direct the Prosecutor to prepare findings in default and a recommended disposition for submission to the Commission in accordance with Section R686-100-16.

(f) Violations of the terms of a valid Stipulated Agreement may result in an additional five-year revocation of the Respondent's license.

#### H. Other Disciplinary Action:

(1) Recommend that the Commission direct the Executive Secretary to take appropriate disciplinary action against an educator which may include: an admonishment, a letter of warning, a written reprimand, or an agreement not to teach.

(2) If so directed, documentation of the disciplinary action shall be sent to the Respondent's employing school district or to a district where the Respondent finds employment.

(3) Additional conditions of retention and documentation of disciplinary actions taken by the Commission are provided in R686-100-15.

#### I. Agreement not to teach:

(1) If compelling circumstances exist, as determined by the Commission, an educator may agree not to be employed in the schools of any state without thorough and exhaustive review of all allegations of misconduct.

(2) Compelling circumstances may include a single serious allegation with mitigating circumstances that did not involve students within a long-term, otherwise exemplary, career.

(3) Other provisions:

(a) The educator shall surrender his educator license to the Commission;

(b) The NASDTEC Clearinghouse shall receive notification of the invalidation of the educator's license;

(c) The educator may be required to provide to the Commission annually employment and current address information;

(d) Acknowledgment may be made of the existence of the agreement not to teach, otherwise the agreement and its provisions shall remain confidential.

(e) If the educator breaches the agreement not to teach, the agreement shall be voidable at the sole discretion of the Commission, and the Commission may initiate further disciplinary action against the educator.

#### J. Probation

(1) If compelling circumstances exist, as determined by the Commission, an educator may be placed on probation for a specified period of time.

(2) A hearing report or a Stipulated Agreement may provide directives for an educator during the specified probation period.

(3) A probationary term shall be reported to the educator's employing district or school and referenced on the educator's Cactus file.

(4) At the end of the probation term, the educator may petition the Executive Secretary for termination of probation. The petition shall include:

(a) complete documentation of satisfaction of all terms of probation. Incomplete, inaccurate or misleading documentation shall not be considered;

(b) a written statement by the educator explaining the reasons termination of probation is warranted;

(c) results of a criminal background check completed within six months of the request;

(d) any other documentation or evidence requested by the Executive Secretary.

(5) The Executive Secretary and Investigator shall review the documentation, may schedule an informal hearing with the probationary educator, and make a recommendation to Commission if termination of probation is warranted.

(6) If the Executive Secretary or the Commission determine that termination is not warranted, the educator may reapply for termination of probation no sooner than one year from the date of the Executive Secretary or Commission decision.

(7) Consequences for violation of probation or failure to satisfy all conditions of probation may include an extended probation, a renewed investigation, and notice to an employer that the individual is in violation of a professional probation agreement.

#### K. Surrender:

(1) If an educator surrenders his license, the surrender shall have the effect of revocation unless otherwise designated by the Commission;

(2) The Board shall receive official notification of the surrender at an official Board meeting; and

(3) The Executive Secretary shall enter findings in the educator's licensing file explaining the circumstances of the surrender.

(4) Surrender of an educator's license is not a final action. Surrender shall include a Stipulated Agreement or findings of fact, as determined by the Commission, to complete the educator's misconduct file, except as provided in Section (6) and (7) of this part.

(5) Upon receipt of the educator's license by the Executive Secretary, the educator shall be notified in a timely manner that:

(a) he has the right to a hearing before the Commission to contest specific allegations against him;

(b) he has a right to consult an attorney concerning the allegations;

(c) absent response by the educator, the educator admits that the allegations set forth in the Complaint are substantially true;

(d) the Board may take action to suspend or revoke the educator license following the surrender and notice of procedures and consequences to the educator; and

(e) following final administrative action by the Commission or action by the Board, the status of the educator's license shall be indicated on the educator's CACTUS file.

(6) An educator who agrees to surrender his license pursuant to a plea, diversion, or similar agreement from a court shall be deemed to have waived his right to a Stipulated Agreement or hearing before the Commission. The Board may take action to revoke his license upon receipt of the applicable plea or diversion agreement.

(7) An educator who returns his license to the Commission without signing a Stipulated Agreement or requesting a hearing within 60 days after the receipt of his license by the Office shall be deemed to have waived his right to an agreement or a hearing.

**R686-100-5. Hearing Procedures.**

~~\_\_\_\_\_ A. Scheduling the Hearing: The Commission shall agree upon Commission panel members, and the Executive Secretary shall appoint a Hearing Officer from among a list of Hearing Officers identified by the state procurement process approved by the Commission, and schedule the date, time, and place for the hearing. The selection of Hearing Officers shall be on a rotating basis, to the extent practicable, from the list of available Hearing Officers. The selection of a Hearing Officer shall also be made based on availability of individual Hearing Officers and whether any financial or personal interest or prior relationship with parties might affect the Hearing Officer's impartiality or otherwise constitute a conflict of interest. The Executive Secretary shall provide such information about the case as necessary to determine whether the Hearing Officer has a conflict of interest and shall disqualify any Hearing Officer that cannot serve under the Utah Rules of Professional Conduct. The date for the hearing shall be scheduled not less than 25 days nor more than 180 days from the date the response is received by the Executive Secretary. If exceptional circumstances exist which make it impracticable for a party to be present in person, the Executive Secretary may, with the consent of the parties, permit participation by electronic means. The required scheduling periods may be waived by mutual written consent of the parties or by the Commission for good cause shown.~~

~~\_\_\_\_\_ B. Change of Hearing Date:~~

~~\_\_\_\_\_ (1) A request for change of hearing date by any party shall be submitted in writing, include a statement of the reasons for the request, and be received by the Executive Secretary at least five days prior to the scheduled date of the hearing.~~

~~\_\_\_\_\_ (2) The Executive Secretary shall determine whether the cause stated in the request is sufficient to warrant a change of hearing date:~~

~~\_\_\_\_\_ (a) If the cause is found to be sufficient, the Executive Secretary shall promptly notify all parties of the new time, date, and place for the hearing.~~

~~\_\_\_\_\_ (b) If the cause is found to be insufficient, the Executive Secretary shall immediately notify the parties that the request has been denied.~~

~~\_\_\_\_\_ (c) The Executive Secretary and the parties may waive the time period required for requesting a change of hearing date for exceptional circumstances.~~

**R686-100-6. Appointment and Duties of the Hearing Officer and Hearing Panel.**

~~\_\_\_\_\_ A. Hearing Officer: The Executive Secretary shall appoint a Hearing Officer at the request of the Commission to chair the hearing panel and conduct the hearing. The Hearing Officer:~~

~~\_\_\_\_\_ (1) may require the parties to submit briefs and lists of witnesses prior to the hearing;~~

~~\_\_\_\_\_ (2) presides at the hearing and regulates the course of the proceedings;~~

~~\_\_\_\_\_ (3) administers oaths to witnesses as follows: "Do you swear or affirm that the testimony you will give is the truth?";~~

~~\_\_\_\_\_ (4) may take testimony, rule on questions of evidence, and ask questions of witnesses to clarify specific issues;~~

~~\_\_\_\_\_ (5) prepares and submits a hearing report at the conclusion of the proceedings in consultation with panel members consistent with R686-100-1R and the timelines of this rule.~~

~~\_\_\_\_\_ B. Commission Panel Members: The Commission shall agree upon three or more Commission members to serve as Commission members of the hearing panel. As directed by the Commission, former Commission members who have served on the Commission within the three years prior to the date set for the hearing may be used as panel members. The majority of panel members shall be current Commission members.~~

~~\_\_\_\_\_ (1) The selection of panel members shall be on a rotating basis to the extent practicable. However, the selection shall also accommodate the availability of panel members.~~

~~\_\_\_\_\_ (2) The majority of a panel shall be educators.~~

~~\_\_\_\_\_ (3) If the Respondent is a teacher, at least one panel member shall be a teacher. If the Respondent is an administrator, at least one panel member shall be an administrator unless the Respondent objects to the configuration of the panel.~~

~~\_\_\_\_\_ (4) Duties of the Commission panel members include:~~

~~\_\_\_\_\_ (a) Assisting the Hearing Officer by providing information concerning common standards and practices of educators in the Respondent's particular field of practice and in the situations alleged;~~

~~\_\_\_\_\_ (b) Asking questions of all witnesses to clarify specific issues;~~

~~\_\_\_\_\_ (c) Reviewing all briefs and evidence presented at the hearing;~~

~~\_\_\_\_\_ (d) Assisting the Hearing Officer in preparing the hearing report.~~

~~\_\_\_\_\_ (5) The panel members shall not receive any documents prior to the hearing except the Complaint and Response, and a list of witnesses who will participate in the hearing. The Hearing Officer may provide any documents to the panel members prior to the hearing that the parties stipulate may be provided. Unless a different time is agreed to by the parties, documents shall be provided to the panel 30 minutes prior to the hearing.~~

~~\_\_\_\_\_ (6) The Executive Secretary may make an emergency substitution of a panel member for cause with the agreement of the parties. The agreement should be in writing but if time does not permit written communication of the agreement to reach the Executive Secretary prior to the scheduled time of the hearing, an Acceptance of Substituted Hearing Panel Member shall be signed by the parties prior to commencement of the hearing. If the panel cannot be filled within a reasonable time, the Executive Secretary may reschedule the hearing date.~~

~~\_\_\_\_\_ C. Disqualification of the Hearing Officer or a panel member:~~

~~\_\_\_\_\_ (1) Hearing Officer:~~

~~\_\_\_\_\_ (a) A party may seek disqualification of a Hearing Officer by submitting a written request for disqualification to the Executive Secretary, which request must be received not less than 15 days before a scheduled hearing. The Executive Secretary shall review the request and supporting evidence and, upon a finding that the reasons for the request are substantial and sufficient, shall appoint a new Hearing Officer and, if necessary, reschedule the hearing. A Hearing Officer may recuse himself from a hearing if, in the Hearing Officer's opinion, his participation would violate any of the Utah Rules of Professional Conduct consistent with the Supreme Court Rules of Professional Practice, Chapter 13.~~

~~\_\_\_\_\_ (b) If the Executive Secretary denies the request, the party requesting the disqualification shall be notified not less than~~

ten days prior to the date of the hearing. The requesting party may submit a written appeal of the denial to the State Superintendent, which request must be received not less than five days prior to the hearing date. If the State Superintendent finds that the appeal is justified, he shall direct the Executive Secretary to appoint a new Hearing Officer and, if necessary, reschedule the hearing.

(c) The decision of the State Superintendent is final.

(d) Failure of a party to meet the time requirements of Section R686-100-6C(1) shall result in denial of the request or appeal; if the Executive Secretary fails to meet the time requirements, the request or appeal shall be approved.

(2) Commission panel member:

(a) A Commission member shall disqualify himself as a panel member due to any known financial or personal interest, prior relationship, personal and independent knowledge of the persons or issues in the case, or other association that would compromise the panel member's ability to make an impartial decision.

(b) A party may seek disqualification of a Commission panel member by submitting a written request for disqualification to the Hearing Officer, or the Executive Secretary if there is no Hearing Officer, which request shall be received not less than 15 days before a scheduled hearing. The Hearing Officer, or the Executive Secretary, if there is no Hearing Officer, shall review the request and supporting evidence and, upon a finding that the reasons for the request are substantial and compelling, shall disqualify the panel member. If the disqualification leaves the hearing panel with fewer than three Commission panel members, the Commission shall appoint a replacement and the Hearing Officer shall, if necessary, reschedule the hearing.

(c) If the request is denied, the party requesting the disqualification shall be notified not less than ten days prior to the date of the hearing. The requesting party may file a written appeal of the denial to the State Superintendent, which request shall be received not less than five days prior to the hearing date. If the State Superintendent finds that the appeal is justified, he shall direct the Hearing Officer, or the Executive Secretary if there is no Hearing Officer, to replace the panel member.

(d) If a disqualification leaves the hearing panel with fewer than three Commission panel members, the Commission shall agree upon a replacement and the Hearing Officer shall, if necessary, reschedule the hearing.

(e) The decision of the State Superintendent is final.

(f) Failure of a party to meet the time requirements of Section R686-100-7C(2) shall result in denial of the request or appeal; if the Hearing Officer fails to meet the time requirements, the request or appeal shall be approved.

E. The Executive Secretary may, at the time he selects the Hearing Officer or panel members, select alternative Hearing Officers or panel members following the process for selecting those individuals.

#### **R686-100-7. Preliminary Instructions to Parties to a Hearing.**

A. Not less than 30 days before the date of a hearing the Executive Secretary shall provide the parties with the following information:

(1) Date, time, and location of the hearing;

(2) Names and school district affiliations of the panel members, and the name of the Hearing Officer;

(3) Procedures for objecting to any member of the hearing panel; and

(4) Procedures for requesting a change in the hearing date.

B. Not less than 20 days before the date of the hearing, the Respondent and the Complainant shall serve the following upon the other party and submit a copy and proof of service to the Hearing Officer:

(1) A brief, if requested by the Hearing Officer, containing any procedural and evidentiary motions along with that party's position regarding the allegations. Submitted briefs shall include relevant laws, rules, and precedent;

(2) The name of the person who shall represent the party at the hearing, a list of witnesses expected to be called, a summary of the testimony which each witness is expected to present, and a summary of documentary evidence which shall be submitted.

C. If a party fails to comply in good faith with a directive of the Hearing Officer under Section R686-100-7A, including time requirements for service, the Hearing Officer may prohibit introduction of the testimony or evidence or take other steps reasonably appropriate under the circumstances including, in extreme cases of noncompliance, entry of a default against the offending party. Nothing in this section prevents the use of rebuttal witnesses.

D. Parties shall provide materials to the Hearing Officer, panel members and Commission as directed by the Hearing Officer.

#### **R686-100-8. Hearing Parties' Representation.**

A. Complainant: The Complainant shall be represented by a person appointed by the State Superintendent or his designee.

B. Respondent: A Respondent may represent himself or be represented, at his own cost, by another person.

C. The informant has no right to individual representation at the hearing or to be present or heard at the hearing unless called as a witness.

D. The Executive Secretary shall receive timely notice in writing of representation by anyone other than the Respondent.

#### **R686-100-9. Discovery Prior to a Hearing.**

A. Discovery is permitted to the extent necessary to obtain relevant information necessary to support claims or defenses, as determined by the appointed Hearing Officer.

B. Discovery, especially burdensome or unduly legalistic discovery, may not be used to delay a hearing.

C. Discovery may be limited by the Hearing Officer at his discretion or upon a motion by either party. The Hearing Officer rules on all discovery requests and motions.

D. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence shall be issued pursuant to Section 53A-6-306(2)(e) if requested by either party at least five working days prior to the hearing.

E. Either party may request the names of witnesses the opposing party expects to call at the hearing and to receive a copy of or examine all documents and exhibits that the opposing party intends to use as evidence during the hearing.

F. Except as provided in R100-7C, no witness or evidence may be presented at the hearing if the opposing party has requested to be notified of such information and has not been fairly

apprised at least 10 days prior to the hearing. The timeliness requirement may be waived by agreement of the parties or by the Hearing Officer upon a showing of good cause or the Hearing Officer's determination that no prejudice has occurred to the opposing party. This restriction shall not apply to rebuttal witnesses whose testimony, where required, cannot reasonably be anticipated before the time of the hearing.

G. No expert witness report or testimony may be presented at the hearing unless the requirements of Section R686-100-13 have been met.

**R686-100-10. Burden and Standard of Proof for Commission Proceedings.**

A. In matters other than those involving applicants for licensing, and excepting the presumptions under Section R686-100-14G, the complainant shall have the burden of proving that action against the license is appropriate.

B. An applicant for licensing has the burden of proving that licensing is appropriate.

C. Standard of proof: The standard of proof in all Commission hearings is a preponderance of the evidence.

D. Evidence: The Utah Rules of Evidence are not applicable to Commission proceedings. The criteria to decide evidentiary questions shall be:

(1) reasonable reliability of the offered evidence;

(2) fairness to both parties; and

(3) usefulness to the Commission in reaching a decision.

E. The Hearing Officer has the sole responsibility to determine the application of the hearing rules and the admissibility of evidence.

**R686-100-11. Deportment.**

A. Parties, their representatives, witnesses, and other persons present during a hearing shall conduct themselves in an appropriate manner during hearings, giving due respect to members of the hearing panel and complying with the instructions of the Hearing Officer. The Hearing Officer may expel persons from the hearing room who fail to conduct themselves in an appropriate manner and may, in response to extreme instances of noncompliance, disallow testimony or declare an offending party to be in default.

B. Parties, attorneys for parties, or other participants in the professional practices investigation and hearing process shall not harass, intimidate or pressure witnesses or other hearing participants, nor shall they direct others to harass, intimidate or pressure witnesses or participants.

**R686-100-12. Hearing Record.**

A. The hearing shall be tape recorded at the Commission's expense, and the tapes shall become part of the permanent case record, unless otherwise agreed upon by all parties.

B. Individual parties may, at their own expense, make recordings of the proceedings with notice to the Executive Secretary.

C. If an exhibit is admitted as evidence, the record shall reflect the contents of the exhibit.

D. All evidence and statements presented at a hearing shall become part of the permanent case file and shall not be removed except by order of the Board.

E. The Office record of the proceedings may be reviewed upon request of a party under supervision of the Executive Secretary and only at the Office.

**R686-100-13. Expert Witnesses in Commission Proceedings.**

A. A party may call an expert witness at its own expense. Notice of intent of a party to call an expert witness, the identity and qualifications of such expert witness and the purpose for which the expert witness is to be called shall be provided to the Hearing Officer and the opposing party at least 15 days prior to the hearing date.

B. The Hearing Officer may appoint any expert witness agreed upon by the parties or of the Hearing Officer's own selection. An expert so appointed shall be informed of his duties by the Hearing Officer in writing, a copy of which shall become part of the permanent case file. The expert shall advise the hearing panel and the parties of his findings and may thereafter be called to testify by the hearing panel or by any party. He may be examined by each party or by any of the hearing panel members.

C. Defects in the qualifications of expert witnesses, once a minimum threshold of expertise is established, go to the weight to be given their testimony and not to its admissibility.

D. Experts who are members of the Complainant's staff or a school district staff may testify and have their testimony considered as part of the record along with that of any other expert.

E. Any report of an expert witness which a party intends to introduce into evidence shall be provided to the opposing party at least 15 days prior to the hearing date.

**R686-100-14. Evidence and Participation in Commission Proceedings.**

A. The Hearing Officer may not exclude evidence solely because it is hearsay.

B. Each party has the right to call witnesses, present evidence, argue, respond, cross-examine witnesses who testify in person at the hearing, and submit rebuttal evidence.

C. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

D. In any case involving allegations of child abuse or of a sexual offense against a child, upon request of either party or by a member of the hearing panel, the Hearing Officer may determine whether a significant risk exists that the child would suffer serious emotional or mental harm if required to testify in the Respondent's presence, or whether a significant risk exists that the child's testimony would be inherently unreliable if required to testify in the Respondent's presence. If the Hearing Officer determines either to be the case, then the child's testimony may be admitted in one of the following ways:

(1) An oral statement of a victim or witness younger than 18 years of age which is recorded prior to the filing of a complaint shall be admissible as evidence in a hearing regarding the offense if:

(a) No attorney for either party is in the child's presence when the statement is recorded;

(b) The recording is visual and aural and is recorded on film or videotape or by other electronic means;

(c) The recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and the recording is accurate and has not been altered; and



~~(d) Each voice in the recording is identified.~~

~~(2) The testimony of any witness or victim younger than 18 years of age may be taken in a room other than the hearing room, and be transmitted by closed circuit equipment to another room where it can be viewed by the Respondent. All of the following conditions shall be observed:~~

~~(a) Only the hearing panel members, attorneys for each party, persons necessary to operate equipment, and a person approved by the Hearing Officer whose presence contributes to the welfare and emotional well-being of the child may be with the child during his testimony.~~

~~(b) The Respondent may not be present during the child's testimony;~~

~~(c) The Hearing Officer shall ensure that the child cannot hear or see the Respondent;~~

~~(d) The Respondent shall be permitted to observe and hear, but not communicate with, the child; and~~

~~(e) Only hearing panel members and the attorneys may question the child.~~

~~(3) The testimony of any witness or victim younger than 18 years of age may be taken outside the hearing room and recorded if the provisions of Sections R686-100-14E(2)(a)(b)(c) and (e) and the following are observed:~~

~~(a) The recording is both visual and aural and recorded on film or videotape or by other electronic means;~~

~~(b) The recording equipment is capable of making an accurate recording, the operator is competent, and the recording is accurate and is not altered;~~

~~(c) Each voice on the recording is identified; and~~

~~(d) Each party is given an opportunity to view the recording before it is shown in the hearing room.~~

~~(4) If the Hearing Officer determines that the testimony of a child shall be taken under Section R686-100-14E(1)(2) or (3) above, the child may not be required to testify in any proceeding where the recorded testimony is used.~~

~~E. On his own motion or upon objection by a party, the Hearing Officer:~~

~~(1) May exclude evidence that the Hearing Officer determines to be irrelevant, immaterial, or unduly repetitious;~~

~~(2) Shall exclude evidence that is privileged under law applicable to administrative proceedings in Utah unless waived;~~

~~(3) May receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;~~

~~(4) May take official notice of any facts that could be judicially noticed under judicial or administrative laws of Utah, or from the record of other proceedings before the agency.~~

~~F. Presumptions:~~

~~(1) A rebuttable evidentiary presumption exists that a person has committed a sexual offense against a minor child if the person has:~~

~~(a) Been found, pursuant to a criminal, civil, or administrative action to have committed a sexual offense against a minor;~~

~~(b) Failed to defend himself against such a charge when given a reasonable opportunity to do so; or~~

~~(c) Voluntarily surrendered a license or allowed a license to lapse in the face of a charge of having committed a sexual offense against a minor.~~

~~(2) A rebuttable evidentiary presumption exists that a person is unfit to serve as an educator if the person has been found pursuant to a criminal, civil, or administrative action to have exhibited behavior evidencing unfitness for duty, including immoral, unprofessional, or incompetent conduct, or other violation of standards of ethical conduct, performance, or professional competence. Evidence of such behavior may include:~~

~~(a) conviction of a felony;~~

~~(b) a felony charge and subsequent conviction for a lesser related charge pursuant to a plea bargain or plea in abeyance;~~

~~(c) an investigation of an educator's license, certificate or authorization in another state; or~~

~~(d) the expiration, surrender, suspension, revocation, or invalidation for any reasons of an educator license.~~

~~H. The Hearing Officer may confer with the Executive Secretary or the panel members or both while preparing the Hearing Report. The Hearing Officer may request the Executive Secretary to confer with the Hearing Officer and panel following the hearing.~~

~~I. The Executive Secretary may return a Hearing Report to a Hearing Officer if the Report is incomplete, unclear, or unreadable.~~

**~~R686-100-15. Hearing Report.~~**

~~A. Within 20 days after the hearing, or within 20 days after the deadline imposed for the filing of any post-hearing materials permitted by the Hearing Officer, the Hearing Officer shall sign and issue a Hearing Report consistent with the recommendations of the panel that includes:~~

~~(1) A detailed findings of fact and conclusions of law based upon the evidence of record or on facts officially noted. Findings of fact may not be based solely upon hearsay, and conclusions shall be based upon competent evidence;~~

~~(2) A statement of relevant precedent, if available;~~

~~(3) A statement of applicable law and rule;~~

~~(4) A recommended disposition of the Commission panel members which shall be one of the following:~~

~~(a) Dismissal of the Complaint: The hearing report shall indicate that the complaint should be dismissed and that no further action should be taken.~~

~~(b) Warning: the hearing report shall indicate that Respondent's conduct is deemed unprofessional and shall direct the Executive Secretary to write a letter of warning to the Respondent. A letter of warning:~~

~~(i) shall be maintained permanently in Respondent's paper licensing file;~~

~~(ii) shall be mailed to Respondent or, if Respondent is represented by counsel, to Respondent's counsel;~~

~~(iii) shall state that the letter does not affect Respondent's license status;~~

~~(iv) shall not be noted on Respondent's active CACTUS file;~~

~~(v) shall not be copied and mailed to the Respondent's employing school district, although the employing school district shall be notified that Respondent received a warning letter;~~

~~(vi) shall not be public information, although, as a final administrative decision, the existence of the letter is public information;~~

~~(vii) shall state that a letter of warning may be considered by the Commission or the Board if formal allegations are made regarding Respondent's conduct in the future; and~~

~~(viii) may be acknowledged and summarized to prospective employers upon request.~~

~~(c) Reprimand: the hearing report shall indicate that Respondent's conduct is deemed unprofessional and shall direct the Executive Secretary to write a letter of reprimand to the Respondent. A letter of reprimand:~~

~~(i) shall be maintained permanently in Respondent's paper licensing file;~~

~~(ii) shall be mailed to Respondent or, if Respondent is represented by counsel, to Respondent's counsel;~~

~~(iii) shall state that the letter does not affect Respondent's license status;~~

~~(iv) shall be noted on Respondent's active CACTUS file for the period stated in the hearing report and until Respondent's written request for removal of the letter is granted;~~

~~(v) shall be copied and sent to Respondent's employing school district;~~

~~(vi) shall not be public information, although, as a final administrative decision, the existence of the letter is public information; and~~

~~(vii) shall state that a letter of reprimand may be considered by the Commission or the Board if formal allegations are made regarding Respondent's conduct in the future; and~~

~~(viii) may be acknowledged and summarized to prospective employers upon request.~~

~~(d) It is the Respondent's responsibility to petition the Commission for removal of letters of warning and reprimand from his licensing and CACTUS files.~~

~~(c) Probation: The hearing report shall determine whether the Respondent's conduct was unprofessional, that the Respondent shall not lose his license, but that a probationary period is appropriate. If the report recommends probation, the report shall designate:~~

~~(i) a probationary time period;~~

~~(ii) conditions that can be monitored;~~

~~(iii) a person or entity to monitor a Respondent's probation;~~

~~(iv) a statement providing for costs of probation.~~

~~(v) whether or not the Respondent may work in any capacity in education during the probationary period.~~

~~A probation may be imposed substantially in the form of a plea in abeyance. The Respondent's penalty is stayed subject to the satisfactory completion of probationary conditions. The decision shall provide for discipline should the probationary conditions not be fully satisfied.~~

~~(f) Suspension: The hearing report shall recommend to the Board that the license of the Respondent be suspended for a specific period of time and until specified reinstatement conditions have been met before Respondent may petition for reinstatement of his license. The hearing report shall indicate that, should the Board confirm the recommended decision, the Respondent shall return the printed suspended license to the Office and that the Educator Licensing Section of the Office shall notify the employing school district, all other Utah school districts, and all other state, territorial, and national licensing offices or clearing houses of the suspension in accordance with R277-514.~~

~~(g) Revocation: The hearing report shall recommend to the State Board of Education that the license of the Respondent be revoked for a period of not less than five years. The hearing report shall indicate that should the Board confirm the recommended decision, the Respondent shall return any paper copies of the revoked license to the Office and that the Educator Licensing Section of the Office shall notify the employing school district, all other Utah school districts, and all other state, territorial, and national licensing offices or clearing houses of the revocation in accordance with R277-514.~~

~~(5) Notice of the right to appeal; and~~

~~(6) Time limits applicable to appeal.~~

~~B. Processing the Hearing Report:~~

~~(1) The Hearing Officer shall circulate the draft report to hearing panel members prior to the 20 day completion deadline of the hearing report.~~

~~(2) Hearing panel members shall notify the Hearing Officer of any changes to the report as soon as possible after receiving the report and prior to the 20 day completion deadline of the hearing report.~~

~~(3) The Hearing Officer shall file the completed hearing report with the Executive Secretary, who shall review the report with the Commission.~~

~~(4) If the Commission, upon review of the hearing report, finds by majority vote, that there have been significant procedural errors in the hearing process or that the weight of the evidence does not support the conclusions of the hearing report, the Commission may direct the Executive Secretary to prepare an alternate hearing report and follow procedures under R686-100-15B(2).~~

~~(5) The Executive Secretary may be present, at the discretion of the Commission, but may only participate in the Commission's deliberation as a resource to the Commission in explaining the hearing report and answering any procedural questions raised by Commission members.~~

~~(6) If the Commission finds that there have not been significant procedural errors or that recommendations are based upon a reasonable interpretation of the evidence presented at the hearing, the Commission shall vote to uphold the Hearing Officer's report and do one of the following:~~

~~(a) If the recommendation is for final action to be taken by the Commission, the Commission shall direct the Executive Secretary to prepare a corresponding final order and serve all parties with a copy of the order and hearing report. A copy of the order and the hearing report shall be placed in and become part of the permanent case file. The order shall be effective upon approval by the Commission.~~

~~(b) If the recommendation is for final action to be taken by the Board, the Executive Secretary shall forward a copy of the hearing report to the Board for its further action. A copy of the hearing report shall also be placed in and become part of the permanent case file.~~

~~(7) If the Commission determines that procedural errors or that the Hearing Officer's report is not based upon a reasonable interpretation of the evidence presented at the hearing to the extent that an amended hearing report cannot be agreed upon, the Commission shall direct the Executive Secretary to schedule the matter for rehearing before a new Hearing Officer and panel.~~

~~C. Consistent with Section 63G-2-301(2)(c), the final administrative disposition of all administrative proceedings, the Recommended Disposition section of the Hearing Report, of the Commission shall be public. The hearing findings/report of suspensions and expulsions shall be public information and shall be provided consistent with Section 63G-2-301(2)(c). The Recommended Disposition portion of the Hearing Report of warnings, reprimands and probations (including the probationary conditions) shall be public information. All references to individuals and personally identifiable information about individuals not parties to the hearing shall be redacted prior to making the disposition public.~~

~~D. Failure to comply with the terms of a final disposition that includes a suspension or revocation of the Respondent's license may result in an additional five-year revocation of the license.~~

~~E. If a hearing officer fails to satisfy his responsibilities under this rule, the Commission may:~~

- ~~(1) notify the Utah State Bar of the failure;~~
- ~~(2) reduce the hearing officer's compensation consistent with his failure;~~
- ~~(3) take timely action to avoid disadvantaging either party; and~~
- ~~(4) preclude the hearing officer from further employment by the Board for Commission purposes.~~

~~F. Deadlines within this section may be waived by the Commission for good cause shown.~~

~~G. All criteria of letters of warning and reprimand, probation, suspension and revocation shall also apply to final Stipulated Agreements, agreed to and signed by both parties.~~

**R686-100-16. Default Procedures:**

~~A. An order of default may be issued against a Respondent under any of the following circumstances:~~

~~(1) The Prosecutor may prepare an order of default by preparing a report of default including the order of default, a statement of the grounds for default, and a recommended disposition if the Respondent fails to file a response to a complaint or respond to a proffered Stipulated Agreement following written notice and telephone contact, to the extent possible, for an additional 20 days following the time period allowed for response to a complaint under R686-100-4F or G.~~

~~(2) The Hearing Officer may enter an order of default against a Respondent by preparing a hearing report including the order of default, a statement of the grounds for default and the recommended disposition if:~~

~~(a) The Respondent fails to attend or participate in a properly scheduled hearing after receiving proper notice. The Hearing Officer may determine that the Respondent has failed to attend a properly scheduled hearing if the Respondent has not appeared within 30 minutes of the appointed time for the hearing to begin, unless the Respondent shows good cause for failing to appear in a timely manner.~~

~~(b) The Respondent or the Respondent's representative commits misconduct during the course of the hearing process as provided under Section R686-100-8D.~~

~~B. The recommendation of default may be executed by the Executive Secretary following all applicable time periods, without further action by the Commission.~~

**R686-100-17. Appeal:**

~~A. Either party may appeal a final recommendation of the Commission for a suspension of the Respondent's license for two or more years or a revocation to the State Superintendent. A request for review by the State Superintendent shall follow the procedures in R277-514-3 and be submitted in writing within 15 days from the date that the Commission sends written notice to the parties of its recommendation.~~

~~(1) Either party may appeal the Superintendent's decision to the Board following the procedures in R277-514-4.~~

~~B. Either party may appeal a Commission recommendation for a suspension of less than two years or dismissal of the case to the Board following the procedures in R277-514-4B.~~

~~C. A request for appeal to the State Superintendent or the Board shall include:~~

- ~~(1) name, position, and address of appellant;~~
- ~~(2) issue(s) being appealed; and~~
- ~~(3) signature of appellant.~~

**R686-100-18. Remedies for Individuals Beyond Commission Actions:**

~~Despite Commission or Board actions, informants or other injured parties who feel that their rights have been compromised, impaired or not addressed by the provisions of this rule, may appeal directly to district court.~~

**R686-100-19. Application for Licensing Following Denial or Loss of License:**

~~A. An individual who has been denied licensing or lost his license through revocation or suspension, or through surrender of a license or allowing a license to lapse in the face of an allegation of misconduct, may request review to consider reinstatement of a license.~~

~~(1) The request for review shall be in writing and addressed to the Executive Secretary, Professional Practices Advisory Commission, at the Office mailing address, and shall have the following heading:~~

TABLE 1

-----	
Jane Doe, _____ )	Request for Agency Action
Petitioner _____ )	Following Denial or Loss of
vs _____ )	License
Utah State Office of Education, _____ )	File no.: .....
URPAC _____ )	
The State. _____ )	
-----	

~~B. The body of the request shall contain:~~

- ~~(1) Name and address of the individual requesting review;~~
- ~~(2) Action being requested;~~
- ~~(3) Evidence of compliance with terms and conditions of any remedial or disciplinary requirements or recommendations;~~
- ~~(4) Reasons for reconsideration of past disciplinary action;~~

~~\_\_\_\_\_ (5) Signature of person requesting review.  
 \_\_\_\_\_ C. The Executive Secretary shall review the request with the Commission.~~

~~\_\_\_\_\_ (1) If the Commission determines that the request is invalid, the person requesting reinstatement shall be notified by certified mail of the denial.~~

~~\_\_\_\_\_ (2) If the Commission determines that the request is valid, a hearing shall be scheduled and held as provided under Section R686-100-6.~~

~~\_\_\_\_\_ D. Burden of Proof: The burden of proof for granting or reinstatement of a license shall fall on the individual seeking the reinstatement.~~

~~\_\_\_\_\_ (1) Individuals requesting reinstatement of a suspended license shall show sufficient evidence of compliance with any conditions imposed in the past disciplinary action as well as undergo a criminal background check in accordance with Utah law.~~

~~\_\_\_\_\_ (2) Individuals requesting licensing following revocation shall show sufficient evidence of compliance with any conditions imposed in the past disciplinary action as well as providing evidence of qualifications for licensing as if the individual had never been licensed in Utah or any other state.~~

~~\_\_\_\_\_ (3) Individuals requesting licensing following denial shall show sufficient evidence of completion of a rehabilitation or remediation program, if applicable.~~

**~~R686-100-20. Reinstatement Hearing Procedures.~~**

~~\_\_\_\_\_ A. The individual seeking reinstatement of his license shall be the petitioner.~~

~~\_\_\_\_\_ B. The petitioner shall have the responsibility of presenting the background of the case.~~

~~\_\_\_\_\_ C. The petitioner shall present documentation or evidence that supports reinstatement.~~

~~\_\_\_\_\_ D. The State, represented by the Commission Prosecutor, shall present any evidence or documentation that would not support reinstatement.~~

~~\_\_\_\_\_ E. Other evidence or witnesses shall be presented consistent with R686-100-14.~~

~~\_\_\_\_\_ F. The appointed Hearing Officer shall rule on other procedural issues in a reinstatement hearing in a timely manner as they arise.~~

**~~R686-100-21. Temporary Suspension of License Pending a Hearing.~~**

~~\_\_\_\_\_ A. If the Executive Secretary determines, after affording Respondent an opportunity to discuss allegations of misconduct, that reasonable cause exists to believe that the charges shall be proven to be correct and that permitting the Respondent to retain his license prior to hearing would create unnecessary and unreasonable risks for children, then the Executive Secretary may order immediate suspension of the Respondent's license pending final Board action.~~

~~\_\_\_\_\_ B. Evidence of the temporary suspension may not be introduced at the hearing.~~

~~\_\_\_\_\_ C. Notice of the temporary suspension shall be provided to other states under R277-514.]~~

**R686-100. Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions.**

**R686-100-1. Definitions.**

A. "Action" as used in 53A-6-306 and as applied in this rule means a disciplinary action taken by UPPAC or the Board adversely affecting an educator's license, and which, pursuant to 53A-6-306, may not be taken without giving the educator an opportunity for a fair hearing to contest the allegations upon which the action would be based. Actions include:

\_\_\_\_\_ (1) probation

\_\_\_\_\_ (2) suspension

\_\_\_\_\_ (3) revocation.

B. "Allegation of misconduct" means a written or oral report alleging that an educator has engaged in unprofessional or criminal conduct; is unfit for duty; has lost his license in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or has committed some other violation of standards of ethical conduct, performance, or professional competence as provided in R277-515.

C. "Applicant for a license" means a person seeking a new license or seeking reinstatement of an expired, surrendered, suspended, or revoked license.

\_\_\_\_\_ D. "Board" means the Utah State Board of Education.

\_\_\_\_\_ E. "Chair" means the Chair of UPPAC.

F. "Complaint" means a written allegation or charge against an educator filed by USOE against the educator.

G. "Complainant" means the Utah State Office of Education.

H. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file owned and maintained on all licensed Utah educators. The file includes information such as:

\_\_\_\_\_ (1) personal directory information;

\_\_\_\_\_ (2) education background;

\_\_\_\_\_ (3) endorsements;

\_\_\_\_\_ (4) employment history; and

\_\_\_\_\_ (5) a record of disciplinary action taken against the educator's license.

I. "Days": in calculating any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included; the last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. Saturdays, Sundays and legal holidays shall not be included in calculating the period of time if the period prescribed or allowed is less than seven days, but shall be included in calculating periods of seven or more days.

J. "Disciplinary letter " means a letter issued to respondent by UPPAC as a result of an investigation into allegations of educator misconduct. Disciplinary letters include:

\_\_\_\_\_ (1) letters of admonishment;

\_\_\_\_\_ (2) letters of warning;

\_\_\_\_\_ (3) letters of reprimand; and  
\_\_\_\_\_ (3) any other action that UPPAC or the Board takes to discipline an educator for educator misconduct that does not rise to the level of an action as defined in 686-100-1A.  
K. "Educator" means a person who currently holds a license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training to obtain a license.  
L. "Educator Misconduct" means unprofessional or criminal conduct; conduct that renders the educator unfit for duty; or conduct that is a violation of standards of ethical conduct, performance, or professional competence as provided in R277-515.  
M. "Educator paper licensing file" means the file maintained securely by UPPAC on an educator. The file is opened following UPPAC's direction to investigate alleged misconduct. The file contains the original notification of misconduct, subsequent correspondence, the investigative report, and the final disposition of the case.  
N. "Executive Committee" means a subcommittee of UPPAC consisting of the Executive Secretary, Chair, Vice-Chair, and one member of UPPAC at large. All Executive Committee members, excluding the Executive Secretary, shall be selected by UPPAC. Substitutes may be appointed from within UPPAC by the Executive Secretary as needed.  
O. "Executive Secretary" means an employee of the Utah State Office of Education who is appointed by the State Superintendent of Public Instruction to serve as the executive officer, and a non-voting member, of UPPAC.  
P. "Final action" means any action by UPPAC or the Board which concludes an investigation of an allegation of misconduct against a licensed educator.  
Q. "Hearing" means an administrative proceeding held pursuant to Section 53A-6-601, is a formal adjudication in which allegations made in a complaint are examined before a hearing officer and UPPAC hearing panel, where each party has the opportunity to present witnesses and evidence relevant to the complaint and respond to witnesses or evidence presented by the other party. At the conclusion of a hearing, the hearing officer, after consulting with members of the UPPAC hearing panel, prepares a hearing report and submits it to the Executive Secretary.  
R. "Informant" means a person who submits information to UPPAC concerning alleged misconduct of an educator.  
S. "Investigator" means an employee of the USOE who is assigned by UPPAC to investigate allegations of educator misconduct and to offer recommendations of educator discipline to UPPAC at the conclusion of the investigation. The investigator works independently of the Executive Secretary and provides an investigative report for UPPAC. The investigator may also be the prosecutor but does not have to be. The investigator may be called on by the prosecutor, if not the same person, to testify at a hearing about the investigator's findings during the course of an investigation.  
T. "Investigative report" means a written report of an investigation into allegations of educator misconduct, prepared by a UPPAC investigator. The report includes a brief summary of the allegations, a recommendation for UPPAC, and a summary of witness interviews conducted during the course of the investigation. The investigative report may include a rationale for the recommendation, and mitigating and aggravating circumstances, but

does not have to. The investigative report is maintained in the educator's licensing file.

U. "Jurisdiction" means the legal authority to hear and rule on a complaint.

V. "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.

W. "License" means a teaching or administrative credential, including endorsements, which is issued by a state to signify authorization for the person holding the license to provide professional services in the state's public schools.

X. "National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator Information Clearinghouse" means a database maintained by NASDTEC for its members regarding persons whose licenses have been suspended or revoked.

Y. "Notification of Alleged Educator Misconduct" means the official UPPAC form that can be accessed on UPPAC's internet website, and can be submitted by any person, school, or district that alleges educator misconduct.

Z. "Party" means the complainant or the respondent.

AA. "Prosecutor" means the attorney designated by the USOE to represent the complainant and present evidence in support of the complaint. The prosecutor may also be the investigator, but does not have to be.

BB. "Recommended disposition" means a recommendation provided by a UPPAC investigator for resolution of an allegation.

CC. "Revocation" means a permanent invalidation of a Utah educator license consistent with R277-517.

DD. "Respondent" means the party against whom a complaint is filed or an investigation is undertaken.

EE. "Serve" or "service," as used to refer to the provision of notice to a person, means delivery of a written document or its contents to the person or persons in question. Delivery may be made in person, by mail, electronic correspondence, or by other means reasonably calculated, under all of the circumstances, to notify the interested person or persons to the extent reasonably practical or practicable of the information contained in the document.

FF. "Stipulated agreement" means an agreement between a respondent/educator and the USOE/Board or between a respondent/educator and UPPAC under which disciplinary action against an educator's license status shall be taken, in lieu of a hearing. At any time after an investigative letter has been sent, a stipulated agreement may be negotiated between the parties and becomes binding when approved by the Board, if necessary, or UPPAC if Board approval is not necessary.

GG. "Suspension" means an invalidation of a Utah educator license. A suspension may include specific conditions that an educator shall satisfy and may identify a minimum time period that shall elapse before the educator can request a reinstatement hearing before UPPAC.

HH. "Utah Professional Practices Advisory Commission (UPPAC)" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as established under Section 53A-6-301.

II. "UPPAC investigative letter" means a letter sent by UPPAC to an educator notifying the educator that an allegation of misconduct has been received against him and UPPAC has directed that an investigation of the educator's alleged actions take place.

JJ. "UPPAC disciplinary letters or action" means letters sent or action taken by UPPAC informing the educator of licensing disciplinary action not rising to the level of license suspension. Disciplinary letters and action include the following:

(1) Letter of admonishment is a letter sent by UPPAC to the educator cautioning the educator to avoid or take specific actions in the future;

(2) Letter of warning is a letter sent by UPPAC to an educator for misconduct that was inappropriate or unethical that does not warrant longer term or more serious discipline;

(3) Letter of reprimand is a letter sent by UPPAC to an educator for misconduct that was longer term or more seriously unethical or inappropriate than conduct warranting a letter of warning, but not warranting more serious discipline; a letter of reprimand may provide specific directives to the educator as a condition for removal of the letter, and shall appear as a notation on the educator's CACTUS file;

(4) Probation is an action directed by UPPAC that involves some monitoring or supervision for an indefinite or designated time period usually accompanied by a disciplinary letter. In this time period, the educator may be subject to additional monitoring by an identified person or entity and the educator may be asked to satisfy certain conditions in order to have the probation lifted. This discipline usually, but not always, is accompanied by a letter of warning or a letter of reprimand and shall appear as a notation on the educator's CACTUS file. Unless otherwise specified, the probationary period is at least two years and must be terminated through a formal petition by respondent.

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

LL. "USOE administrative action" means an administrative investigation into allegations of educator misconduct, opened under the authority of 53A-3-306.

#### **R686-100-2. Authority and Purpose.**

A. This rule is authorized by Section 53A-6-306(1)(a) directing UPPAC to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to provide procedures regarding:

(1) notification of alleged educator misconduct;

(2) review of notification by UPPAC; and

(3) complaints, stipulated agreement and defaults.

The provisions of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63G-4-102(2)(d). UPPAC may invoke and use sections or provisions of the Utah Administrative Procedures Act as found in Section 63G-4 as necessary to adjudicate an issue.

#### **R686-100-3. Initiating Proceedings Against Educators.**

A. The Executive Secretary may initiate proceedings against an educator upon receiving a notification of alleged educator misconduct or upon the Executive Secretary's own initiative.

(1) An informant may be asked to submit information in writing, including the following:

(a) name, position (such as administrator, teacher, parent, student), telephone number, address, and contact information of the informant;

(b) name, position (such as administrator, teacher, candidate), and if known, the address and telephone number of the educator against whom the allegations are made;

(c) the facts on which the allegations are based and supporting information;

(d) signature of the informant and date.

(2) If an informant submits a written allegation of misconduct as provided in Section R686-100-3A(1), the informant may be told of final actions taken by UPPAC or the Board regarding the allegations.

(3) Proceedings initiated upon the Executive Secretary's own initiative are based on information received through telephone calls, letters, newspaper articles, media information, notices from other states or other means; UPPAC shall not investigate anonymous allegations.

B. All notifications of alleged educator misconduct shall be directed to UPPAC for initial review.

C. All written allegations, subsequent dismissals, or action or disciplinary letter of a case against an educator shall be maintained permanently in UPPAC's paper licensing files.

#### **R686-100-4. Review of Notification of Alleged Educator Misconduct.**

A. Initial Review: On reviewing the notification of alleged educator misconduct, the Executive Secretary or the Executive Committee or both shall recommend one of the following to UPPAC:

(1) Dismiss: If UPPAC determines that UPPAC lacks jurisdiction or that the request for agency action does not state a cause of action that UPPAC should address, UPPAC shall dismiss the request.

(2) Initiate an investigation: If UPPAC determines that UPPAC has jurisdiction and that the notification states a cause of action which may be appropriately addressed by UPPAC or the Board, the Executive Secretary shall direct a UPPAC investigator to gather evidence relating to the allegations.

(a) Prior to a UPPAC investigator's initiation of any investigation, the Executive Secretary shall send a letter to the educator to be investigated, to the LEA of current employment, and to the LEA where the alleged activity occurred, with information that an investigation has been initiated. The letter shall inform the educator and the LEA(s) that an investigation shall take place and is not evidence of unprofessional conduct. UPPAC may also notify an LEA that formerly employed the educator or the LEA that currently employs the educator or both, as appropriate.

(b) The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations.

(c) The investigator shall prepare an investigative report of the findings of the investigation and a recommendation for appropriate action or disciplinary letter.

(d) If the investigator discovers additional evidence of unprofessional conduct which could have been included in the original notification of alleged educator misconduct, it may be included in the investigative report.

(e) The report shall be submitted to the Executive Secretary, who shall review the report with UPPAC.

(f) The investigative report shall become part of the permanent case file.

B. Secondary Review: UPPAC shall review the investigative report and, based on the recommendation by the investigator, shall direct one of the following:

(1) Dismiss: If UPPAC determines no further action should be taken, it shall dismiss the case as provided in Section R686-100-4A(1), above; or

(2) Prepare and serve complaint: If the investigator determines that allegations are sufficiently supported by evidence discovered in the investigation, UPPAC, through the Executive Secretary, shall direct the prosecutor to prepare and serve a complaint and a copy of these rules upon the respondent pursuant to R686-100-5; or

(3) Approve a Stipulated Agreement: At any time after UPPAC has directed that a case be investigated, an educator may accept the recommendation of the UPPAC investigator, rather than request a hearing, by entering into a stipulated agreement.

(a) The stipulated agreement shall conform to the requirements set forth in R686-100-6.

(b) Pursuant to 686-100-6B, an educator may stipulate to any recommended disposition for an action as defined in R686-100-1A.

(4) Upon receipt of an investigative report, including a stipulated agreement, or a hearing report as defined in R686-101, UPPAC may direct the Executive Secretary to carry out the recommendation or recommend suspension or revocation to the Board for consideration.

(5) If so directed by UPPAC, documentation of the disciplinary letter or action shall be sent to the respondent's employing LEA or to an LEA where the respondent finds employment.

(6) UPPAC may direct an additional investigation or other action as appropriate.

#### **R686-100-5. Complaints.**

A. Filing a complaint: If UPPAC determines that the allegations are sufficiently supported by evidence discovered in the investigation, UPPAC, through the Executive Secretary, may direct the prosecutor to serve a complaint upon the educator being investigated, along with a copy of these rules.

B. Elements of a complaint: At a minimum, the complaint shall include:

(1) a statement of legal authority and jurisdiction under which the action is being taken;

(2) a statement of the facts and allegations upon which the complaint is based;

(3) other information which the investigator believes to be necessary to enable respondent to understand and address the allegations;

(4) a statement of the potential consequences should the allegations be found to be true or substantially true;

(5) a statement that the respondent shall answer the complaint, request a hearing, or discuss a stipulated agreement, within 30 days of the date the complaint was mailed to the respondent, by filing a written answer addressed to the Executive Secretary, at the mailing address for the Office. The statement shall

advise the respondent that if he fails to respond in 30 days, a default judgment for a suspension term of not less than five years shall be entered;

(6) a statement that, if a hearing is requested, the hearing shall be scheduled not less than 25 days, nor more than 180 days, after receipt of the respondent's answer, unless a different date is agreed to by both parties in writing. On his own motion, the Executive Secretary, or designee with notice to the parties, may reschedule a hearing date.

C. Answer to the complaint: An answer to the complaint shall be made by filing a written response signed by the respondent or his representative with the Executive Secretary within 30 days after the complaint was mailed. The answer shall include a request for a hearing or a stipulated agreement, and shall include:

(1) the file number of the complaint;

(2) the names of the parties;

(3) a statement of the relief that the respondent seeks, which may include a request for a hearing or a stipulated agreement; and

(4) if not requesting a hearing or a stipulated agreement, a statement of the reasons that the relief requested should be granted.

D. Response to answer. As soon as reasonably practicable after receiving the answer, or no more than 30 days after receipt of the answer at the USOE, the Executive Secretary shall do one of the following:

(1) Dismiss the complaint: If the Executive Secretary and the Executive Committee determines upon review of respondent's answer that there are insufficient grounds to proceed with the complaint, the Executive Committee shall recommend to UPPAC that the complaint be dismissed. If UPPAC votes to uphold the dismissal, the informant and the respondent shall each be served with notice of the dismissal. If UPPAC does not uphold the dismissal, the complaint shall proceed in accordance with the rules set forth in R686-100.

(2) Schedule a hearing: If the respondent requests a hearing, UPPAC shall direct the Executive Secretary to schedule a hearing as provided in R686-101.

(3) Direct investigator to negotiate a stipulated agreement: If the respondent requests a stipulated agreement, the Executive Secretary shall direct the investigator to negotiate a stipulated agreement with respondent.

E. Default: If respondent does not respond to the complaint within 30 days, the Executive Secretary may issue a default in accordance with the procedures set forth in R686-100-7.

(1) Except as provided in R686-100-5E(2), a default judgment shall result in a recommendation to the Board for a suspension of five years before the educator may request a reinstatement hearing; a default may include conditions that an educator shall satisfy to have any possibility for a reinstatement hearing.

(2) A default judgment shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Section 53A-6-501(2).

#### **R686-100-6. Stipulated Agreements.**

A. Pursuant to R686-100-4B(3), at any time after UPPAC has directed that a case be investigated, a respondent may accept the recommendation of the UPPAC investigator, rather than request a hearing, by entering into a stipulated agreement.

B. By entering into a stipulated agreement, a respondent waives his right to a hearing to contest the recommended disposition. A respondent has a right to a hearing for any action as defined in R686-100-1A that adversely affects the respondent's license, including:

- (1) revocations;
- (2) suspensions; and
- (3) probations.

C. A respondent may request a hearing to contest a recommended disposition for a letter of reprimand or deny respondent a hearing, but UPPAC has discretion to grant a hearing or deny respondent a hearing because letters of reprimand do not adversely affect an educator's license.

D. A respondent shall not have a right to a hearing for recommended dispositions that are lesser disciplinary actions, such as letters of warning and letters of admonishment.

E. Elements of a stipulated agreement: At minimum, a stipulated agreement shall include:

(1) a summary of the facts, the allegations, the evidence relied upon by UPPAC in its recommendation, and a summary of the respondent's response, if any;

(2) a statement that the respondent accepts the facts recited in the stipulated agreement as true for purposes of the USOE administrative action;

(3) a statement that the respondent waives his right to a hearing to contest the allegations that gave rise to the investigation, and agrees to limitations on his license or surrenders his license rather than contest the allegations;

(4) a statement that the respondent agrees to the terms of the stipulated agreement and other provisions applicable to the case, such as remediation, counseling, restitution, rehabilitation, and conditions, if any, under which the respondent may request a reinstatement hearing or a removal of the letter of reprimand or termination of probation;

(5) if for suspension, a statement that the respondent:

(a) shall not seek or provide professional services in a public school in Utah; or

(b) otherwise seek to obtain or use a license in Utah; or

(c) work or volunteer in a public K-12 setting in any capacity without express authorization from UPPAC Executive Secretary, unless or until the respondent:

(i) first obtains a valid educator license or authorization from the Board to obtain such a license; or

(ii) satisfies other provisions provided in the stipulated agreement.

(6) a statement that the action and the stipulated agreement shall be reported to other states through the NASDTEC Educator Information Clearinghouse and any attempt to present to any other state a valid Utah license shall result in further licensing action in Utah;

(7) a statement that respondent waives any right to contest the facts stated in the stipulated agreement at a subsequent reinstatement hearing, if any;

(8) a statement that all records related to the stipulated agreement shall remain permanently in the educator's licensing file at the USOE.

F. Violations of the terms of a valid stipulated agreement may result in an additional disciplinary action.

G. The stipulated agreement shall be forwarded to UPPAC for consideration.

(1) If UPPAC rejects the stipulated agreement, the respondent shall be informed of the decision, which shall be final, and the proceedings shall continue from the point under these procedures at which the agreement was negotiated, as if the agreement had not been submitted.

(2) If UPPAC accepts a stipulated agreement for probation or a letter of reprimand, this is a final USOE administrative action, and UPPAC Executive Secretary shall notify the parties of the decision and shall direct the letter of reprimand to be sent or probation to begin.

(3) If UPPAC accepts a stipulated agreement for suspension or revocation of an educator's license, the agreement shall be forwarded to the Board for consideration.

(4) If the Board rejects the agreement, the Executive Secretary shall notify the parties of the decision and the proceedings shall continue from the point under these procedures at which the agreement was negotiated, as if the agreement had not been submitted.

E. If, after negotiating a stipulated agreement, a respondent fails to sign or respond to a proffered agreement within 30 days after the agreement is mailed, UPPAC or the Executive Secretary shall direct the prosecutor to prepare findings in default consistent with Section R686-100-7.

F. The terms and conditions of a stipulated agreement are protected under Section 63G-2-304(9) and (24), unless waived by the educator. The disposition (such as suspension for a minimum of two years, revocation, probation) of the stipulated agreement is public information, upon request consistent with Section 63G-2-204.

#### **R686-100-7. Default Procedures.**

A. If a respondent does not respond to a complaint or a stipulated agreement within 30 days from the date the complaint or stipulated agreement was served, the Executive Secretary may issue an order of default against respondent consistent with the following:

(1) The prosecutor shall prepare and serve on respondent an order of default including a statement of the grounds for default, and a recommended disposition if respondent fails to file a response to a complaint or respond to a proffered stipulated agreement.

(2) Ten (10) days following service of the order of default, the prosecutor shall attempt to contact respondent by telephone or electronically. UPPAC shall maintain documentation of attempts toward written, telephonic or electronic contact.

(2) Respondent has 20 days following service of the order of default to respond to UPPAC. If UPPAC receives a response from respondent to a default order before the end of the 20 day default period, UPPAC shall allow respondent a final 10 day period to respond to a complaint or stipulated agreement.

C. Except as provided in R686-100-7D, a default judgment shall result in a recommendation to the Board for a suspension of no less than five years.

D. A default judgment shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in 53A-6-501(2).



**KEY:** teacher licensing, conduct, hearings  
**Date of Enactment or Last Substantive Amendment:**  
~~November 9, 2006~~ 2013  
**Notice of Continuation:** February 1, 2013  
**Authorizing, and Implemented or Interpreted Law:** 53A-6-306(1)(a)

**Professional Practices Advisory  
 Commission, Administration  
 R686-101  
 UPPAC Hearing Procedures and  
 Reports**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 38009

FILED: 09/16/2013

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to establish procedures regarding Utah Professional Practices Advisory Commission (UPPAC) hearings and hearing reports.

**SUMMARY OF THE RULE OR CHANGE:** This rule provides definitions and procedures for UPPAC hearings and hearing reports.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 53A-6-306(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. Much of the language in this rule was in Rule R686-100, which is being repealed and reenacted. (DAR NOTE: The repeal and reenactment of Rule R686-100 is under DAR No. 38008 in this issue, October 1, 2013, of the Bulletin.)

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government. Much of the language in this rule was in Rule R686-100, which is being repealed and reenacted.

◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses. This rule applies to the UPPAC hearing procedures and reports and does not affect businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. Much of the language in this rule was in Rule R686-100, which is being repealed and reenacted.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. Much of the language in this rule was in Rule R686-100, which is being repealed and reenacted.

**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:**

PROFESSIONAL PRACTICES ADVISORY  
 COMMISSION  
 ADMINISTRATION  
 250 E 500 S  
 SALT LAKE CITY, UT 84111  
 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 10/31/2013**

**THIS RULE MAY BECOME EFFECTIVE ON:** 11/07/2013

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

**R686. Professional Practices Advisory Commission, Administration.**

**R686-101. UPPAC Hearing Procedures and Reports.**

**R686-101-1. Definitions.**

A. "Administrative hearing" means a formal adjudicative proceeding consistent with 53A-6-601. The Utah State Board of Education and Utah State Office of Education licensing process is not governed by the Utah Administrative Procedures Act, Title 63G, Chapter 4.

B. "Answer" means a written response to a complaint filed by USOE alleging educator misconduct. An answer must be filed within 30 days of receipt of a complaint. Failure to file an answer to a complaint shall result in a default, consistent with R686-100-5E.

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

D. "Complaint" means a written allegation or charge against an educator filed by USOE against the educator.

E. "Complainant" means the Utah State Office of Education.

F. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file owned and maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;

\_\_\_\_\_ (2) educational background;  
\_\_\_\_\_ (3) endorsements;  
\_\_\_\_\_ (4) employment history; and  
\_\_\_\_\_ (5) a record of disciplinary action taken against the  
educator's license.

\_\_\_\_\_ G. "Days": in calculating any period of time prescribed  
or allowed by these rules, the day of the act, event, or default from  
which the designated period of time begins to run shall not be  
included; the last day of the period shall be included, unless it is a  
Saturday, a Sunday, or a legal holiday, in which event the period  
runs until the end of the next day which is not a Saturday, a Sunday,  
or a legal holiday. Saturdays, Sundays and legal holidays shall not  
be included in calculating the period of time if the period prescribed  
or allowed is less than seven days, but shall be included in  
calculating periods of seven or more days.

\_\_\_\_\_ H. "Educator" means a person who currently holds a  
license, held a license at the time of an alleged offense, is an  
applicant for a license, or is a person in training to obtain a license.

\_\_\_\_\_ I. "Educator paper licensing file" means the file  
maintained securely by UPPAC on an educator. The file is opened  
following UPPAC's direction to investigate alleged misconduct.  
The file contains the original notification of misconduct, subsequent  
correspondence, the investigative report, and the final disposition of  
the case.

\_\_\_\_\_ J. "Executive Secretary" means an employee of the Utah  
State Office of Education who is appointed by the State  
Superintendent of Public Instruction to serve as the executive  
officer, and a non-voting member, of UPPAC.

\_\_\_\_\_ K. "Final action" means any action by UPPAC or the  
Board which concludes an investigation of an allegation of  
misconduct against a licensed educator.

\_\_\_\_\_ L. "Hearing" means an administrative proceeding held  
pursuant to Section 53A-6-601, is a formal adjudication in which  
allegations made in a complaint are examined before a hearing  
officer and UPPAC hearing panel, where each party has the  
opportunity to present witnesses and evidence relevant to the  
complaint and respond to witnesses or evidence presented by the  
other party. At the conclusion of a hearing, the hearing officer, after  
consulting with members of the UPPAC hearing panel, prepares a  
hearing report and submits it to the Executive Secretary.

\_\_\_\_\_ M. "Hearing officer" means a person who is experienced  
in matters relating to administrative procedures, education and  
education law and is either a member of the Utah State Bar  
Association or a person not a member of the bar who has received  
specialized training in conducting administrative hearings, and is  
appointed by the Executive Secretary at the request of UPPAC to  
manage the proceedings of a hearing. The hearing officer may not  
be an acting member of UPPAC. The hearing officer has broad  
authority to regulate the course of the hearing and dispose of  
procedural requests but shall not have a vote as to the recommended  
disposition of a case.

\_\_\_\_\_ N. "Hearing panel" means a hearing officer and three or  
more members of UPPAC agreed upon by UPPAC to assist the  
hearing officer in conjunction with the hearing panel in conducting  
a hearing and preparing a hearing report.

\_\_\_\_\_ O. "Hearing report" means a report prepared by the  
hearing officer consistent with the recommendations of the hearing  
panel at the conclusion of a hearing. The report includes a  
recommended disposition, detailed findings of fact and conclusions

of law, based upon the evidence presented in the hearing, relevant  
precedent, and applicable law and rule.

\_\_\_\_\_ P. "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.

\_\_\_\_\_ Q. "License" means a teaching or administrative  
credential, including endorsements, which is issued by a state to  
signify authorization for the person holding the license to provide  
professional services in the state's public schools.

\_\_\_\_\_ R. "Party" means the complainant or the respondent.

\_\_\_\_\_ S. "Prosecutor" means the attorney designated by the  
USOE to represent the complainant and present evidence in support  
of the complaint. The prosecutor may also be the investigator, but  
does not have to be.

\_\_\_\_\_ T. "Recommended disposition" means a recommendation  
provided by a UPPAC investigator for resolution of an allegation.

\_\_\_\_\_ U. "Revocation" means a permanent invalidation of a  
Utah educator license consistent with R277-517.

\_\_\_\_\_ V. "Respondent" means the party against whom a  
complaint is filed or an investigation is undertaken.

\_\_\_\_\_ W. "Stipulated agreement" means an agreement between  
a respondent/educator and the USOE/Board or between a  
respondent/educator and UPPAC under which disciplinary action  
against an educator's license status shall be taken, in lieu of a  
hearing. At any time after an investigative letter has been sent, a  
stipulated agreement may be negotiated between the parties and  
becomes binding when approved by the Board, if necessary, or  
UPPAC if Board approval is not necessary.

\_\_\_\_\_ X. "Suspension" means an invalidation of a Utah  
educator license. A suspension may include specific conditions that  
an educator shall satisfy and may identify a minimum time period  
that shall elapse before the educator can request a reinstatement  
hearing before UPPAC.

\_\_\_\_\_ Y. "Utah Professional Practices Advisory Commission  
(UPPAC)" means an advisory commission established to assist and  
advise the Board in matters relating to the professional practices of  
educators, as established under Section 53A-6-301.

\_\_\_\_\_ Z. "UPPAC disciplinary letters or action" means letters  
sent or action taken by UPPAC informing the educator of licensing  
disciplinary action not rising to the level of license suspension.  
Disciplinary letters and action include the following:

\_\_\_\_\_ (1) Letter of admonishment is a letter sent by UPPAC to  
the educator cautioning the educator to avoid or take specific  
actions in the future;

\_\_\_\_\_ (2) Letter of warning is a letter sent by UPPAC to an  
educator for misconduct that was inappropriate or unethical that  
does not warrant longer term or more serious discipline;

\_\_\_\_\_ (3) Letter of reprimand is a letter sent by UPPAC to an  
educator for misconduct that was longer term or more seriously  
unethical or inappropriate than conduct warranting a letter of  
warning, but not warranting more serious discipline; a letter of  
reprimand may provide specific directives to the educator as a  
condition for removal of the letter, and shall appear as a notation on  
the educator's CACTUS file;

\_\_\_\_\_ (4) Probation is an action directed by UPPAC that  
involves some monitoring or supervision for an indefinite or  
designated time period usually accompanied by a disciplinary letter.  
In this time period, the educator may be subject to additional  
monitoring by an identified person or entity and the educator may

be asked to satisfy certain conditions in order to have the probation lifted. This discipline usually, but not always, is accompanied by a letter of warning or a letter of reprimand and shall appear as a notation on the educator's CACTUS file. Unless otherwise specified, the probationary period is at least two years and must be terminated through a formal petition by respondent.

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

#### **R686-101-2. Authority and Purpose.**

A. This rule is authorized by Section 53A-6-306(1)(a) which directs UPPAC to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to establish procedures regarding UPPAC hearings and hearing reports.

#### **R686-101-3. Scheduling a Hearing.**

A. Scheduling the hearing: Following receipt of an answer by respondent requesting a hearing:

(1) UPPAC shall select panel members.

(2) The Executive Secretary shall appoint a hearing officer from among a list of hearing officers identified by the state procurement process and approved by UPPAC.

(3) UPPAC shall schedule the date, time, and place for the hearing.

(4) The date for the hearing shall be scheduled not less than 25 days nor more than 180 days from the date the answer is received by the Executive Secretary. The required scheduling periods may be waived by mutual written consent of the parties or by UPPAC for good cause shown.

B. Change of hearing date:

(1) A request for change of hearing date by any party shall be submitted in writing, include a statement of the reasons for the request, and be received by the Executive Secretary at least five days prior to the scheduled date of the hearing.

(2) The Executive Secretary shall determine whether the cause stated in the request is sufficient to warrant a change.

(a) If the cause is found to be sufficient, the Executive Secretary shall promptly notify all parties of the new time, date, and place for the hearing.

(b) If the cause is found to be insufficient, the Executive Secretary shall immediately notify the parties that the request has been denied.

(c) The Executive Secretary and the parties may waive the time period required for requesting a change of hearing date for compelling circumstances.

#### **R686-101-4. Appointment and Duties of the Hearing Officer and Hearing Panel.**

A. Hearing officer: The Executive Secretary shall appoint a hearing officer at the request of UPPAC to chair the hearing panel and conduct the hearing.

(1) The selection of hearing officers shall be on a rotating basis, to the extent practicable, from the list of available hearing officers.

(2) The selection of a hearing officer shall be made based on availability of individual hearing officers and whether any financial or personal interest or prior relationship with parties might affect the hearing officer's impartiality or otherwise constitute a conflict of interest.

(3) The Executive Secretary shall provide such information about the case as necessary to determine whether the hearing officer has a conflict of interest and shall disqualify any hearing officer that cannot serve under the Utah Rules of Professional Conduct.

(4) Duties of a hearing officer. A hearing officer:

(a) may require the parties to submit briefs and lists of witnesses prior to the hearing;

(b) presides at the hearing and regulates the course of the proceedings;

(c) administers oaths to witnesses as follows: "Do you swear or affirm that the testimony you will give is the truth?";

(d) may take testimony, rule on questions of evidence, and ask questions of witnesses to clarify specific issues;

(e) prepares and submits a hearing report at the conclusion of the proceedings in consultation with panel members and the timelines of this rule.

B. UPPAC panel members: UPPAC shall agree upon three or more UPPAC members to serve as members of the hearing panel. As directed by UPPAC, former UPPAC members who have served on UPPAC within the three years prior to the date set for the hearing may be used as panel members. The majority of panel members shall be current UPPAC members.

(1) The selection of panel members shall be on a rotating basis to the extent practicable. However, the selection shall also accommodate the availability of panel members.

(2) If the respondent is a teacher, at least one panel member shall be a teacher. If the respondent is a non-teacher educator, at least one panel member shall be a non-teacher educator unless the respondent accepts a different configuration.

(3) Duties of UPPAC panel members include:

(a) assisting the hearing officer by providing information concerning professional standards and practices of educators in the respondent's particular field of practice and in the situations alleged;

(b) asking questions of all witnesses to clarify specific issues;

(c) reviewing all evidence and briefs, if any, presented at the hearing;

(d) assisting the hearing officer in preparing the hearing report.

(4) The panel members may receive documents or information no more than 30 minutes prior to the hearing, including the complaint and response, and a list of witnesses who shall participate in the hearing, other materials as directed by the hearing officer, or additional materials agreed to by the parties.

(5) The Executive Secretary may make an emergency substitution of a panel member for cause with the consent of the parties. The agreement should be in writing. Parties may agree to a two-member UPPAC panel in an emergency situation. If parties do not agree, the hearing shall be rescheduled.

C. Disqualification of the hearing officer or a panel member:

(1) Hearing officer:

(a) A party may seek disqualification of a hearing officer by submitting a written request for disqualification to the Executive Secretary, which request must be received not less than 15 days before a scheduled hearing. The Executive Secretary shall review the request and supporting evidence and, upon a finding that the reasons for the request are substantial and sufficient, shall appoint a

new hearing officer and, if necessary, reschedule the hearing. A hearing officer may recuse himself from a hearing if, in the hearing officer's opinion, his participation would violate any of the Utah Rules of Professional Conduct consistent with the Supreme Court Rules of Professional Practice.

(b) If the Executive Secretary denies the request, the party requesting the disqualification shall be notified not less than ten days prior to the date of the hearing. The requesting party may submit a written appeal of the denial to the State Superintendent, which request must be received not less than five days prior to the hearing date. If the State Superintendent finds that the appeal is justified, the State Superintendent shall direct the Executive Secretary to appoint a new hearing officer and, if necessary, reschedule the hearing.

(c) The decision of the State Superintendent is final.

(d) Failure of a party to meet the time requirements of R686-101-4C(1)(b) shall result in denial of the request or appeal; if the Executive Secretary fails to meet the time requirements, the request or appeal shall be approved.

(2) UPPAC panel member:

(a) A UPPAC member shall disqualify himself as a panel member due to any known financial or personal interest, prior relationship, personal and independent knowledge of the persons or issues in the case, or other association that the panel member believes would compromise the panel member's ability to make an impartial decision.

(b) A party may seek disqualification of a UPPAC panel member by submitting a written request for disqualification to the hearing officer, or the Executive Secretary if there is no hearing officer; the request shall be received not less than 15 days before a scheduled hearing. The hearing officer, or the Executive Secretary, if there is no hearing officer, shall review the request and supporting evidence and, upon a finding that the reasons for the request are substantial and compelling, shall disqualify the panel member. If the disqualification leaves the hearing panel with fewer than three UPPAC panel members, UPPAC shall appoint a replacement and the Executive Secretary shall, if necessary, reschedule the hearing.

(c) If the request is denied, the party requesting the disqualification shall be notified not less than ten days prior to the date of the hearing. The requesting party may file a written appeal of the denial to the State Superintendent, which request shall be received not less than five days prior to the hearing date. If the State Superintendent finds that the appeal is justified, he shall direct the hearing officer, or the Executive Secretary if there is no hearing officer, to replace the panel member.

(d) If a disqualification leaves the hearing panel with fewer than three UPPAC panel members, UPPAC shall agree upon a replacement and the Executive Secretary shall, if necessary, reschedule the hearing.

(e) The decision of the State Superintendent is final.

(f) Failure of a party to meet the time requirements of R686-101-4C(2)(c) shall result in denial of the request or appeal; if the hearing officer fails to meet the time requirements, the request or appeal shall be approved.

D. The Executive Secretary may, at the time he selects the hearing officer or panel members, select alternative hearing officers or panel members following the process for selecting those individuals. Substitution of alternative panel members requires only notice to both parties.

#### **R686-101-5. Preliminary Instructions to Parties to a Hearing.**

A. Not less than 25 days before the date of a hearing the Executive Secretary shall provide the parties with the following information:

(1) Date, time, and location of the hearing;

(2) Names and LEA affiliations of the panel members, and the name of the hearing officer;

(3) Procedures for objecting to any member of the hearing panel; and

(4) Procedures for requesting a change in the hearing date.

B. Not less than 20 days before the date of the hearing, the respondent and the complainant shall provide the following to the other party and to the hearing officer:

(1) A brief, if requested by the hearing officer, containing any procedural and evidentiary motions along with that party's position regarding the allegations. Submitted briefs shall include relevant laws, rules, and precedent;

(2) The name of the person who shall represent the party at the hearing, a list of witnesses expected to be called, a summary of the testimony which each witness is expected to present, and a summary of documentary evidence which shall be submitted.

(3) Following receipt of each party's witness list, each party may provide a list of anticipated rebuttal witnesses and evidence no later than 10 days prior to the hearing.

(4) No witness or evidence may be presented at the hearing if the opposing party has requested to be notified of such information and has not been fairly apprised at least 20 days prior to the hearing, or 10 days prior to the hearing if the witness or evidence is to be used for rebuttal purposes. The timeliness requirement may be waived by agreement of the parties or by the hearing officer upon a showing of good cause or by the hearing officer's determination that no prejudice has occurred to the opposing party. This restriction shall not apply to rebuttal witnesses whose testimony cannot reasonably be anticipated before the time of the hearing.

C. Not less than 10 days before the date of the hearing, the respondent and the complainant shall provide to the other party and the hearing officer the documents referenced on the summary of documentary evidence previously provided, to be entered as evidence in the hearing.

D. If a party fails to comply in good faith with a directive of the hearing officer, including time requirements, the hearing officer may prohibit introduction of the testimony or evidence or take other steps reasonably appropriate under the circumstances including, in extreme cases of noncompliance, entry of a default against the offending party. Nothing in this Section prevents the use of rebuttal witnesses.

E. Parties shall provide materials to the hearing officer, panel members and UPPAC as directed by the hearing officer.

#### **R686-101-6. Hearing Parties' Representation.**

A. Complainant: The complainant shall be represented by a person appointed by the USOE prosecutor.

B. Respondent: A respondent may represent himself or be represented, at his own cost, by another person.

C. The informant has no right to individual representation at the hearing or to be present or heard at the hearing unless called as a witness.

D. The Executive Secretary shall receive timely notice in writing of representation by anyone other than the respondent.

**R686-101-7. Discovery Prior to a Hearing.**

A. Discovery is permitted to the extent necessary to obtain relevant information necessary to support claims or defenses, as determined by the appointed hearing officer.

B. Discovery, especially burdensome or unduly legalistic discovery, may not be used to delay a hearing.

C. Discovery may be limited by the hearing officer at his discretion or upon a motion by either party. The hearing officer rules on all discovery requests and motions.

D. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence shall be issued pursuant to Section 53A-6-306(2)(c) if requested by either party at least five working days prior to the hearing.

E. No expert witness report or testimony may be presented at the hearing unless the requirements of R686-101-11 have been met.

**R686-101-8. Burden and Standard of Proof for UPPAC Proceedings.**

A. In matters other than those involving applicants for licensing, and excepting the presumptions under R686-101-12F, the complainant shall have the burden of proving that action against the license is appropriate.

B. An applicant for licensing has the burden of proving that licensing is appropriate.

C. Standard of proof: The standard of proof in all UPPAC hearings is a preponderance of the evidence.

D. Evidence: The Utah Rules of Evidence are not applicable to UPPAC proceedings. The criteria to decide evidentiary questions shall be:

- (1) reasonable reliability of the offered evidence;
- (2) fairness to both parties; and
- (3) usefulness to UPPAC in reaching a decision.

E. The hearing officer has the sole responsibility to determine the application of the hearing rules and the admissibility of evidence.

**R686-101-9. Deportment.**

A. Parties, their representatives, witnesses, and other persons present during a hearing shall conduct themselves in an appropriate manner during hearings, giving due respect to members of the hearing panel and complying with the instructions of the hearing officer. The hearing officer may exclude persons from the hearing room who fail to conduct themselves in an appropriate manner and may, in response to extreme instances of noncompliance, disallow testimony or declare an offending party to be in default.

B. Parties, attorneys for parties, or other participants in the professional practices investigation and hearing process shall not harass, intimidate or pressure witnesses or other hearing participants, nor shall they direct others to harass, intimidate or pressure witnesses or participants.

**R686-101-10. Hearing Record.**

A. The hearing shall be recorded at UPPAC's expense, and the recording shall become part of the permanent case record, unless otherwise agreed upon by all parties.

B. Individual parties may, at their own expense, make recordings or transcripts of the proceedings with notice to the Executive Secretary.

C. If an exhibit is admitted as evidence, the record shall reflect the contents of the exhibit.

D. All evidence and statements presented at a hearing shall become part of the permanent case file and shall not be removed except by direction of the hearing officer or order of the Board.

E. The USOE record of the proceedings may be reviewed upon request of a party under supervision of the Executive Secretary and only at the USOE.

**R686-101-11. Expert Witnesses in UPPAC Proceedings.**

A. A party may call an expert witness at its own expense. Notice of intent of a party to call an expert witness, the identity and qualifications of such expert witness and the purpose for which the expert witness is to be called shall be provided to the hearing officer and the opposing party at least 15 days prior to the hearing date.

B. The hearing officer may appoint any expert witness agreed upon by the parties or of the hearing officer's own selection. An expert so appointed shall be informed of his duties by the hearing officer in writing, a copy of which shall become part of the permanent case file. The expert shall advise the hearing panel and the parties of his findings and may thereafter be called to testify by the hearing panel or by any party. He may be examined by each party or by any of the hearing panel members.

C. Defects in the qualifications of expert witnesses, once a minimum threshold of expertise is established, go to the weight to be given the testimony and not to its admissibility.

D. Experts who are members of the complainant's staff or an LEA staff may testify and have their testimony considered as part of the record along with that of any other expert.

E. Any report of an expert witness which a party intends to introduce into evidence shall be provided to the opposing party at least 15 days prior to the hearing date.

F. The hearing officer may allow testimony by expert witnesses by mutual agreement of the parties or if the hearing officer allows the testimony.

**R686-101-12. Evidence and Participation in UPPAC Proceedings.**

A. The hearing officer may not exclude evidence solely because it is hearsay.

B. Each party has the right to call witnesses, present evidence, argue, respond, cross-examine witnesses who testify in person at the hearing, and submit rebuttal evidence.

C. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

D. If a case involves allegations of child abuse or of a sexual offense against a child, either party or a member of the hearing panel, the hearing officer may request that a minor be allowed to testify outside of the respondent's presence. If the hearing officer determines that the minor would suffer serious emotional or mental harm or that the minor's testimony in the presence of the respondent would be unreliable, the minor's testimony may be admitted in one of the following ways:

(1) An oral statement of a victim or witness younger than 18 years of age which is recorded prior to the filing of a complaint shall be admissible as evidence in a hearing regarding the offense if:

(a) No attorney for either party is in the minor's presence when the statement is recorded;

(b) The recording is visual and aural and is recorded;

(c) The recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and the recording is accurate and has not been altered; and

(d) Each voice in the recording is identified.

(2) The testimony of any witness or victim younger than 18 years of age may be taken in a room other than the hearing room, and be transmitted by closed circuit equipment to another room where it can be viewed by the respondent. All of the following conditions shall be observed:

(a) Only the hearing panel members, attorneys for each party, persons necessary to operate equipment, and a person approved by the hearing officer whose presence contributes to the welfare and emotional well-being of the minor may be with the minor during the testimony.

(b) The respondent may not be present during the minor's testimony;

(c) The hearing officer shall ensure that the minor cannot hear or see the respondent;

(d) The respondent shall be permitted to observe and hear, but not communicate with the minor; and

(e) Only hearing panel members, the hearing officer and the attorneys may question the minor.

(3) If the hearing officer determines that the testimony of a minor shall be taken consistent with R686-101-12D, the child may not be required to testify in any proceeding where the recorded testimony is used.

E. On his own motion or upon objection by a party, the hearing officer:

(1) May exclude evidence that the hearing officer determines to be irrelevant, immaterial, or unduly repetitious;

(2) Shall exclude evidence that is privileged under law applicable to administrative proceedings in Utah unless waived;

(3) May receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;

(4) May take official notice of any facts that could be judicially noticed under judicial or administrative laws of Utah, or from the record of other proceedings before the agency.

F. Presumptions:

(1) A rebuttable evidentiary presumption exists that a person has committed a sexual offense against a minor if the person has:

(a) Been found, pursuant to a criminal, civil, or administrative action to have committed a sexual offense against a minor;

(b) Failed to defend himself against such a charge when given a reasonable opportunity to do so; or

(c) Voluntarily surrendered a license or allowed a license to lapse in the face of a charge of having committed a sexual offense against a minor.

(2) A rebuttable evidentiary presumption exists that a person is unfit to serve as an educator if the person has been found pursuant to a criminal, civil, or administrative action to have exhibited behavior evidencing unfitness for duty, including immoral, unprofessional, or incompetent conduct, or other violation of standards of ethical conduct, performance, or professional competence. Evidence of such behavior may include:

(a) conviction of a felony;

(b) a felony charge and subsequent conviction for a lesser related charge pursuant to a plea bargain or plea in abeyance;

(c) an investigation of an educator's license, certificate or authorization in another state; or

(d) the expiration, surrender, suspension, revocation, or invalidation for any reasons of an educator license.

### **R686-101-13. Hearing Report.**

A. Within 20 days after the hearing, or within 20 days after the deadline imposed for the filing of any post-hearing materials permitted by the hearing officer, the hearing officer shall sign and issue a hearing report consistent with the recommendations of the panel that includes:

(1) A detailed findings of fact and conclusions of law based upon the evidence of record or on facts officially noted. Findings of fact may not be based solely upon hearsay, and conclusions shall be based upon competent evidence;

(2) A statement of relevant precedent, if available;

(3) A statement of applicable law and rule;

(4) A recommended disposition of UPPAC panel members which shall be one or an appropriate combination of the following:

(a) Dismissal of the complaint: The hearing report shall indicate that the complaint should be dismissed and that no further action should be taken.

(b) Letter of admonishment: the hearing report shall indicate that respondent's conduct is of concern and shall direct the Executive Secretary to write a letter of admonishment, consistent with R277-517, to the respondent.

(c) Letter of warning: the hearing report shall indicate that respondent's conduct is deemed unprofessional and shall direct the Executive Secretary to write a letter of warning, consistent with R277-517, to the respondent.

(d) Letter of reprimand: the hearing report shall indicate that respondent's conduct is deemed unprofessional and shall direct the Executive Secretary to write a letter of reprimand, consistent with R277-517, to the respondent.

(e) Probation: The hearing report shall determine whether the respondent's conduct was unprofessional, that the respondent shall not lose his license, but that a probationary period is appropriate. If the report recommends probation, the report shall designate:

(i) it is the respondent's responsibility to petition UPPAC for removal of probation and letter of reprimand from the respondent's active licensing and CACTUS files;

(ii) a probationary time period or specifically designate an indefinite period;

(iii) conditions that can be monitored;

(iv) if recommended by the panel, a person or entity to monitor a respondent's probation;

(v) a statement providing for costs of probation.

(vi) whether or not the respondent may work in any capacity in public education during the probationary period.

(vii) a probation may be imposed substantially in the form of a plea in abeyance. The respondent's penalty is stayed subject to the satisfactory completion of probationary conditions. The decision shall provide for appropriate or presumed discipline should the probationary conditions not be fully satisfied.

(f) Suspension: The hearing report shall recommend to the Board that the license of the respondent be suspended for a specific or indefinite period of time and until specified reinstatement conditions have been met before respondent may petition for reinstatement of his license.

(g) Revocation: The hearing report may recommend to the State Board of Education that the license of the respondent be revoked.

(5) Notice of the right to appeal; and

(6) Time limits applicable to appeal.

B. Processing the hearing report:

(1) The hearing officer shall circulate the draft report to hearing panel members prior to the 20 day completion deadline of the hearing report.

(2) Hearing panel members shall notify the hearing officer of any changes to the report as soon as possible after receiving the report and prior to the 20 day completion deadline of the hearing report.

(3) The hearing officer shall file the completed hearing report with the Executive Secretary, who shall review the report with UPPAC.

(4) The Executive Secretary may participate in UPPAC's deliberation as a resource to UPPAC in explaining the hearing report and answering any procedural questions raised by UPPAC members.

(5) The hearing officer may confer with the Executive Secretary or the panel members or both while preparing the hearing report. The hearing officer may request the Executive Secretary to confer with the hearing officer and panel following the hearing.

(6) The Executive Secretary may return a hearing report to a hearing officer if the Report is incomplete, unclear, or unreadable, or missing essential components or information.

(7) If UPPAC finds that there have not been significant procedural errors, that recommendations are based upon a reasonable interpretation of the evidence presented at the hearing, and that all issues explained in the hearing report are adequately addressed in the conclusions of the report, UPPAC shall vote to uphold the hearing officer's and panel's report and do one of the following:

(a) If the recommendation is for final action to be taken by UPPAC, UPPAC shall direct the Executive Secretary to prepare a corresponding final order and provide all parties with a copy of the order and hearing report. A copy of the order and the hearing report shall be placed in and become part of the permanent case file. The order shall be effective upon approval by UPPAC.

(b) If the recommendation is for final action to be taken by the Board, the Executive Secretary shall forward a copy of the hearing report to the Board for its further action. A copy of the hearing report shall also be placed in and become part of the permanent case file.

(8) If UPPAC determines that:

(a) the hearing process had procedural errors;

(b) the hearing officer's report is not based upon a reasonable interpretation of the evidence presented at the hearing;

(c) that the conclusions and findings of the hearing report do not provide adequate guidance to the educator; or

(d) that the findings or conclusions of the hearing report do not adequately address the evidence as outlined in the hearing report, the Board or UPPAC may:

(i) direct the Executive Secretary to schedule the matter for rehearing before a hearing officer and panel; or

(ii) direct the Executive Secretary to amend the hearing report to reflect the UPPAC decision.

C. Consistent with Section 63G-2-301(2)(c), the final administrative disposition of all administrative proceedings of UPPAC contained in the recommended disposition section of the hearing report shall be public.

D. A respondent's failure to comply with the terms of a final disposition that includes a probation or suspension of the respondent's license may result in additional discipline against the educator license.

E. If a hearing officer fails to satisfy the responsibilities under this rule, UPPAC may:

(1) notify the Utah State Bar of the failure;

(2) reduce the hearing officer's compensation consistent with the failure;

(3) take timely action to avoid disadvantaging either party; and

(4) preclude the hearing officer from further employment by the Board for UPPAC purposes.

F. Deadlines within this Section may be waived by the Executive Secretary or UPPAC for good cause shown.

G. All criteria of letters of warning and reprimand, probation, suspension and revocation shall also apply to the comparable sections of the final hearing reports.

#### **R686-101-14. Default.**

A. The hearing officer may prepare an order of default in a hearing report including a statement of the grounds for default and the recommended disposition if:

(1) the respondent fails to attend or participate in a properly scheduled hearing after receiving proper notice. The hearing officer may determine that the respondent has failed to attend a properly scheduled hearing if the respondent has not appeared within 30 minutes of the appointed time for the hearing to begin, unless the respondent shows good cause for failing to appear in a timely manner;

(2) the respondent or the respondent's representative commits misconduct during the course of the hearing process.

B. The recommendation of default may be executed by the Executive Secretary following all applicable time periods, without further action by UPPAC.

C. Except as provided in R686-101, a default judgment shall result in a recommendation to the Board for a suspension of no less than five years.

D. A default judgment shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in 53A-6-501(2).

**R686-101-15. Appeal.**

A. UPPAC shall notify a respondent of a UPPAC recommendation for a suspension of two years or more or a revocation immediately following the UPPAC meeting finalizing the UPPAC recommendation.

B. Either party may appeal a final recommendation of UPPAC for a suspension of the respondent's license for two or more years or a revocation to the State Superintendent. A request for review by the State Superintendent shall follow the procedures in R277-514-3 and be submitted in writing within 15 days from the date that UPPAC sends written notice to the parties of its recommendation.

C. Either party may appeal the Superintendent's decision to the Board following the procedures in R277-514-4.

D. A request for appeal to the State Superintendent or the Board shall include:

- (1) name, position, and address of appellant;
- (2) issue(s) being appealed; and
- (3) signature of appellant.

**R686-101-16. Temporary Suspension of License Pending a Hearing.**

A. If the Executive Secretary determines, after affording respondent an opportunity to discuss allegations of misconduct, that reasonable cause exists to believe that the charges will be proven to be correct and that permitting the respondent to retain his license prior to hearing would create unnecessary and unreasonable risks for children, then the Executive Secretary may order immediate suspension of the Respondent's license pending final Board action.

B. The formal UPPAC recommendation and evidence of the temporary suspension may not be introduced at the hearing.

C. Notice of the temporary suspension shall be provided to other states under R277-514.

**R686-101-17. Remedies for Individuals Beyond UPPAC Actions.**

Despite UPPAC or Board actions, informants or other injured parties who feel that their rights have been compromised, impaired or not addressed by the provisions of this rule, may appeal directly to district court.

**KEY: hearings, reports**

**Date of Enactment or Last Substantive Amendment: 2013**  
**Authorizing, and Implemented or Interpreted Law: 53A-6-306(1)(a)**

**Professional Practices Advisory  
Commission, Administration  
R686-102  
Request for Licensure Reinstatement  
and Reinstatement Procedures**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 38010

FILED: 09/16/2013

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to establish procedures regarding educator license reinstatement procedures.

**SUMMARY OF THE RULE OR CHANGE:** The rule provides definitions, procedures for a Utah Professional Practices Advisory Commission (UPPAC) review for reinstatement of a license, reinstatement hearing, and reinstatement hearing reports.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 53A-6-306(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. Much of the language in this rule was in Rule R686-100, which is being repealed and reenacted. (DAR NOTE: The repeal and reenactment of Rule R686-100 is under DAR No. 38008 in this issue, October 1, 2013, of the Bulletin.)

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government. Much of the language in this rule was in Rule R686-100, which is being repealed and reenacted.

♦ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses. Much of the language in this rule was in Rule R686-100, which is being repealed and reenacted.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. Much of the language in this rule was in Rule R686-100, which is being repealed and reenacted.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. Much of the language in this rule was in Rule R686-100, which is being repealed and reenacted.



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:  
 PROFESSIONAL PRACTICES ADVISORY  
 COMMISSION  
 ADMINISTRATION  
 250 E 500 S  
 SALT LAKE CITY, UT 84111  
 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 10/31/2013

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2013

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

**R686. Professional Practices Advisory Commission, Administration.**

**R686-102. Request for Licensure Reinstatement and Reinstatement Procedures.**

**R686-102-1. Definitions.**

A. "Administrative hearing" means a formal adjudicative proceeding consistent with 53A-6-601. The Utah State Board of Education and Utah State Office of Education licensing process is not governed by the Utah Administrative Procedures Act, Title 63G, Chapter 4.

B. "Allegation of misconduct" means a written or oral report alleging that an educator has engaged in unprofessional or criminal conduct; is unfit for duty; has lost his license in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or has committed some other violation of standards of ethical conduct, performance, or professional competence as provided in R277-515.

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

D. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file owned and maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history; and

(5) a record of disciplinary action taken against the educator's license.

E. "Executive Secretary" means an employee of the Utah State Office of Education who is appointed by the State

Superintendent of Public Instruction to serve as the executive officer, and a non-voting member, of UPPAC.

F. "Hearing" means an administrative proceeding held pursuant to Section 53A-6-601, is a formal adjudication in which allegations made in a complaint are examined before a hearing officer and UPPAC hearing panel, where each party has the opportunity to present witnesses and evidence relevant to the complaint and respond to witnesses or evidence presented by the other party. At the conclusion of a hearing, the hearing officer, after consulting with members of the UPPAC hearing panel, prepares a hearing report and submits it to the Executive Secretary.

G. "Hearing officer" means a person who is experienced in matters relating to administrative procedures, education and education law and is either a member of the Utah State Bar Association or a person not a member of the bar who has received specialized training in conducting administrative hearings, and is appointed by the Executive Secretary at the request of UPPAC to manage the proceedings of a hearing. The hearing officer may not be an acting member of UPPAC. The hearing officer has broad authority to regulate the course of the hearing and dispose of procedural requests but shall not have a vote as to the recommended disposition of a case.

H. "Hearing panel" means a hearing officer and three or more members of UPPAC agreed upon by UPPAC to assist the hearing officer in conjunction with the hearing panel in conducting a hearing and preparing a hearing report.

I. "Hearing report" means a report prepared by the hearing officer consistent with the recommendations of the hearing panel at the conclusion of a hearing. The report includes a recommended disposition, detailed findings of fact and conclusions of law, based upon the evidence presented in the hearing, relevant precedent, and applicable law and rule.

J. "License" means a teaching or administrative credential, including endorsements, which is issued by a state to signify authorization for the person holding the license to provide professional services in the state's public schools.

K. "Petitioner" means the individual seeking an educator license following denial of a license or seeking reinstatement following license suspension or in the event of compelling circumstances, following revocation.

L. "Prosecutor" means the attorney designated by the USOE to represent the complainant and present evidence in support of the complaint. The prosecutor may also be the investigator, but does not have to be.

M. "Suspension" means an invalidation of a Utah educator license. A suspension may include specific conditions that an educator shall satisfy and may identify a minimum time period that shall elapse before the educator can request a reinstatement hearing before UPPAC.

N. "Utah Professional Practices Advisory Commission (UPPAC)" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as established under Section 53A-6-301.

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

**R686-102-2. Authority and Purpose.**

A. This rule is authorized by Section 53A-6-306(1)(a) directing UPPAC to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to establish procedures regarding educator license reinstatement.

**R686-102-3. Application for Licensing Following Denial or Loss of License.**

A. An individual who has been denied licensing or lost his license through suspension, or through surrender of a license or allowing a license to lapse in the face of an allegation of misconduct, may request review to consider reinstatement of a license. The request for review shall be in writing and addressed to the UPPAC Executive Secretary at the USOE mailing address, and shall have the following information:

(1) name and address of the individual requesting review;

(2) action being requested;

(3) specific evidence and documentation of compliance with terms and conditions of any remedial or disciplinary requirements or recommendations from UPPAC or the Board;

(4) reason(s) that individual seeks reinstatement;

(5) signature of person requesting review.

B. The Executive Secretary shall review the request with UPPAC.

(1) If UPPAC determines that the request is incomplete or invalid, the person requesting reinstatement shall be notified of the denial.

(2) If UPPAC determines that the request is complete, timely and appropriate, a hearing shall be scheduled and held as provided under Section R686-102-4.

C. Burden of Proof: The burden of proof for recommending or granting reinstatement of a license shall fall on the individual seeking the reinstatement.

(1) Individuals requesting reinstatement of a suspended license shall:

(a) show sufficient evidence of compliance with any conditions imposed in the past disciplinary action;

(b) provide sufficient evidence to the reinstatement hearing panel that the educator shall not engage in recurrences of the actions that gave rise to the suspension and that reinstatement is appropriate;

(c) undergo a criminal background check consistent with Utah law and R277-517; and

(d) provide materials for review by the hearing panel that demonstrate petitioner's compliance with directives from UPPAC or the Board found in petitioner's original stipulated agreement or hearing report.

(2) Individuals requesting licensing following denial shall show sufficient evidence of completion of a rehabilitation or remediation program, if applicable, when requesting reinstatement.

D. An individual whose license has been suspended or revoked in another state shall seek reinstatement in the other state prior to approval of a request for a reinstatement hearing.

**R686-102-4. Reinstatement Hearing Procedures.**

A. The individual seeking reinstatement of his license shall be the petitioner.

B. A hearing officer shall preside over the hearing and shall rule on all procedural issues as they arise.

C. A hearing panel, made up of three members of UPPAC, shall hear the evidence and along with the prosecutor and

hearing officer, question the petitioner regarding the appropriateness of reinstatement.

D. A petitioner may be represented by counsel and may present evidence and witnesses.

E. Presentation of evidence and witnesses by either party shall be consistent with R686-101.

F. The hearing officer shall direct one or both parties to explain the background of a case to provide necessary information about the initial misconduct and subsequent UPPAC and Board action to panel members at the beginning of the hearing.

G. The petitioner shall present documentation or evidence that supports reinstatement.

H. The State, represented by the UPPAC prosecutor, shall present any evidence or documentation that explains and supports the State's recommendation in the matter.

I. Other evidence or witnesses may be presented by either party and shall be presented consistent with R686-101.

J. The petitioner shall:

(1) focus on the petitioner's actions and rehabilitative efforts and performance following license denial or suspension;

(2) explain item by item how each condition of the hearing report or stipulated agreement was satisfied;

(3) provide documentation in the form of evaluations, reports, or plans, as directed by the hearing report or stipulated agreement of satisfaction of all required and outlined conditions;

(4) be prepared to completely and candidly respond to the UPPAC prosecutor and hearing panel questions about the misconduct that caused the license suspension, subsequent rehabilitation activities, any counseling or therapy related to the original misconduct, and work and professional actions and behavior between the suspension and reinstatement request;

(5) present and be prepared to question witnesses (including counselors, current employers, support group members) at the hearing who can provide substantive corroboration of rehabilitation or current professional fitness to be an educator;

(6) provide copies of all reports and documents to the UPPAC prosecutor and hearing officer at least five days before a reinstatement hearing; and

(7) bring eight copies of all documents or materials that shall be introduced at the hearing to the hearing.

K. The UPPAC prosecutor, the hearing panel and hearing officer shall thoroughly question the petitioner as to the petitioner's:

(1) specific and exact compliance with reinstatement requirements;

(2) counseling, if required for reinstatement. Petitioner shall state, under oath, that he provided all relevant information and background to his counselor or therapist;

(3) specific plans for avoiding previous misconduct; and

(4) demeanor and changed understanding of petitioner's professional integrity and actions consistent with R277-515.

L. The appointed hearing officer shall rule on procedural issues in a reinstatement hearing in a timely manner as they arise.

M. No more than 20 days following a reinstatement hearing, the hearing officer, with the assistance of the hearing panel, shall prepare a hearing report, which shall comply with the requirements set forth in R686-102-5, and which shall be provided to the UPPAC Executive Secretary.

(1) The hearing report shall be submitted to UPPAC at the next meeting following receipt by the Executive Secretary.

(2) If the recommendation in the hearing report is for reinstatement of an educator license that was suspended, UPPAC may do the following upon receipt of the hearing report:

(a) accept the recommendation as prepared in the hearing report;

(b) amend the recommendation with conditions or modifications to the panel's recommendation which shall be directed by UPPAC and prepared by the UPPAC Executive Secretary and attached to the hearing report;

(c) reject the recommendation.

(3) If UPPAC rejects a recommendation for reinstatement of an educator license, the Executive Secretary shall notify the educator within 20 working days of the UPPAC meeting in which the recommendation was rejected.

**R686-102-5. Reinstatement Hearing Report.**

A. A reinstatement hearing report shall:

(1) provide a summary of the background of the original disciplinary action;

(2) provide adequate information, including summary statements of evidence presented, documents provided, and petitioner's testimony and demeanor for both UPPAC and the Board to evaluate petitioner's progress and rehabilitation since petitioner's original disciplinary action;

(3) specifically address petitioner's appropriateness and fitness to be a public school educator again; and

(4) provide a statement that the hearing panel's recommendation to UPPAC was unanimous or provide the panel's vote concerning reinstatement.

B. The conclusions section of a reinstatement hearing report is public information. Other parts of the hearing report are protected.

C. If a license is reinstated, an educator's CACTUS file shall show that the educator's license was reinstated and the date of formal Board action reinstating the license.

**KEY: licensure, reinstatement, hearings**

**Date of Enactment or Last Substantive Amendment: 2013**

**Authorizing, and Implemented or Interpreted Law: 53A-6-306(1)(a)**

**Professional Practices Advisory  
Commission, Administration**

**R686-103**

**Utah Professional Practices Advisory  
Commission Review of License Due to  
Background Check Offenses**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 38011

FILED: 09/16/2013

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to provide changes to Utah Professional Practices Advisory Commission (UPPAC) procedures for review of an applicant due to a background check offense.

**SUMMARY OF THE RULE OR CHANGE:** Changes include adding and amending definitions; providing new language for initial submission and evaluation of information; providing new language for appeal procedures; and changing terminology throughout the rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 53A-6-306(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. The changes to this rule are procedural and do not have a financial impact.

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government. The changes to this rule are procedural and do not have a financial impact.

♦ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses. This rule and the amendments apply to educator licensing and do not affect businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. The changes to this rule are procedural and do not have a financial impact.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no compliance costs for affected persons. The changes to this rule are procedural and do not have cost implications.

**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:**

PROFESSIONAL PRACTICES ADVISORY  
COMMISSION  
ADMINISTRATION  
250 E 500 S  
SALT LAKE CITY, UT 84111  
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 10/31/2013**

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2013

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

**R686. Professional Practices Advisory Commission, Administration.**

**R686-103. Utah Professional Practices Advisory Commission Review of License Due to Background Check Offenses.**

**R686-103-1. Definitions.**

A. "Applicant" means an individual seeking a clearance of a criminal background check pursuant to approval for an educational license at any stage of the licensing process from the USOE, including license renewal.

~~B. "Arrest" means a seizure or forcible restraint; the taking or keeping of a person in custody by legal authority, especially in response to a criminal charge; specifically the apprehension of someone for the purpose of securing the administration of the law. For purposes of this rule, "arrest" also means fingerprinting at the time of restraint or at a later time related to the cause for restraint.~~

~~[B]C.~~ "Board" means the Utah State Board of Education.

~~D. "Conviction" means the act or process of judicially finding someone guilty of a crime.~~

~~[D]E.~~ "Executive Committee" means a subcommittee of ~~[the Commission]UPPAC~~ consisting of the Executive Secretary, Chair, Vice-Chair, and one member of ~~[the Commission]UPPAC~~ at large. All Executive Committee members, excluding the Executive Secretary, shall be selected by ~~[the Commission]UPPAC~~. Substitutes may be appointed from within ~~[the Commission]UPPAC~~ by the Executive Secretary as needed.

~~[E]E.~~ "Executive Secretary" means an employee of the Utah State Office of Education who is appointed by the State Superintendent of Public Instruction to serve as the executive officer, and a non-voting member, of ~~[r]UPPAC~~.

~~[F]G.~~ "License" means ~~a[n] authorization issued by the Board which permits the holder to serve in a professional capacity in a unit of the public education system or an accredited private school~~ teaching or administrative credential, including endorsements, which is issued by the Board to signify authorization for the person holding the license to provide professional services in Utah's public schools.

~~[G]H.~~ "~~[Commission]Utah Professional Practices Advisory Commission (UPPAC)~~" means ~~[the Utah Professional Practices Advisory Commission as defined and authorized under]~~ an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as establishing under Section 53A-6-301[et seq].

~~[G]I.~~ "USOE" means the Utah State Office of Education.

**R686-103-2. Authority and Purpose.**

A. This rule is authorized by Section 53A-6-306(1)(a) which directs ~~[the Commission]UPPAC~~ to adopt rules to carry out its responsibilities under the law ~~[and Section 53A-6-107 which directs the Board to carry out its responsibilities].~~

B. The purpose of this rule is to establish procedures for an applicant to proceed toward licensing or be denied to continue when an application or recommendation for licensing or renewal

identifies offenses in the applicant's criminal background check. The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63G-4-102(2)(d).

**R686-103-3. Initial Submission and Evaluation of Information.**

A. Upon receipt of information as the result of a fingerprint check of all applicable state, regional, and national criminal records files pursuant to Section 53A-6-401, the Executive Secretary shall make a determination to approve the applicant's request for criminal background check clearance based on time passed since offense, violent nature of the offense (student safety), involvement or non-involvement of students or minors in the offense, and other relevant factors, or refer the application to ~~[the Commission]UPPAC~~ for a decision and request further information and explanation from the applicant. The Executive Secretary may require the applicant to provide additional information, including:

(1) a letter of explanation for each reported offense ~~[reported to the Commission]~~ that details the circumstances, the final disposition, and any explanation for the offense the applicant may want to provide ~~[the Commission]UPPAC~~, including any advocacy for approving licensing.

(2) official documentation regarding each offense, including court records and police reports for each offense, or if both court records and police reports are not available, a letter on official police or court stationery from the appropriate court or police department involved, explaining why the records are not available.

B. ~~[The Commission]UPPAC~~ shall only consider an applicant's licensing request after receipt of all letters of explanation and documentation requested in good faith by the Executive Secretary.

C. If an applicant is under court supervision of any kind, including parole, informal or formal probation or plea in abeyance, there is a presumption that the individual shall not be approved for licensing until the supervision is successfully terminated.

D. It is the applicant's sole responsibility to provide the requested material to ~~[the Commission]UPPAC~~.

E. Upon receipt of any requested documentation, including the applicant's written letters of explanation and advocacy, ~~[the Commission]UPPAC~~ shall either approve the applicant's request for criminal background check clearance; deny the applicant's licensing request; or seek further information, personally from the applicant or other sources, at the first possible meeting of ~~[the Commission]UPPAC~~.

F. UPPAC has directed the Executive Secretary to approve the following without additional UPPAC review:

(1) singular offenses committed by an applicant, excluding offenses identified in R686-103-4G, if the arrest occurred more than two years prior to the date of submission to UPPAC for review;

(2) more than two offenses committed by the applicant, excluding offenses identified in R686-103-4G, if at least one arrest occurred more than five years prior to the date of submission to UPPAC for review; or

(3) more than two offenses committed by the applicant, excluding offenses identified in R686-103-4G, if all arrests for the offenses occurred more than 10 years prior to the date of submission to UPPAC for review.

G. UPPAC shall review all arrests and convictions for the following:

(1) convictions or pleas in abeyance for any offense where the arrest occurred less than two years prior to the date of submission to UPPAC;

(2) conviction(s) for felonies;

(3) arrests or convictions for sex-related or lewdness offenses;

(4) arrests or convictions for drug-related offenses where the charge or conviction is for a class A misdemeanor or higher; and

(5) convictions involving children in any way.

H. UPPAC directs the Executive Secretary to use reasonable discretion to interpret the information received from the Bureau of Criminal Identification (BCI) provided to BCI from multiple jurisdictions to comply with the provisions of R686-103-4F and G and to interpret strictly the provisions of R686-103-4F and G.

#### **R686-103-4. Appeal.**

A. Should ~~the Commission~~ UPPAC deny an applicant's licensing request, ~~the Commission~~ UPPAC shall inform the applicant in writing that the application for licensing has been denied and notify the applicant of the right to appeal that decision under this Rule.

B. The applicant shall have 30 days from notice provided under R686-10[4]3-3A to make formal written request for an appeal.

C. An applicant's request to appeal the denial of clearance shall follow the application criteria and format contained in R686-10[0-19(A)(1)] and shall include:

- (1) name and address of the individual requesting review;
- (2) action being requested;
- (3) the grounds for the appeal, which are limited to:

- (a) a mistake of identity;
- (b) a mistake of fact regarding the information relied upon by ~~the Commission~~ UPPAC in making its decision;

(c) information that could not, with reasonable diligence, have been discovered and produced by the applicant previously and provided previously to ~~the Commission~~ UPPAC; or

(d) compelling circumstances that in the judgment of the ~~Commission~~ Executive Committee warrant an appeal.

- (4) signature of person requesting review.

D. The ~~Commission~~ Executive Secretary shall make a determination regarding the grounds for appeal in a timely manner, inform the applicant in writing of the decision, and, if necessary, schedule an appeal hearing at the earliest possible date, consistent with the standard ~~Commission~~ UPPAC meetings.

#### **R686-103-5. Appeal Procedure.**

A. An applicant shall have the right to be represented by an attorney at an appeal hearing under this Rule. ~~The Commission~~ UPPAC shall be represented by a person appointed by the Investigations Unit of the USOE.

B. The burden of proof at an appeal hearing shall be on the applicant to show that the actions of ~~the Commission~~ UPPAC in denying the applicant's licensing request were based on the grounds enumerated in R686-10[4]3-3C.

C. The hearing shall be heard before a panel (~~3~~ three members) of ~~the Commission~~ UPPAC or ~~the Commission~~

UPPAC, chosen under the same procedures and having the same duties as delineated in R686-10[0-6]1.

D. The ~~Commission~~ Executive Secretary or ~~Commissioner~~ UPPAC Chair shall conduct the hearing and act as hearing officer. The hearing officer's duties shall be the same duties as delineated in R686-10[0-6(A)]1.

E. At the sole discretion of the hearing officer, the hearing shall be conducted ~~under~~ consistent with R686-10[0-7 through 14]1, as applicable. All procedural matters shall be at the ~~sole~~ discretion of the hearing officer and the Executive Secretary who has the right to limit witnesses and evidence presented by the applicant in support of the appeal.

F. Within 20 days after the hearing, the Executive Secretary or ~~Commission~~ UPPAC Chair shall issue a written report containing:

(1) detailed findings of fact related to the factual basis for the appeal;

(2) the decision and rationale of the hearing panel concerning the applicant's clearance of criminal background check request; and

(3) any time-line or conditions ~~set~~ recommended by the panel for a reapplication for clearance by the applicant.

G. ~~The decision of the hearing panel is final.~~ The panel's recommendation shall be reviewed by UPPAC at the first reasonable opportunity.

H. UPPAC's decision, upon review of the panel's recommendation, is the final administrative decision.

**KEY: educator license, appeals**

**Date of Enactment or Last Substantive Amendment: ~~October 16, 2002~~ 2013**

**Notice of Continuation: October 5, 2012**

**Authorizing, and Implemented or Interpreted Law: 53A-6-306(1); ~~53A-6-107~~**

## Transportation, Motor Carrier R909-1 Safety Regulations for Motor Carriers

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 37996

FILED: 09/16/2013

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to incorporate by reference and adopt final rule changes in the Federal Motor Carrier Safety Regulations (FMCSR) as of 10/01/2012, and the Federal Register as of 08/23/2013, and to add enforcement provisions authorized by statute. The change also requires every Utah-based motor carrier to update their USDOT number information at the time of registration, or at least every 12 months as required by the Performance and Registration Information Systems Management (PRISM) program.

**SUMMARY OF THE RULE OR CHANGE:** This rule amendment adopts the current Code of Federal Regulations (CFR) related to Part 350-384, Part 387-399 and Part 40 and ensures that intrastate carriers are subject to the same requirements as interstate carriers. The following final regulations are included in the adoption of the CFR as of 10/01/2012: 01/30/2012 - Clarification that drivers may not use Schedule 1 drugs and be qualified to drive commercial motor vehicles under any circumstances. 02/13/2012 - A correction to mandatory language or guidance to legal editors of the CFRs for the hours of service final rule published on 12/27/2011. 02/22/2012 - A correction to final rule clarifying that drivers may not use Schedule 1 drugs and be qualified to drive commercial motor vehicles under any circumstances. 04/20/2012 - FMCSA establishes a National Registry of Certified Medical Examiners. 04/30/2012 - Requires household goods motor carrier liability to appear on the estimates and bills of lading that carriers must provide to individual shippers. 05/08/2012 - Correction amendment: Correction to minor discrepancies regarding section references in text related to commercial driver's license (CDL) knowledge and skills testing standards and minimum standards for states to issue the commercial learner's permit (CLP). 05/14/2012 - Final rule: FMCSA may revoke the operating authority registration of a for-hire motor carrier for failure to comply with safety fitness requirements. 05/14/2012 - From a decision of the Court of Appeals for the Seventh Circuit the 04/05/2012 rule entitled "Electronic On-Board Recorders for Hours-of-Service Compliance" has been rescinded. 06/12/2012 - Final rule: Eliminates the requirement of intermodal equipment (IME) to retain driver vehicle inspection reports (DVIRs) when the driver has neither found nor been made aware of any defects in the IME. 06/20/2012 - Direct final rule; request for comments: Removes an obsolete requirement related to collect calls, the resolution of ambiguities, and reduces a regulatory burden on household goods motor carriers. 07/16/2012 - Direct final rule; request for comments: FMCSA amends the regulations governing the period during which household goods (HHG) motor carriers must retain documentation of an individual shipper's waiver of receipt. 08/06/2012 - Final rule: FMCSA amends the requirements regarding brake re-adjustment limits in the FMCSRs. 08/14/2012 - Direct final rule; confirmation of effective date: Confirmation of the effective date for its 06/20/2012, direct final rule concerning household goods consumer protection. 08/27/2012 - Direct final rule; request for comments: FMCSA confirms the effective date for its 07/16/2012, direct final rule concerning the period during which household goods (HHG) motor carriers must retain documentation of an individual shipper's waiver of receipt. 09/21/2012 - Notification of statutory exemptions: FMCSA alerts motor carriers and enforcement officials of two statutory exemptions included in the MAP-21 transportation reauthorization legislation that are applicable to certain motor carriers engaged in the transportation of agricultural commodities and farm supplies. This includes statutory exemption from the hour-of-service regulations, and most of the Federal Motor Carrier Safety Regulations for the

operation of a covered farm vehicle by farm and ranch operator, their employees, and certain other specified individuals. 10/01/2012 - FMCSA alerts motor carriers and enforcement officials of two statutory exemptions included in the MAP-21 transportation reauthorization legislation that are applicable to certain motor carriers engaged in the transportation of agricultural commodities and farm supplies. The following final federal rules are adopted from the Federal Register from 10/29/2012 to 08/23/2013: 10/29/2012 - FMCSA withdraws its 08/27/2012, direct final rule (DFR) amending the definition of "gross combination weight rating" (GCWR) in 49 CFR Parts 383 and 390. 03/14/2013 - FMCSA promulgates the regulatory exemptions for the Moving Ahead for Progress in the 21st Century Act (MAP-21). 03/25/2013 - FMCSA amends its 05/09/2011, final rule in response to certain petitions for reconsideration. The 2011 final rule amended the commercial driver's license (CDL) knowledge and skills testing standards and established new minimum Federal standards for States to issue the commercial learner's permit (CLP). 04/26/2013 - FMCSA amends its commercial driver's license (CDL) rules to eliminate the requirement for drivers to notify the state licensing agency that issued their commercial learners permit (CLP) or CDL of out-of-state traffic convictions. 08/23/2013 - The FMCSA amends its regulations to require interstate motor carriers, freight forwarders, brokers, intermodal equipment providers (IEPs), hazardous materials safety permit (HMSP) applicants, and cargo tank facilities under FMCSA jurisdiction to submit required registration and biennial update information to the agency via an electronic on-line Unified Registration System (URS) that becomes effective 10/23/2015. This adoption of the Federal Register final rules pertains to all private, common, and contract carriers by highway in commerce.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 72-9-101 and Section 72-9-103 and Section 72-9-104 and Section 72-9-301 and Section 72-9-303 and Section 72-9-701 and Section 72-9-703

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Updates 16189, Federal Register / Vol. 78, No. 50, published by Government Printing Office, March 14, 2013
- ◆ Updates 65497, Federal Register / Vol. 77, No. 209, published by Government Printing Office, October 29, 2012
- ◆ Updates 49 CFR Parts 350 through 384, Parts 387 through 399, and Part 40, published by Government Printing Office, October 1, 2012
- ◆ Updates 24684, Federal Register / Vol. 78, No. 81, published by Government Printing Office, April 26, 2013
- ◆ Updates 52608, Federal Register / Vol. 78, No. 164, published by Government Printing Office, August 23, 2013
- ◆ Updates 17875, Federal Register / Vol. 78, No. 57, published by Government Printing Office, March 25, 2013

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There is an anticipated cost to the state budget. The Federal Motor Carrier Safety Administration has reported there will be some costs associated with re-training state enforcement personnel on the sometimes intricate details of the exemptions of MAP-21.

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to the local government because the amendment only affects the Department of Transportation and motor carriers.

♦ **SMALL BUSINESSES:** The cost savings of this rule for small farming businesses will take the form of reduced expenditures in the agricultural sector. The exact amount of cost savings of the agricultural exemptions in MAP-21 are unknown at this time, because the number of drivers who will qualify for the exemptions are unknown. Small businesses that operate intermodal equipment are estimated to save a total loaded hourly time value of \$33 with the elimination of the driver vehicle inspection report (DVIRs) when the driver has neither found nor been made aware of any defects in the intermodal equipment (IME). After 10/23/2015, new interstate motor carriers, freight forwarders, brokers, intermodal equipment providers (IEPs), hazardous materials safety permit (HMSP) applicants, and cargo tank facilities under FMCSA jurisdiction will be required to pay a registration fee of \$300 via the new electronic on-line Unified Registration System (URS). There is no cost for entities that already have a USDOT number.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the amendment only affects the Department of Transportation and motor carriers.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be a \$300 registration fee for new registrations of the Form MCSA-1 and affected persons that operate as interstate motor carriers, freight forwarders, brokers, intermodal equipment providers (IEPs), hazardous materials safety permit (HMSP) applicants, and cargo tank facilities.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Small farming businesses and businesses that operate intermodal equipment will experience fiscal savings from adoption of this rule due respectively to the MAP-21 exemptions and from elimination of the DVIR in certain circumstances, as more fully described in the savings to small businesses section. Beginning 10/23/2015, there will be a \$300 registration fee for new registrations of the Form MCSA-1 and affected persons that operate as interstate motor carriers, freight forwarders, brokers, intermodal equipment providers (IEPs), hazardous materials safety permit (HMSP) applicants, and cargo tank facilities.

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

TRANSPORTATION  
MOTOR CARRIER  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at [cwnewman@utah.gov](mailto:cwnewman@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2013

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2013

AUTHORIZED BY: Carlos Braceras, Executive Director

**R909. Transportation, Motor Carrier.****R909-1. Safety Regulations for Motor Carriers.****R909-1-1. Authority and Purpose.**

This Rule is enacted under the authority of Section 72-9-103 to enable the department to enforce the Federal Motor Carrier Safety Regulations as contained in Title 49, Code of Federal Regulations related to the operation of a motor carrier within the state, as required by Section 72-9-301.

**R909-1-2. Adoption of Federal Regulations.**

(1) Safety Regulations for Motor Carriers, 49 CFR Parts 350 through 384, Parts 38[6] through 399, and Part 40, (October 1, 201[+]2), as amended by the Federal Register through [January 12, 2012] August 23, 2013 are incorporated by reference, except for Parts 391.11(b)(1) and 391.49 as it applies to intrastate drivers only. These requirements apply to all motor carrier(s) as defined in 49 CFR Part 390.5, excluding commercial motor vehicles which are designed or used to transport more than 8 and less than 15 passengers (including the driver) for compensation and Section 72-9-102(2) engaged in intrastate commerce.

(2) Intrastate trucking operations in which the carriers operate double trailer combinations only are not required to comply with 49 CFR Part 380.203(a)(2).

(3) Exceptions to Part 391.41, Physical Qualification may be granted under the rules of Department of Public Safety, Driver's License Division, Section 53-3-303.5 for intrastate drivers under R708-34.

(4) Drivers involved wholly in intrastate commerce shall be at least 18 years old. However, if they are transporting placarded amounts of hazardous materials or carrying 16 or more passengers, including the driver, they must be 21 years old.

(5) Licensed child care providers operating a passenger vehicle with a seating capacity of not more than 30 passengers, and wholly in intrastate commerce, are exempt from 49 CFR Part 387 Subpart B but are subject to the minimum coverage requirements in Section 72-9-103.

**R909-1-3. Insurance for Private Intrastate/Interstate Motor Carriers.**

(1) "Private Motor Carrier" means a person who provides transportation of property or passengers by commercial motor vehicle and is not a for-hire motor carrier.

(2) All intrastate private motor carriers shall have a minimum amount of \$750,000 liability.

(3) All intrastate for-hire and private motor carriers transporting any quantities of oil listed in 49 CFR 172.101; hazardous waste, hazardous material and hazardous substances defined in 49 CFR 171.101, shall have \$1,000,000 minimum level of financial responsibility and a MCS-90 endorsement maintained at the principal place of business.

**R909-1-4. Implements of Husbandry.**

"Implements of Husbandry" is defined in Section 41-1a-102(23) and must be in compliance with all provisions of Chapter 6, Title 41, Utah Code Annotated. Vehicles meeting this definition are exempt from 49 CFR Part 393 - Parts and Accessories Necessary for Safe Operations.

**R909-1-5. Cease and Desist Order - Registration Sanctions.**

As authorized by Section 72-9-303, the department may issue cease and desist orders to any motor carrier that fails or neglects to comply with State and Federal Motor Carrier Safety Regulations or any part of this rule.

**R909-1-6. Penalties and Fines.**

Any motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations or any part of this rule is subject to a civil penalty as authorized by Sections 72-9-701 and 72-9-703.

**R909-1-7. Motor Carriers Delinquent in Paying Civil Penalties; Prohibition on Transportation.**

Pursuant to Section 72-9-303, a motor carrier that has failed to pay civil penalties imposed by the department, or has failed to abide by a payment plan, may be prohibited from operating commercial motor vehicles in intrastate or interstate commerce.

**R909-1-8. Form MCSA-1 Update Required.**

Utah participates in the federal Performance and Registration Information Systems Management (PRISM) program which enforces the motor vehicle maintenance and requires updates to the USDOT number associated with the carrier responsible for the safety of each motor vehicle being registered. Utah based carriers are required to update their USDOT number information (Form MCSA-1) at the time of vehicle registration with the Utah State Tax Commission, or at least every 12 months.

**KEY:** trucks, transportation safety, implements of husbandry

**Date of Enactment or Last Substantive Amendment:** [~~April 11, 2012~~]**2013**

**Notice of Continuation:** November 1, 2013

**Authorizing, and Implemented or Interpreted Law:** 72-9-103; 72-9-104; 72-9-101; 72-9-301; 72-9-303; 72-9-701; 72-9-703.

## Transportation, Preconstruction R930-7-13 Deviations

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 37995

FILED: 09/16/2013

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule amendment is to allow UDOT to deviate from federal right-of-way requirements when using state money to fund a functional replacement of a utility building taken to accommodate a state highway project.

**SUMMARY OF THE RULE OR CHANGE:** This rule change will allow UDOT to reimburse a utility company for replacement of existing buildings with functionally equivalent buildings when impacted by state-funded projects. This change only affects acquisition of buildings located within property used for generating, transmitting or distributing operations, when the buildings are not part of these operations. Federal-aid highway projects will continue to follow federal regulations for acquisition of non-operating property which require the utility company to fund the difference in value if the replacement facilities cost more than the value of the existing buildings.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 72-6-116(2)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Increased state costs will be determined on a specific project basis. The cost will be the difference between potential reimbursement based on federal right-of-way regulations and a functional replacement of the building funded entirely by UDOT.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government because the rule change only applies to state-funded UDOT projects.

◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses because the rule change only applies to state-funded UDOT projects.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the rule change only applies to state-funded UDOT projects.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no anticipated compliance costs for affected persons because the rule change only affects state-funded UDOT projects.



COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will allow UDOT to replace existing buildings with functionally equivalent buildings at no cost to the utility company when the taking of these buildings is required by state-funded projects. Under current rule, the utility company is required to fund the difference if the replacement facilities cost more than the value of the existing buildings.

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

TRANSPORTATION  
PRECONSTRUCTION  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ 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 10/31/2013

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2013

AUTHORIZED BY: Carlos Braceras, Executive Director

**R930. Transportation, Preconstruction.**

**R930-7. Utility Accommodation.**

**R930-7-13. Deviations.**

(1) Deviations from provisions of this rule may be allowed if they do not violate state and federal statutes, law, or regulations and UDOT has determined the use of the right of way will be for the public good without compromising the transportation purposes of the right of way.

(2) Requests for deviations with limited impact may be considered by UDOT on an individual basis, upon justification submitted by the utility company.

(3) Requests for significant deviations must demonstrate extreme hardship and unusual conditions and provide justification for the deviation. Requests must demonstrate that alternative measures can be specified and implemented and still fulfill the intent of state and federal regulations. Requests for these deviations must include the following:

- (a) formal request by the utility company; and
- (b) an evaluation of the direct and indirect design, safety, environmental, and economic impacts associated with granting a deviation.

(4) In order for UDOT to grant a significant deviation the following approvals are necessary:

- (a) formal recommendation for approval by the UDOT Region Permits Officer or the officer's supervisor;
- (b) formal recommendation for approval from the UDOT Region Director;

(c) concurrence of the UDOT Statewide Utilities Engineer; and

(d) FHWA concurrence if the deviation applies to a utility facility located within a Federal-aid highway right of way.

(5) For UDOT projects that are solely state funded, UDOT may deviate from the utility relocation regulations contained in the Code of Federal Regulations by reimbursing a utility company for replacement of existing buildings with functionally equivalent buildings, if the following requirements are met:

(a) the utility company owns the property in fee that UDOT needs to acquire for its project;

(b) the utility company owns operational facilities located upon, below or above the property;

(c) the utility company owns a building on the property that provides maintenance services for the utility facility;

(d) a property purchase in accordance with 49 CFR 24 will not adequately compensate the utility company's costs to relocate and functionally re-establish the maintenance facility; and

(e) the deviation promotes the public interest.

**KEY: right-of-way, utilities, utility accommodation**

**Date of Enactment or Last Substantive Amendment: [~~October 10, 2012~~2013**

**Authorizing, and Implemented or Interpreted Law: 72-6-116(2)**

**Workforce Services, Employment  
Development  
R986-200  
Family Employment Program**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 37991

FILED: 09/12/2013

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to comply with the requirements of H.B. 209 passed in the 2013 General Legislative Session and to move some sections to another rule.

SUMMARY OF THE RULE OR CHANGE: Section R986-200-249 is to comply with H.B. 209 (2013) which requires the Department to pass a rule about when fees and surcharges will be charged under the Family Employment Program. H.B. 209 (2013) also requires access without fee. The Department has always complied with these requirements but has never had it in rule. Sections R986-200-250 through R986-200-253 are being deleted because they were moved to rule Rule R986-600 which will become effective on or around 10/01/2013.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Section 35A-3-301 et seq. and Subsection 35A-1-104(4)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: This applies to federally-funded programs so there are no costs or savings to the state budget.

◆ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to local government.

◆ SMALL BUSINESSES: There will be no costs to small businesses to comply with these changes because this is a federally-funded program.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no costs to persons other than small businesses, businesses, or local government entities to comply with these changes because there are no costs or fees associated with these proposed changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for these changes and will have no impact on any affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
WORKFORCE SERVICES  
EMPLOYMENT DEVELOPMENT  
140 E 300 S  
SALT LAKE CITY, UT 84111-2333  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2013

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2013

AUTHORIZED BY: Jon Pierpont, Executive Director

**R986. Workforce Services, Employment Development.**

**R986-200. Family Employment Program.**

**R986-200-249. Access to Assistance.**

Financial assistance for FEP and FEPTP is provided through an electronic benefit transfer (EBT) card. The card, instructions on its use, and applicable fees will be provided to all

clients. A method for obtaining assistance without a fee will be made available. In other circumstances, minimal fees or/or surcharges will apply. Information about obtaining assistance without a fee or surcharge, when fees or surcharges apply, and the amount of the fee or surcharge is available on the Department's website: jobs.utah.gov.

~~**R986-200-250. Basic Education Training Provider.**~~

~~(1) Basic education funds can only be provided to training providers approved by the Department.~~

~~(2) This section applies to basic education providers receiving funds from the Department including WIA funds under R986-600.~~

~~**R986-200-251. Types of Basic Education Training Providers and Approval Requirements.**~~

~~(1) Public schools governed by the Utah State Office of Education (USOE) must complete and submit Application "A" to the Department.~~

~~(2) Individuals offering youth tutoring personally, and not as an employee of another business or school, must be over 18 years of age, submit Application "B" and provide all of the following:~~

~~(a) a birth certificate;~~

~~(b) a current BCI background check results for Utah, from the Utah Department of Public Safety, paid for by the individual. The BCI report cannot contain:~~

~~(i) any matters involving an alleged sexual offense;~~

~~(ii) any matters involving an alleged felony or class A misdemeanor drug offense; or~~

~~(iii) any matters involving an alleged offense against the person under Utah State Code Title 76 Chapter 5, Offenses Against the Person.~~

~~(c) a resume with tutoring-related work history or subject matter knowledge;~~

~~(d) three letters of recommendation addressing suitability as a tutor; and~~

~~(e) an approved grievance procedure for clients to use in making complaints.~~

~~(3) All other providers must submit Application "C" and:~~

~~(a) have been in business in Utah for at least one year;~~

~~(b) meet all state and local licensing requirements;~~

~~(c) have a satisfactory record with the Better Business Bureau;~~

~~(d) submit evidence of financial stability prepared by a certified public accountant (CPA) using generally accepted accounting principles. The evidence must include at least one of the following:~~

~~(i) balance sheet, income statement and a statement of changes in financial position;~~

~~(ii) copy of the most recent annual business audit; or~~

~~(iii) copies of each owner's most recent personal income tax return.~~

~~(e) submit a current Utah Business License showing at least one year in business; and~~

~~(f) submit an approved grievance procedure for clients to use in making complaints.~~

~~(g) ESL training providers must also submit documentation of registration as a Postsecondary Proprietary~~

School with the Utah Division of Consumer Protection or show an exemption from such registration.

~~(h) Providers offering high school credit must also provide documentation of accreditation through Utah State Office of Education and Northwest Association of Accredited Schools.~~

~~(4) Training providers submitting Application "B" or "C" must provide the following information for each training program for which the provider is seeking approval:~~

~~(a) program completion rates for all individuals enrolled;~~

~~(b) the type of certification students completing the program will obtain;~~

~~(c) the percentage rate of certification attained by program graduates; and~~

~~(d) program costs including tuition, fees and refund policy.~~

~~(5) A training provider approved under R986-600-652 can be approved for its basic education curriculum upon submission and approval of the information required in subsection (4) of this section. However, public schools governed by Title IV of the Higher Education Act of 1965 (20 USCA 1070 et seq.) or the Utah State Office of Education (USOE) approved as providers under R986-600-652 do not need to submit the information required in subsection (4) of this section.~~

**~~R986-200-252. Renewal and Revocation of Approval for Training Providers.~~**

~~(1) Once a provider has been approved, the Department will establish a review date for that provider and notify the provider of the review date. The Department will determine at the time of the review if the provider is still eligible for approved provider status and notify the provider of that determination. At the time of review, the provider is required to provide any and all information requested by the Department which the Department has determined is necessary to allow the provider to continue to be an approved provider. This may include completing necessary forms, providing documentation and verification, and returning the Department's telephone calls. The requests for information must be completed within the time frame specified by the Department. If the Department determines as a result of the review that the provider is no longer eligible for approved provider status, the provider will be removed from the approved provider list.~~

~~(2) Providers must retain participant program records for three years from the date the participant completes the program.~~

~~(3) A provider who is not on the Department's approved provider list is not eligible for receipt of Department funds. A provider will be removed from the eligible provider list if the provider:~~

~~(a) does not meet the performance levels established by the Department including providing training services in a professional and timely manner;~~

~~(b) has committed fraud or violated applicable state or federal law, rule, or regulation;~~

~~(c) intentionally supplies inaccurate student or program performance information;~~

~~(d) fails to complete the review process; or~~

~~(e) has lost approval, accreditation, licensing, or certification from any of the following:~~

~~(i) Utah Division of Consumer Protection;~~

~~(ii) USOE;~~

~~(iii) Northwest Association of Accredited Schools, or~~

~~(iv) any other required approval, accrediting, licensing, or certification body.~~

~~(4) Some providers who have been removed from the eligible provider list may be eligible to be placed back on the list as follows:~~

~~(a) a provider who was removed for failure to meet performance levels may reapply for approval if the provider can prove it can meet performance levels;~~

~~(b) there is a lifetime ban for a provider who has committed fraud as a provider;~~

~~(c) providers removed for other violations of state or federal law will be suspended:~~

~~(i) until the provider can prove it is no longer in violation of the law for minor violations;~~

~~(ii) for a period of two years for serious violations or supplying inaccurate student or program performance information; or~~

~~(iii) for the lifetime of the provider for egregious violations. The seriousness of the violation will be determined by the Department.~~

**~~R986-200-253. Training Provider's Right to Appeal a Denial or Revocation of Approval.~~**

~~(1) Training providers will be notified in writing of a decision to deny an application for approval as a basic education training provider or a decision to revoke prior approval. The notice will inform the provider of its right to file a written appeal, where the appeal should be sent, and the deadline for filing an appeal.~~

~~(2) A hearing on the appeal will be held by the Department's Appeals Unit following the procedure in R986-100.~~

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**KEY: family employment program**

**Date of Enactment or Last Substantive Amendment: [December 5, 2012]2013**

**Notice of Continuation: September 8, 2010**

**Authorizing, and Implemented or Interpreted Law: 35A-3-301 et seq.**

**End of the Notices of Proposed Rules Section**



## NOTICES OF CHANGES IN PROPOSED RULES

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After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive public comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period, and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends October 31, 2013.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [~~example~~]). A row of dots in the text between paragraphs (. . . . .) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Division of Administrative Rules will include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

From the end of the 30-day waiting period through January 29, 2014, an agency may notify the Division of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses and the agency must start the process over.

**CHANGES IN PROPOSED RULES** are governed by Section 63G-3-303; Rule R15-2; and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

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

**Environmental Quality, Air Quality  
R307-361  
Architectural Coatings**

**NOTICE OF CHANGE IN PROPOSED RULE**  
DAR FILE NO.: 37704  
FILED: 09/12/2013

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** On 06/05/2013, the Air Quality Board proposed for public comment Rule R307-361, which is based on the Ozone Transport Commission (OTC) Phase II model rule. The public comment period was held from 07/01/2013 to 07/31/2013. During the public comment period, the Division of Air Quality (DAQ), received several comments that resulted in making substantive change to the proposed rule.

**SUMMARY OF THE RULE OR CHANGE:** An exemption is added for Department of Defense contractors who perform contractor work that explicitly mandates the use of military technical data specifications. The sell-through provision of the rule in Subsection R307-361-5(3) is changed to clarify that coatings manufactured prior to 01/01/2105 may be sold for up to three years after 01/01/2015. Language is also added to clarify that coatings manufactured before 01/01/2015, may be applied at any time. The rule compliance schedule is extended to 01/01/2015. Other minor technical and grammatical corrections are made throughout the rule. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the July 1, 2013, issue of the Utah State Bulletin, on page 64. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-101 and Subsection 19-2-104(1)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The changes made to the change in proposed rule do not create any requirements that would result in any costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** The changes made to the change in proposed rule do not create any requirements that would result in any costs or savings to local government.
- ◆ **SMALL BUSINESSES:** Small businesses that are Department of Defense contractors who perform contractor work that explicitly mandates the use of military technical data specifications will no longer be required to meet the standards in this rule, resulting in savings to the small business. It is difficult to determine what type of contractor

work could be done, and therefore it is difficult to estimate the savings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because manufacturers are not expecting to add measurable costs to products as a result of this rule, these changes do not result in any additional costs or savings to persons other than small businesses, businesses, or local governmental entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** These changes add an exemption and extend the compliance schedule. There are no changes to this rule that affect the compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** These changes add an exemption and extend the compliance schedule. The exemption will reduce any fiscal impact the rule may have on businesses, and the extension of the compliance schedule will give businesses more time to comply, potentially reducing the fiscal impact on businesses.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

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

**THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2013**

**AUTHORIZED BY: Bryce Bird, Director**

**R307. Environmental Quality, Air Quality.  
R307-361. Architectural Coatings.**

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**R307-361-3. Definitions.**

The following additional definitions apply only to R307-361.

"Adhesive" means any chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means.

"Aerosol coating product" means a pressurized coating product containing pigments or resins that dispenses product

ingredients by means of a propellant, and is packaged in a disposable can for hand-held application or for use in specialized equipment for ground traffic/marketing applications.

"Aluminum roof coating" means a coating labeled and formulated exclusively for application to roofs and containing at least 84 grams of elemental aluminum pigment per liter of coating (at least 0.7 pounds per gallon).

"Appurtenance" means any accessory to a stationary structure coated at the site of installation, whether installed or detached, including, but not limited to, bathroom and kitchen fixtures; cabinets; concrete forms; doors; elevators; fences; hand railings; heating equipment, air conditioning equipment, and other fixed mechanical equipment or stationary tools; lampposts; partitions; pipes and piping systems; rain gutters and downspouts; stairways, fixed ladders, catwalks, and fire escapes; and window screens.

"Architectural coating" means a coating to be applied to stationary structures or their appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs.

(1) Coatings applied in shop applications or to non-stationary structures such as airplanes, ships, boats, railcars, and automobiles, and adhesives are not considered architectural coatings for the purposes of this rule.

"Basement specialty coating" means a clear or opaque coating that is labeled and formulated for application to concrete and masonry surfaces to provide a hydrostatic seal for basements and other below-grade surfaces, meeting the following criteria:

(1) Coating must be capable of withstanding at least 10 psi of hydrostatic pressure, as determined in accordance with ASTM D7088-04 and;

(2) Coating must be resistant to mold and mildew growth and must achieve a microbial growth rating of 8 or more, as determined in accordance with ASTM D3273-00 and ASTM D3274-95.

"Bitumens" means black or brown materials including, but not limited to, asphalt, tar, pitch, and asphaltite that are soluble in carbon disulfide, consist mainly of hydrocarbons, and are obtained from natural deposits or as residues from the distillation of crude petroleum or coal.

"Bituminous roof coating" means a coating that incorporates bitumens and that is labeled and formulated exclusively for roofing for the primary purpose of preventing water penetration.

"Bituminous roof primer" means a primer that incorporates bitumens and that is labeled and formulated exclusively for roofing and intended for the purpose of preparing a weathered or aged surface or improving adhesion of subsequent surface components.

"Bond breaker" means a coating labeled and formulated for application between layers of concrete to prevent a freshly poured top layer of concrete from bonding to the layer over which it is poured.

"Calcimine recoaters" means a flat solvent borne coating formulated and recommended specifically for coating calcimine-painted ceilings and other calcimine-painted substrates.

"Coating" means a material applied onto or impregnated into a substrate for protective, decorative, or functional purposes,

and such materials include, but are not limited to, paints, varnishes, sealers, and stains.

"Colorant" means a concentrated pigment dispersion in water, solvent, or binder that is added to an architectural coating after packaging in sale units to produce the desired color.

"Concrete curing compound" means a coating labeled and formulated for application to freshly poured concrete to retard the evaporation of water and or harden or dustproof the surface of freshly poured concrete.

"Concrete/masonry sealer" means a clear or opaque coating that is labeled and formulated primarily for application to concrete and masonry surfaces to prevent penetration of water, provide resistance against abrasion, alkalis, acids, mildew, staining, or ultraviolet light, or harden or dustproof the surface of aged or cured concrete.

"Concrete surface retarder" means a mixture of retarding ingredients such as extender pigments, primary pigments, resin, and solvent that interact chemically with the cement to prevent hardening on the surface where the retarder is applied allowing the retarded mix of cement and sand at the surface to be washed away to create an exposed aggregate finish.

"Conjugated oil varnish" means a clear or semi-transparent wood coating, labeled as such, excluding lacquers or shellacs, based on a natural occurring conjugated vegetable oil (tung oil) and modified with other natural or synthetic resins; a minimum of 50% of the resin solids consisting of conjugated oil.

"Conversion varnish" means a clear acid coating with an alkyd or other resin blended with amino resins and supplied as a single component or two-component product.

"Department of Defense military technical data" means a specification that specifies design requirements, such as materials to be used, how a requirement is to be achieved, or how an item is to be fabricated or constructed.

"Driveway sealer" means a coating labeled and formulated for application to worn asphalt driveway surfaces to fill cracks, seal the surface to provide protection, or to restore or preserve the appearance.

"Dry fog coating" means a coating labeled and formulated only for spray application such that overspray droplets dry before subsequent contact with incidental surfaces in the vicinity of the surface coating activity.

"Faux finishing coating" means a coating labeled and formulated to meet one or more of the following criteria:

(1) A glaze or textured coating used to create artistic effects, including, but not limited to, dirt, suede, old age, smoke damage, and simulated marble and wood grain;

(2) A decorative coating used to create a metallic, iridescent, or pearlescent appearance and that contains at least 48 grams of pearlescent mica pigment or other iridescent pigment per liter of coating as applied (at least 0.4 pounds per gallon); or

(3) A decorative coating used to create a metallic appearance and that contains less than 48 grams of elemental metallic pigment per liter of coating as applied (less than 0.4 pounds per gallon); or

(4) A decorative coating used to create a metallic appearance and that contains greater than 48 grams of elemental metallic pigment per liter of coating as applied (greater than 0.4 pounds per gallon) and which requires a clear topcoat to prevent the degradation of the finish under normal use conditions; or

(5) A clear topcoat to seal and protect a faux finishing coating that meets the requirements of (1) through (4) of this definition, and these clear topcoats shall be sold and used solely as part of a faux finishing coating system.

"Fire-resistive coating" means a coating labeled and formulated to protect structural integrity by increasing the fire endurance of interior or exterior steel and other structural materials. The Fire-Resistive coating category includes sprayed fire resistive materials and intumescent fire resistive coatings that are used to bring structural materials into compliance with federal, state, and local building code requirements. The fire-resistant coatings shall be tested in accordance with ASTM E119-08.

"Flat coating" means a coating that is not defined under any other definition in this rule and that registers gloss less than 15 on an 85 degree meter or less than 5 on a 60 degree meter according to ASTM D523-89 (1999).

"Floor coating" means an opaque coating that is labeled and formulated for application to flooring, including, but not limited to, decks, porches, steps, garage floors, and other horizontal surfaces that may be subject to foot traffic.

"Form-release compound" means a coating labeled and formulated for application to a concrete form to prevent the freshly poured concrete from bonding to the form which may consist of wood, metal, or some material other than concrete.

"Graphic arts coating or sign paint" means a coating labeled and formulated for hand-application by artists using brush, airbrush, or roller techniques to indoor and outdoor signs, excluding structural components, and murals including lettering enamels, poster colors, copy blockers, and bulletin enamels.

"High-temperature coating" means a high performance coating labeled and formulated for application to substrates exposed continuously or intermittently to temperatures above 204 degrees Celsius (400 degrees Fahrenheit).

"Impacted immersion coating" means a high performance maintenance coating formulated and recommended for application to steel structures subject to immersion in turbulent, debris-laden water. These coatings are specifically resistant to high-energy impact damage by floating ice or debris.

"Industrial maintenance coating" means a high performance architectural coating, including primers, sealers, undercoaters, intermediate coats, and topcoats, formulated for application to substrates, including floors exposed to one or more of the following extreme environmental conditions:

(1) Immersion in water, wastewater, or chemical solutions (aqueous and non-aqueous solutions), or chronic exposure of interior surfaces to moisture condensation;

(2) Acute or chronic exposure to corrosive, caustic or acidic agents, or to chemicals, chemical fumes, or chemical mixtures or solutions;

(3) Frequent exposure to temperatures above 121 degrees Celsius (250 degrees Fahrenheit);

(4) Frequent heavy abrasion, including mechanical wear and frequent scrubbing with industrial solvents, cleansers, or scouring agents; or

(5) Exterior exposure of metal structures and structural components.

"Low solids coating" means a coating containing 0.12 kilogram or less of solids per liter (1 pound or less of solids per

gallon) of coating material as recommended for application by the manufacturer.

"Magnesite cement coating" means a coating labeled and formulated for application to magnesite cement decking to protect the magnesite cement substrate from erosion by water.

"Manufacturer's maximum thinning recommendation" means the maximum recommendation for thinning that is indicated on the label or lid of the coating container.

"Mastic texture coating" means a coating labeled and formulated to cover holes and minor cracks and to conceal surface irregularities, and is applied in a single coat of at least 10 mils (at least 0.010 inch) dry film thickness.

"Medium density fiberboard (MDF)" means a composite wood product, panel, molding, or other building material composed of cellulosic fibers, usually wood, made by dry forming and pressing of a resinated fiber mat.

"Metallic pigmented coating" means a coating that is labeled and formulated to provide a metallic appearance and must contain at least 48 grams of elemental metallic pigment (excluding zinc) per liter of coating as applied (at least 0.4 pounds per gallon), when tested in accordance with SCAQMD Method 318-95, but does not include coatings applied to roofs, or zinc-rich primers.

"Multi-color coating" means a coating that is packaged in a single container and that is labeled and formulated to exhibit more than one color when applied in a single coat.

"Non-flat coating" means a coating that is not defined under any other definition in this rule and that registers a gloss of 15 or greater on an 85-degree meter and five or greater on a 60-degree meter according to ASTM D523-89 (1999).

"Non-flat/high-gloss coating" means a non-flat coating that registers a gloss of 70 or greater on a 60-degree meter according to ASTM D523-89 (1999).

"Nuclear coating" means a protective coating formulated and recommended to seal porous surfaces such as steel or concrete that otherwise would be subject to intrusion by radioactive materials. These coatings must be resistant to long-term cumulative radiation exposure according to ASTM Method 4082-02, relatively easy to decontaminate, and resistant to various chemicals to which the coatings are likely to be exposed according to ASTM Method D 3912-95 (~~2004~~2010).

"Particleboard" means a composite wood product panel, molding, or other building material composed of cellulosic material, usually wood, in the form of discrete particles, as distinguished from fibers, flakes, or strands, which are pressed together with resin.

"Pearlescent" means exhibiting various colors depending on the angles of illumination and viewing, as observed in mother-of-pearl.

"Plywood" means a panel product consisting of layers of wood veneers or composite core pressed together with resin and includes panel products made by either hot or cold pressing (with resin) veneers to a platform.

"Post-consumer coating" means a finished coatings generated by a business or consumer that have served their intended end uses, and are recovered from or otherwise diverted from the waste stream for the purpose of recycling.

"Pre-treatment wash primer" means a primer that contains a minimum of 0.5% acid, by weight, when tested in accordance



with ASTM D1613-06, that is labeled and formulated for application directly to bare metal surfaces to provide corrosion resistance and to promote adhesion of subsequent topcoats.

"Primer, sealer, and undercoater" means a coating labeled and formulated to provide a firm bond between the substrate and the subsequent coatings, prevent subsequent coatings from being absorbed by the substrate, prevent harm to subsequent coatings by materials in the substrate, provide a smooth surface for the subsequent application of coatings, provide a clear finish coat to seal the substrate, or to block materials from penetrating into or leaching out of a substrate.

"Reactive penetrating sealer" means a clear or pigmented coating that is formulated for application to above-grade concrete and masonry substrates to provide protection from water and waterborne contaminants, including, but not limited to, alkalis, acids, and salts.

(1) Reactive penetrating sealers penetrate into concrete and masonry substrates and chemically react to form covalent bonds with naturally occurring minerals in the substrate.

(2) Reactive penetrating sealers line the pores of concrete and masonry substrates with a hydrophobic coating but do not form a surface film.

(3) Reactive penetrating sealers shall meet all of the following criteria:

(a) The reactive penetrating sealer must improve water repellency at least 80% after application on a concrete or masonry substrate, and this performance shall be verified on standardized test specimens in accordance with one or more of the following standards: ASTM C67-07, ASTM C97-02, or ASTM C140-06.

(b) The reactive penetrating sealer shall not reduce the water vapor transmission rate by more than 2% after application on a concrete or masonry substrate, and this performance must be verified on standardized test specimens, in accordance with ASTM E96/E96M-05.

(c) Products labeled and formulated for vehicular traffic surface chloride screening applications shall meet the performance criteria listed in the National Cooperative Highway Research Report 244 (1981).

"Reactive penetrating carbonate stone sealer" means a clear or pigmented coating that is labeled and formulated for application to above-grade carbonate stone substrates to provide protection from water and waterborne contaminants, including but not limited to, alkalis, acids, and salts and that penetrates into carbonate stone substrates and chemically reacts to form covalent bonds with naturally occurring minerals in the substrate. They must meet all of the following criteria:

(1) Improve water repellency at least 80% after application on a carbonate stone substrate. This performance shall be verified on standardized test specimens, in accordance with one or more of the following standards: ASTM C67-07, ASTM C97-02, or ASTM C140-06; and

(2) Not reduce the water vapor transmission rate by more than 10% after application on a carbonate stone substrate. This performance shall be verified on standardized test specimens in accordance with one or more of the following standards: ASTM E96/E96M-05.

"Recycled coating" means an architectural coating formulated such that it contains a minimum of 50% by volume post-

consumer coating, with a maximum of 50% by volume secondary industrial materials or virgin materials.

"Residential" means areas where people reside or lodge, including, but not limited to, single and multiple family dwellings, condominiums, mobile homes, apartment complexes, motels, and hotels.

"Roof coating" means a non-bituminous coating labeled and formulated for application to roofs for the primary purpose of preventing water penetration, reflecting ultraviolet light, or reflecting solar radiation.

"Rust preventative coating" means a coating that is for metal substrates only and is formulated to prevent the corrosion of metal surfaces for direct-to-metal coating or a coating intended for application over rusty, previously coated surfaces but does not include coatings that are required to be applied as a topcoat over a primer or coatings that are intended for use on wood or any other nonmetallic surface.

"Secondary industrial materials" means products or by-products of the paint manufacturing process that are of known composition and have economic value but can no longer be used for their intended purpose.

"Semitransparent coating" means a coating that contains binders and colored pigments and is formulated to change the color of the surface but not conceal the grain pattern or texture.

"Shellac" means a clear or opaque coating formulated solely with the resinous secretions of the lac beetle (*Lacifer lacca*) and formulated to dry by evaporation without a chemical reaction.

"Shop application" means an application of a coating to a product or a component of a product in or on the premises of a factory or a shop as part of a manufacturing, production, or repairing process (e.g., original equipment manufacturing coatings).

"Solicit" means to require for use or to specify by written or oral contract.

"Specialty primer, sealer, and undercoater" means a coating that is formulated for application to a substrate to block water-soluble stains resulting from fire damage, smoke damage, or water damage.

"Stain" means a semi-transparent or opaque coating labeled and formulated to change the color of a surface but not conceal the grain pattern or texture.

"Stone consolidant" means a coating that is labeled and formulated for application to stone substrates to repair historical structures that have been damaged by weathering or other decay mechanisms.

(1) Stone consolidants must penetrate into stone substrates to create bonds between particles and consolidate deteriorated material.

(2) Stone consolidants must be specified and used in accordance with ASTM E2167-01.

"Swimming pool coating" means a coating labeled and formulated to coat the interior of swimming pools and to resist swimming pool chemicals.

"Thermoplastic rubber coating and mastic" means a coating or mastic formulated and recommended for application to roofing or other structural surfaces that incorporates no less than 40% by weight of thermoplastic rubbers in the total resin solids and may also contain other ingredients, including, but not limited to, fillers, pigments, and modifying resins.

"Tint base" means an architectural coating to which colorant is added after packaging in sale units to produce a desired color.

"Traffic marking coating" means a coating labeled and formulated for marking and striping streets, highways, or other traffic surfaces, including, but not limited to, curbs, berms, driveways, parking lots, sidewalks, and airport runways.

"Tub and tile refinish coating" means a clear or opaque coating that is labeled and formulated exclusively for refinishing the surface of a bathtub, shower, sink, or countertop and that meets the following criteria:

(1) Has a scratch hardness of 3H or harder and a gouge hardness of 4H or harder, determined on bonderite 1000, in accordance with ASTM D3363-05;

(2) Has a weight loss of 20 milligrams or less after 1,000 cycles, determined with CS-17 wheels on bonderite 1000, in accordance with ASTM D4060-07;

(3) Withstands 1,000 hours or more of exposure with few or no #8 blisters, determined on unscribed bonderite in accordance with ASTM D4585-99, and ASTM D714-02e1; and

(4) Has an adhesion rating of 4B or better after 24 hours of recovery, determined on unscribed bonderite in accordance with ASTM D4585-99 and ASTM D3359-02.

"Veneer" means thin sheets of wood peeled or sliced from logs for use in the manufacture of wood products such as plywood, laminated veneer lumber, or other products.

"Virgin Materials" means materials that contain no post-consumer coatings or secondary industrial materials.

"VOC actual" means the weight of VOC per volume of coating and applies to coatings in the low solids coatings category and it is calculated with the following equation:

$$\text{VOC Actual} = (W_s - W_w - W_{ec}) / (V_m)$$

Where, VOC actual = the grams of VOC per liter of coating (also known as "Material VOC");

$W_s$  = weight of volatiles, in grams;

$W_w$  = weight of water, in grams;

$W_{ec}$  = weight of exempt compounds, in grams; and

$V_m$  = volume of coating, in liters

"VOC content" means the weight of VOC per volume of coating and is VOC regulatory for all coatings except those in the low solids category.

(1) For coatings in the low solids category, the VOC Content is VOC actual.

(2) If the coating is a multi[=]-component product, the VOC content is VOC regulatory as mixed or catalyzed.

(3) If the coating contains silanes, siloxanes, or other ingredients that generate ethanol or other VOCs during the curing process, the VOC content must include the VOCs emitted during curing.

(4) VOC content must include maximum amount of thinning solvent recommended by the manufacturer.

"VOC regulatory" means the weight of VOC per volume of coating, less the volume of water and exempt compounds. It is calculated with the following equation:

$$\text{VOC Regulatory} = (W_s - W_w - W_{ec}) / (V_m - V_w - V_{ec})$$

Where, VOC regulatory = grams of VOC per liter of coating, less water and exempt compounds (also known as "Coating VOC");

$W_s$  = weight of volatiles, in grams;

$W_w$  = weight of water, in grams;

$W_{ec}$  = weight of exempt compounds, in grams;

$V_m$  = volume of coating, in liters;

$V_w$  = volume of water, in liters; and

$V_{ec}$  = volume of exempt compounds, in liters

VOC regulatory must include maximum amount of thinning solvent recommended by the manufacturer.

"Waterproofing membrane" means a clear or opaque coating that is labeled and formulated for application to concrete and masonry surfaces to provide a seamless waterproofing membrane that prevents any penetration of liquid water into the substrate.

(1) Waterproofing membranes are intended for the following waterproofing applications: below-grade surfaces, between concrete slabs, inside tunnels, inside concrete planters, and under flooring materials.

(2) The waterproofing membrane category does not include topcoats that are included in the concrete/masonry sealer category (e.g., parking deck topcoats, pedestrian deck topcoats, etc.).

(3) Waterproofing Membranes shall:

(a) Be applied in a single coat of at least 25 mils (at least 0.025 inch) dry film thickness; and

(b) Meet or exceed the requirements contained in ASTM C836-06.

"Wood coatings" means coatings labeled and formulated for application to wood substrates only and include clear and semitransparent coatings: lacquers; varnishes; sanding sealers; penetrating oils; clear stains; wood conditioners used as undercoats; and wood sealers used as topcoats. The Wood Coatings category also includes the following opaque wood coatings: opaque lacquers, opaque sanding sealers, and opaque lacquer undercoaters but do not include clear sealers that are labeled and formulated for use on concrete/masonry surfaces or coatings intended for substrates other than wood.

"Wood preservative" means a coating labeled and formulated to protect exposed wood from decay or insect attack that is registered with the U.S. EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 United States Code (U.S.C.) Section 136, et seq.).

"Wood substrate" means a substrate made of wood, particleboard, plywood, medium density fiberboard, rattan, wicker, bamboo, or composite products with exposed wood grain but does not include items comprised of simulated wood.

"Zinc-rich primer" means a coating that contains at least 65% metallic zinc powder or zinc dust by weight of total solids and is formulated for application to metal substrates to provide a firm bond between the substrate and subsequent applications of coatings and are intended for professional use only.

#### **R307-361-4. Exemptions.**

The coatings described in R307-361-4(1) through (3) are exempt from the requirements of R307-361.

(1) Any architectural coating that is supplied, sold, offered for sale, or manufactured for use outside of the counties in R307-361-2 or for shipment to other manufacturers for reformulation or repackaging.

(2) Any aerosol coating product.

(3) Any architectural coating that is sold in a container with a volume of one liter (1.057 quarts) or less, including kits containing containers of different colors, types or categories of coatings and two component products and including multiple containers of one liter or less that are packaged and shipped together with no intent or requirement to ultimately be sold as one unit.

(a) The exemption in R307-361-4(3) does not include bundling of containers one liter or less, which are sold together as a unit with the intent or requirement that they be combined into one container.

(b) The exemption in R307-361-4(3) does not include packaging from which the coating cannot be applied. This exemption does include multiple containers of one liter or less that are packaged and shipped together with no intent or requirement to ultimately sell as one unit.

(4) The requirements of R307-361-5 Table 1 do not apply to operations that are exclusively covered by Department of Defense military technical data and performed by a Department of Defense contractor and or on site at installations owned and or operated by the United States Armed Forces.

**R307-361-5. Standards.**

(1) Except as provided in R307-361-4~~(5(2) and (3))~~, no person shall manufacture, blend, or repackage, ~~for use within the counties in R307-361-2;~~ supply, sell, or offer for sale within the counties in R307-361-~~5~~2; or solicit for application or apply within those counties any architectural coating with a VOC content in excess of the corresponding limit specified in Table 1.

.....

(2) If a coating is recommended for use in more than one of the specialty coating categories listed in Table 1, the most restrictive (lowest) VOC content limit shall apply.

(a) This requirement applies to usage recommendations that appear anywhere on the coating container, anywhere on any label or sticker affixed to the container, or in any sales, advertising, or technical literature supplied by a manufacturer or anyone acting on their behalf.

(b) R307-361-5(2) does not apply to the following coating categories:

- (i) Aluminum roof coatings
- (ii) Bituminous roof primers
- (iv) High temperature coatings
- (v) Industrial maintenance coatings
- (vi) Low-solids coatings
- (vii) Metallic pigmented coatings
- (viii) Pretreatment wash primers
- (ix) Shellacs
- (x) Specialty primers, sealers and undercoaters
- (xi) Wood Coatings
- (xii) Wood preservatives
- (xiii) Zinc-rich primers
- (xiv) Calcimine recoaters
- (xv) Impacted immersion coatings
- (xvi) Nuclear coatings
- (xvii) Thermoplastic rubber coatings and mastic
- (xviii) Concrete surface retarders

(xix) Conversion varnish

(3) Sell-through of coatings. A coating manufactured prior to ~~[the effective date specified for that coating in Table 1]January 1, 2015,~~ ~~and that complied with the standards in effect at the time the coating was manufactured,~~ may be sold, supplied, or offered for sale for up to three years after ~~[the specified effective date]January 1, 2015.~~

(a) A coating manufactured before ~~[the effective date specified for that coating in Table 1]January 1, 2015,~~ may be applied at any time~~[- both before and after the specified effective date, so long as the coating complied with the standards in effect at the time the coating was manufactured].~~

(b) R307-361-5(3) does not apply to any coating that does not display the date or date code required by R307-361-6(1) (a).

(4) Painting practices. All architectural coating containers used when applying the contents therein to a surface directly from the container by pouring, siphoning, brushing, rolling, padding, ragging or other means, shall be closed when not in use. These architectural coating containers include, but are not limited to, drums, buckets, cans, pails, trays or other application containers. Containers of any VOC-containing materials used for thinning and cleanup shall also be closed when not in use.

(5) Thinning. No person who applies or solicits the application of any architectural coating shall apply a coating that is thinned to exceed the applicable VOC limit specified in Table 1.

(6) Rust preventative coatings. No person shall apply or solicit the application of any rust preventative coating manufactured before January 1, 20~~14~~15 for industrial use, unless such a rust preventative coating complies with the industrial maintenance coating VOC limit specified in Table 1.

(7) Coatings not listed in Table 1. For any coating that does not meet any of the definitions for the specialty coatings categories listed in Table 1, the VOC content limit shall be determined by classifying the coating as a flat, non-flat, or non-flat/high gloss coating, based on its gloss, as defined in R307-361-3 and the corresponding flat, non-flat, or non-flat/high gloss coating VOC limit in Table 1 shall apply.

.....

**R307-361-8. Test Methods.**

(1) ~~[Calculation]~~Determination of VOC content.

(a) For the purpose of determining compliance with the VOC content limits in Table 1, the VOC content of a coating shall be calculated by following the appropriate formula found in the definitions of VOC actual, VOC content, and VOC regulatory found in R307-361-3.

(b) The VOC content of a tint base shall be determined without colorant that is added after the tint base is manufactured.

(c) If the manufacturer does not recommend thinning, the VOC content shall be calculated for the product as supplied.

(d) If the manufacturer recommends thinning, the VOC content shall be calculated including the maximum amount of thinning solvent recommended by the manufacturer.

(e) If the coating is a multi-component product, the VOC content shall be calculated as mixed or catalyzed.

(f) The coating contains silanes, siloxanes, or other ingredients that generate ethanol or other VOC during the curing

process, the VOC content shall include the VOCs emitted during curing.

(2) VOC content of coatings.

(a) To determine the VOC content of a coating, the manufacturer may use EPA Method 24, SCAQMD Method 304-91 (revised February 1996), or an alternative method, formulation data, or any other reasonable means for predicting that the coating has been formulated as intended (e.g., quality assurance checks, recordkeeping).

(b) If there are any inconsistencies between the results of EPA Method 24 test and any other means for determining VOC content, the EPA Method 24 test results will govern.

(c) The exempt compounds content shall be determined by ASTM D 3960-05, SCAQMD Method 303-91 (Revised 1993), BAAQMD Method 43 (Revised 1996), or BAAQMD Method 41 (Revised 1995), as applicable.

(3) Methacrylate traffic marking coatings. Analysis of methacrylate multicomponent coatings used as traffic marking coatings shall be conducted according to a modification of EPA Method 24 (40 CFR 59, subpart D, Appendix A), which has not been approved for methacrylate multicomponent coatings used for purposes other than as traffic marking coatings or for other classes of multicomponent coatings.

(4) Flame spread index. The flame spread index of a fire-retardant coating shall be determined by ASTM E84-10, "Standard Test Method for Surface Burning Characteristics of Building Materials."

(5) Fire resistance rating. The fire resistance rating of a fire-resistive coating shall be determined by ASTM E119-08, "Standard Test Methods for Fire Tests of Building Construction and Materials."

(6) Gloss determination. The gloss of a coating shall be determined by ASTM D523-89 (1999), "Standard Test Method for Specular Gloss."

(7) Metal content of coatings. The metallic content of a coating shall be determined by SCAQMD Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction, SCAQMD Laboratory Methods of Analysis for Enforcement Samples."

(8) Acid content of coatings. The acid content of a coating shall be determined by ASTM D1613-06, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products."

(9) Drying times. The set-to-touch, dry-hard, dry-to-touch and dry-to-recoat times of a coating shall be determined by ASTM D1640-95 (1999), "Standard Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature," and the tack-free time of a quick-dry enamel coating shall be determined by the Mechanical Test Method of ASTM D1640-95.

(10) Surface chalkiness. The chalkiness of a surface shall be determined by using ASTM D4214-07, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films."

(11) Exempt compounds-siloxanes. Exempt compounds that are cyclic, branched, or linear, completely methylated siloxanes, shall be analyzed as exempt compounds by methods referenced in ASTM D 3960-05, "Standard Practice for Determining Volatile Organic Compound (VOC) Content of Paints and Related Coatings" or by BAAQMD Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based

Coatings, Inks, and Related Materials," BAAQMD Manual of Procedures, Volume III, adopted November 6, 1996.

(12) Exempt compounds-parachlorobenzotrifluoride (PCBTF). The exempt compound PCBTF, shall be analyzed as an exempt compound by methods referenced in ASTM D 3960-05 "Standard Practice for Determining Volatile Organic Compound (VOC) Content of Paints and Related Coatings" or by BAAQMD Method 41, "Determination of Volatile Organic Compounds in Solvent Based Coatings and Related Materials Containing Parachlorobenzotrifluoride," BAAQMD Manual of Procedures, Volume III, adopted December 20, 1995.

(13) Tub and tile refinish coating adhesion. The adhesion of tub and tile coating shall be determined by ASTM D4585-99, "Standard Practice for Testing Water Resistance of Coatings Using Controlled Condensation" and ASTM D3359-02, "Standard Test Methods for Measuring Adhesion by Tape Test."

(14) Tub and tile refinish coating hardness. The hardness of tub and tile refinish coating shall be determined by ASTM D3363-05, "Standard Test Method for Film Hardness by Pencil Test."

(15) Tub and tile refinish coating abrasion resistance. Abrasion resistance of tub and tile refinish coating shall be analyzed by ASTM D4060-07, "Standard Test Methods for Abrasion Resistance of Organic Coatings by the Taber Abraser."

(16) Tub and tile refinish coating water resistance. Water resistance of tub and tile refinish coatings shall be determined by ASTM D4585-99, "Standard Practice for Testing Water Resistance of Coatings Using Controlled Condensation" and ASTM D714-02e1, "Standard Test Method for Evaluating Degree of Blistering of Paints."

(17) Waterproofing membrane. Waterproofing membrane shall be tested by ASTM C836-06, "Standard Specification for High Solids Content, Cold Liquid-Applied Elastomeric Waterproofing Membrane for Use with Separate Wearing Course."

(18) Reactive penetrating sealer and reactive carbonate sealer water repellency. Reactive penetrating sealer and reactive carbonate sealer water repellency shall be analyzed by ASTM C67-07, "Standard Test Methods for Sampling and Testing Brick and Structural Clay Tile;" ASTM C97-02, "Standard Test Methods for Absorption and Bulk Specific Gravity of Dimension Stone;" or ASTM C140-06, "Standard Test Methods for Sampling and Testing Concrete Masonry Units and Related Units."

(19) Reactive penetrating sealer and reactive penetrating carbonate sealer water vapor transmission. Reactive penetrating sealer and reactive penetrating carbonate sealer water vapor transmission shall be analyzed ASTM E96/E96M-05, "Standard Test Method for Water Vapor Transmission of Materials."

(20) Reactive penetrating sealer -chloride screening applications. Reactive penetrating sealers shall be analyzed by National Cooperative Highway Research Report 244 (1981), "Concrete Sealers for the Protection of Bridge Structures."

(21) Stone consolidants. Stone consolidants shall be tested by using ASTM E2167-01, "Standard Guide for Selection and Use of Stone Consolidants."

(22) Radiation resistance -nuclear coatings. The radiation resistance of a nuclear coating shall be determined by ASTM D 4082-02, "Standard Test Method for Use in Light Water Nuclear Power Plants."

(23) Chemical resistance-nuclear coatings. The chemical resistance of nuclear coatings shall be determined by ASTM D3912-95 (2001), "Standard Test Method for Chemical Resistance of Coatings Used in Light Water Nuclear Power Plants."

**R307-361-9. Compliance Schedule.**

Persons subject to this rule shall be in compliance by ~~September 1, 2014~~ January 1, 2015.

**KEY: air pollution, emission controls, architectural coatings**  
**Date of Enactment or Last Substantive Amendment: 2013**  
**Authorizing, and Implemented or Interpreted Law: 19-2-104(1); 19-2-101**

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**End of the Notices of Changes in Proposed Rules Section**



# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to remove obsolete rules from the Utah Administrative Code. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **NOTICE**. By filing a Notice, the agency indicates that the rule is still necessary.

**NOTICES** are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. **NOTICES** are effective upon filing.

**NOTICES** are governed by Section 63G-3-305.

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## Commerce, Occupational and Professional Licensing

### **R156-5a**

#### Podiatric Physician Licensing Act Rule

##### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 37997  
FILED: 09/16/2013

##### **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: Title 58, Chapter 5a, provides for the licensure of podiatric physicians. Subsection 58-1-106(1) (a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-5a-201(3) provides that the Podiatric Physician Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the division director. This rule was enacted to clarify the provisions of Title 58, Chapter 5a, with respect to podiatric physicians.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in October 2008, no written comments have been received by the Division with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements

for licensure as allowed under statutory authority provided in Title 58, Chapter 5a, with respect to podiatric physicians. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Noel Taxin by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at [ntaxin@utah.gov](mailto:ntaxin@utah.gov)

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 09/16/2013

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## Commerce, Occupational and Professional Licensing

### **R156-63a**

#### Security Personnel Licensing Act Contract Security Rule

##### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 37974  
FILED: 09/09/2013

**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: Title 58, Chapter 63, provides for the licensure of contract security companies, armed private security officers, and unarmed private security officers, as well as armored car companies and armored car security officers. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-63-201(3)(a) provides that the Security Services Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 63a, with respect to contract security companies, armed private security officers and unarmed private security officers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the rule was reviewed in November 2008, the Division received numerous written comments as a result of proposed amendments which were filed in January 2011. The following written comments supported the proposed amendment to increase the basic training hours from 8 hours to 24 hours: 02/08/2011 letter from Roger McIliff/Peak Alarm Guard and Patrol; 02/07/2011 letter from Joseph W. Chapman; 02/14/2011 letter from Utah Security Association/Lynette Phillips; 02/10/2011 email from Tina Hansen/Andrews International and an undated letter from William Sandoval/Pride Investigations and Security. The following written comments opposed the proposed amendment to increase the basic training hours from 8 hours to 24 hours: 02/09/2011 email from Jim Young/The Whitestone Group; 02/10/2011 letter from SOS Security Inc.; 02/12/2011 letter from Contemporary Service Corp.; 02/01/2011 letter from Lewis Kennedy/American Patriot Security Inc.; 01/27/2011 email from Paul Rothe; 01/27/2011 letter from David Purdle/US Security Associates; 02/09/2011 email from Jonna Young; 01/26/2011 letter from Professional Alliance of Contract Security Companies; and a 10/15/2010 letter from Professional Alliance of Contract Security Companies. The Division and the Security Services Licensing Board considered all written comments, as well as comments made during a 02/15/2011 rule hearing. As a result of the Division and Board review, the January 2011 proposed amendments in DAR No. 34370 were made effective on 03/24/2011 with no additional changes being made in the proposed amendments.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in

Title 58, Chapter 63, with respect to contract security companies, armed private security officers and unarmed private security officers. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions and ethical standards relating to the profession.

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:

♦ April Ellis by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at [aprilellis@utah.gov](mailto:aprilellis@utah.gov)

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 09/09/2013

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**Commerce, Occupational and  
Professional Licensing  
R156-63b  
Security Personnel Licensing Act  
Armored Car Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 37975

FILED: 09/09/2013

**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: Title 58, Chapter 63, provides for the licensure of armored car companies and armored car security officers, as well as contract security companies, armed private security officers, and unarmed private security officers. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-63-201(3)(a) provides that the Security Services Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter



63b, with respect to armored car companies and armored car security officers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the rule was enacted in November 2008, the Division has received no written comments with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 63, with respect to armored car companies and armored car security officers. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions and ethical standards relating to the profession.

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:

◆ April Ellis by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at [apriellellis@utah.gov](mailto:apriellellis@utah.gov)

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 09/09/2013

Education, Administration

**R277-106**

Utah Professional Practices Advisory  
Commission Appointment Process

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 37966  
FILED: 09/09/2013

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-6-303(1)(a) directs the Utah State Board of Education (Board) to adopt rules establishing procedures for nominating and appointing Utah Professional Practices Advisory Commission (UPPAC) members and Subsection 53A-1-401(3) allows the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written 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: This rule continues to be necessary because the rule establishes nomination and appointment procedures for UPPAC members as required by law. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

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

EFFECTIVE: 09/09/2013

Education, Administration

**R277-404**

Requirements for Assessments of  
Student Achievement

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 37993  
FILED: 09/13/2013

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 53A-1-603 through 53A-1-611 direct the Utah State Board of Education (Board) to adopt rules for the maintenance and administration of U-PASS and Subsection 53A-1-401(3) allows the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides standards and procedures for a Board-developed and directed comprehensive assessment system for all students as required by state and federal law. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

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

EFFECTIVE: 09/13/2013

Education, Administration

**R277-705**

Secondary School Completion and Diplomas

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 37994  
FILED: 09/13/2013

**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 53A-1-402(1)(b) and (c) direct the Utah State Board of Education (Board) to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements. Subsection 53A-1-401(3) allows the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides alternative methods for students to earn and schools to award credit, and it provides procedures for the assessment of all students as required by law. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

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

EFFECTIVE: 09/13/2013

Human Services, Administration

**R495-879**

Parental Support for Children in Care

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 37983  
FILED: 09/10/2013

**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-11-107 authorizes the Office of Recovery Services (ORS) to adopt, amend, and enforce rules as necessary. Section 78A-6-1106 allows ORS to collect child support payments to reimburse the state for money it has expended on behalf of a child in the care or custody of the state, and requires the parents, a parent, or any other obligated person to pay child support for each month the child is in the care or custody of the state. In addition, the rule is enacted under Section 62A-15-607, which requires the division to determine the actual expenses for caring for a patient at the state hospital and the parents are responsible for the support of their child while the child is in the care of the state hospital. The rule clarifies that a child support obligation shall be calculated for children in care based on the Child Support Guidelines in accordance with Sections 78B-12-201, and 78B-12-203 through 78B-12-216, 78B-12-219, 78B-12-301, and 78B-12-302. The rule provides the authority for ORS to modify and establish child support orders through the Child Support Services Act, Section 62A-11-301 et seq., Administrative Procedures Act, Section 63G-4-102 and Jurisdiction Determination of Custody questions by Juvenile Court, Subsection 78A-6-104, and in accordance with Rule R527-200. The rule explains juvenile court jurisdiction in accordance with Section 78A-6-104. Also, the rule explains that a natural or an adoptive parent is not relieved of the primary obligation to support that child until the child reaches the age of majority if the child becomes a ward of the state in agreement with Section 78B-12-106. The rule clarifies that a rebate shall be given to a parent for support paid when a child's overnight visits equal 25% or more of the service period, how the rebate will be calculated and the time frame for when the rebate is appropriate.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received since the 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: It is necessary to continue this rule to provide information regarding the Office of Recovery Services' ongoing responsibility in regards to children that are placed in the care and custody of the state. In addition, the rule should be continued to ensure that child support obligations continue to be standardized for all agencies that place a child in the care or custody of the state.

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

DHS ADMINISTRATIVE OFFICE  
MULTI STATE OFFICE BUILDING  
195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Shancie Nance by phone at 801-536-8191, by FAX at 801-536-8509, or by Internet E-mail at snance@utah.gov

AUTHORIZED BY: Palmer DePaulis, Executive Director

EFFECTIVE: 09/10/2013

**Public Service Commission,  
Administration  
R746-600  
Postretirement Benefits other than  
Pensions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 37983  
FILED: 09/11/2013

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: As a part of its ratemaking authority in Section 54-4-1, the Public Service Commission must make determinations regarding the accounting of utility costs such as postretirement benefits.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received since the last review in September 2008.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary in order for the Commission to determine how postretirement benefits are accounted for by the utility companies. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
PUBLIC SERVICE COMMISSION  
ADMINISTRATION  
HEBER M WELLS BLDG

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

◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

DIRECT QUESTIONS REGARDING THIS RULE TO:  
◆ Jordan White by phone at 801-530-6712, or by Internet E-mail at jordanwhite@utah.gov

AUTHORIZED BY: Jordan White, Legal Counsel

EFFECTIVE: 09/11/2013

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**End of the Five-Year Notices of Review and Statements of Continuation Section**

## NOTICES OF RULE EFFECTIVE DATES

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State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a Notice of Effective Date within 120 days from the publication of a Proposed Rule or a related Change in Proposed Rule the rule lapses and the agency must start the rulemaking process over.

Notices of Effective Date are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

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### Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

### Administrative Services

Facilities Construction and Management

No. 37848 (AMD): R23-30. State Facility Energy Efficiency Fund

Published: 08/01/2013

Effective: 09/10/2013

### Agriculture and Food

Animal Industry

No. 37850 (AMD): R58-18. Elk Farming

Published: 08/01/2013

Effective: 09/10/2013

### Environmental Quality

Air Quality

No. 37703 (AMD): R307-214. National Emission Standards for Hazardous Air Pollutants

Published: 07/01/2013

Effective: 09/12/2013

### Governor

Economic Development, Pete Suazo Utah Athletic Commission

No. 37672 (AMD): R359-1. Pete Suazo Utah Athletic Commission Act Rule

Published: 06/15/2013

Effective: 09/13/2013

### Insurance

Administration

No. 37849 (AMD): R590-247. Universal Health Insurance Application Rule

Published: 08/01/2013

Effective: 09/10/2013

### Professional Practices Advisory Commission

Administration

No. 37674 (AMD): R686-101 (Changed to R686-104).

Alcohol Related Offenses

Published: 06/15/2013

Effective: 09/10/2013

No. 37675 (AMD): R686-102 (Changed to R686-105). Drug Related Offenses

Published: 06/15/2013

Effective: 09/10/2013

### Transportation

Motor Carrier

No. 37844 (AMD): R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification

Published: 08/01/2013

Effective: 09/10/2013

### Workforce Services

Employment Development

No. 37644 (AMD): R986-100-117. Disqualification For Fraud (Intentional Program Violations or IPVs)

Published: 06/15/2013

Effective: 09/10/2013

**End of the Notices of Rule Effective Dates Section**



**RULES INDEX  
BY AGENCY (CODE NUMBER)  
AND  
BY KEYWORD (SUBJECT)**

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The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2013 through September 16, 2013. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

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## RULES INDEX - BY AGENCY (CODE NUMBER)

### ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>ADMINISTRATIVE SERVICES</b>					
<u>Administration</u>					
R13-1	Public Petitions for Declaratory Orders	37839	5YR	07/11/2013	2013-15/123
<u>Archives</u>					
R17-5	Definitions for Rules in Title R17	37653	5YR	05/17/2013	2013-12/49
R17-6	Records Storage and Disposal at the State Records Center	37654	5YR	05/17/2013	2013-12/49
R17-7	Archival Records Care and Access at the State Archives	37659	5YR	05/28/2013	2013-12/50
R17-7	Archival Records Care and Access at the State Archives	37658	AMD	08/15/2013	2013-12/8
R17-8	Application of Microfilm Standards	37655	5YR	05/17/2013	2013-12/50
<u>Facilities Construction and Management</u>					
R23-13	State of Utah Parking Rules for Facilities Managed by the Division of Facilities and Construction and Management	37357	5YR	02/20/2013	2013-6/49
R23-22	General Procedures for Acquisition and Selling of Real Property	37358	5YR	02/20/2013	2013-6/49
R23-30	State Facility Energy Efficiency Fund	37845	5YR	07/15/2013	2013-15/123
R23-30	State Facility Energy Efficiency Fund	37848	AMD	09/10/2013	2013-15/8
<u>Finance</u>					
R25-5	Payment of Per Diem to Boards	37521	5YR	04/15/2013	2013-9/29
R25-5	Payment of Per Diem to Boards	37558	AMD	06/21/2013	2013-10/6
R25-6	Relocation Reimbursement	37522	5YR	04/15/2013	2013-9/29
R25-7	Travel-Related Reimbursements for State Employees	37523	5YR	04/15/2013	2013-9/30
R25-7	Travel-Related Reimbursements for State Employees	37556	AMD	06/21/2013	2013-10/7
R25-8	Overtime Meal Allowance	37524	5YR	04/15/2013	2013-9/30
R25-8	Overtime Meal Allowance	37557	AMD	06/21/2013	2013-10/12
<u>Fleet Operations</u>					
R27-3	Vehicle Use Standards	36949	AMD	03/07/2013	2012-22/11
R27-3-5	Personal Use Standards	37392	AMD	06/07/2013	2013-7/4
<u>Purchasing and General Services</u>					
R33-3-3	Small Purchases	37633	EMR	05/15/2013	2013-11/81
R33-11	Surplus Property	37937	EMR	08/23/2013	2013-18/53
<u>Records Committee</u>					
R35-1-3	Issuing the Committee Decision and Order	37773	AMD	08/30/2013	2013-14/8



AGRICULTURE AND FOOD

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R58-1	Admission and Inspection of Livestock, Poultry and Other Animals	37811	AMD	08/21/2013	2013-14/9
R58-6	Poultry	37248	R&R	03/25/2013	2013-4/6
R58-18	Elk Farming	37246	AMD	03/25/2013	2013-4/12
R58-18	Elk Farming	37850	AMD	09/10/2013	2013-15/15
R58-19	Compliance Procedures	37247	AMD	03/25/2013	2013-4/13
R58-21	Trichomoniasis	36962	AMD	01/04/2013	2012-22/16

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R64-2	Utah Conservation Commission Proposed Electronic Meetings	37698	5YR	06/04/2013	2013-13/229
R64-2	Utah Conservation Commission Electronic Proposed Meetings	37680	AMD	08/21/2013	2013-13/2

Horse Racing Commission (Utah)

R52-7	Horse Racing	37420	EMR	03/20/2013	2013-8/47
R52-7	Horse Racing	37860	EMR	07/18/2013	2013-16/61

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R68-1	Utah Bee Inspection Act Governing Inspection of Bees	37631	NSC	06/07/2013	Not Printed
R68-2	Utah Commercial Feed Act Governing Feed.	37632	NSC	06/07/2013	Not Printed
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R70-320-18	Transport Tanks, Operators	36915	AMD	01/29/2013	2012-21/8
R70-330	Raw Milk for Retail	36914	AMD	01/29/2013	2012-21/9
R70-330	Raw Milk for Retail	37620	EMR	05/14/2013	2013-11/84

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Administration

R81-1-31	Duties of the Commission Subcommittees	37611	EMR	05/13/2013	2013-11/88
R81-1-31	Duties of Commission Subcommittees	37363	AMD	06/25/2013	2013-6/4
R81-1-31	Duties of Commission Subcommittees	37363	CPR	06/25/2013	2013-10/206
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R81-4A-2	Application	37615	AMD	07/30/2013	2013-11/6
R81-4B-2	Application	37368	AMD	04/30/2013	2013-6/6
R81-4C	Limited Restaurant Licenses	37834	5YR	07/10/2013	2013-15/124
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R81-4C-2	Application	37616	AMD	07/30/2013	2013-11/7
R81-4D	On-Premise Banquet License	37835	5YR	07/11/2013	2013-15/125
R81-4D-2	Application	37370	AMD	04/30/2013	2013-6/8
R81-4E-2	Application	37371	AMD	04/30/2013	2013-6/9
R81-4F-2	Application	37372	AMD	04/30/2013	2013-6/10
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R81-9-1	Application	37377	AMD	04/30/2013	2013-6/12
R81-10	Off-Premise Beer Retailers	37673	5YR	05/31/2013	2013-12/51
R81-10A-3	Application	37374	AMD	04/30/2013	2013-6/13
R81-10B	Temporary Beer Event Permits	37836	5YR	07/11/2013	2013-15/125
R81-10C-2	Application	37375	AMD	04/30/2013	2013-6/14
R81-10D-2	Application	37376	AMD	04/30/2013	2013-6/15
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R156-11a	Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule	37697	AMD	08/08/2013	2013-13/3
R156-17b	Pharmacy Practice Act Rule	37707	AMD	08/08/2013	2013-13/7
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R156-24b-503	Physical Therapist Supervisory Authority and Responsibility	37526	AMD	06/10/2013	2013-9/2
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R156-37-502	Unprofessional Conduct	37175	NSC	01/30/2013	Not Printed
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R156-37f	Controlled Substance Database Act Rule	37039	NEW	01/08/2013	2012-23/21
R156-44a	Nurse Midwife Practice Act Rules	37071	AMD	01/22/2013	2012-24/11
R156-49	Dietitian Certification Act Rule	37273	5YR	02/07/2013	2013-5/189
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R156-63b	Security Personnel Licensing Act Armored Car Rule	37975	5YR	09/09/2013	Not Printed
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R156-68-306	Exemptions from Licensure	37271	AMD	04/08/2013	2013-5/11
R156-69-302b	Qualifications for Licensure - Examination Requirements - Dentist	37706	AMD	08/08/2013	2013-13/24
R156-70a-304	Continuing Education	37705	AMD	08/08/2013	2013-13/25
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R162-2g	Real Estate Appraiser Licensing and Certification Administrative Rules	37750	AMD	08/21/2013	2013-14/28
R162-57a	Timeshare and Camp Resort Rules	37076	AMD	04/02/2013	2012-24/14

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R270-1	Award and Reparation Standards	37166	NSC	01/30/2013	Not Printed
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R270-2	Crime Victim Reparations Adjudicative Proceedings	37167	NSC	01/30/2013	Not Printed

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R277-113-5	Required LEA Fiscal Policies	37538	NSC	05/17/2013	Not Printed
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R277-404	Requirements for Assessments of Student Achievement	37993	5YR	09/13/2013	Not Printed
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R277-406	K-3 Reading Improvement Program and the State Reading Goal	37734	AMD	08/07/2013	2013-13/26
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R277-407-3	Classes and Activities During the Regular School Day	37735	AMD	08/07/2013	2013-13/28
R277-411	School District Sponsored School Seminars on Youth Protection-Related Issues	37634	NEW	07/08/2013	2013-11/16
R277-422-3	Requirements and Timelines for State-Supported Voted Local Levy	37736	AMD	08/07/2013	2013-13/29
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R277-436	Gang Prevention and Intervention Programs in the Schools	37627	5YR	05/15/2013	2013-11/97
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R277-445-3	Standards	37737	AMD	08/07/2013	2013-13/30
R277-460	Distribution of Substance Abuse Prevention Account	37628	5YR	05/15/2013	2013-11/98
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R277-477	Distribution of Funds from the Interest and Dividend Account (School LAND Trust Funds) and Administration of the School LAND Trust Program	37738	R&R	08/07/2013	2013-13/32
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R277-490	Beverly Taylor Sorenson Elementary Arts Learning Program	37711	5YR	06/10/2013	2013-13/231
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R277-502	Educator Licensing and Data Retention	37058	AMD	01/07/2013	2012-23/34
R277-502	Educator Licensing and Data Retention	37146	AMD	02/21/2013	2013-2/10
R277-508	Employment of Substitute Teachers	37497	5YR	04/08/2013	2013-9/32
R277-508	Employment of Substitute Teachers	37510	AMD	06/07/2013	2013-9/8
R277-509	Licensure of Student Teachers and Interns	37059	AMD	01/07/2013	2012-23/39
R277-517	Board and UPPAC Disciplinary Definitions and Actions	37147	NEW	02/21/2013	2013-2/15
R277-517-5	Board Disciplinary Actions	37359	NSC	03/15/2013	Not Printed
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R277-702	Procedures for the Utah High School Completion Diploma (Effective on July 1, 2009)	37415	AMD	05/16/2013	2013-7/26
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R651-619	Possession of Alcoholic Beverages or Controlled Substances	37802	5YR	06/27/2013	2013-14/115
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R651-632	Enforcement	37822	5YR	07/05/2013	2013-15/133
R651-633	Special Closures or Restrictions	37205	AMD	03/14/2013	2013-3/100
R651-633	Special Closures or Restrictions	37823	5YR	07/05/2013	2013-15/133
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R655-7	Administrative Procedures for Notifying the State Engineer of Sewage Effluent Use or Change in the Point of Discharge for Sewage Effluent	37119	REP	03/07/2013	2013-2/81
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R657-12	Hunting and Fishing Accommodations for People with Disabilities	37225	AMD	04/23/2013	2013-4/24
R657-13	Taking Fish and Crayfish	37069	AMD	01/22/2013	2012-24/29
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R657-20	Falconry	37534	NSC	05/17/2013	Not Printed
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R657-37	Cooperative Wildlife Management Units for Big Game or Turkey	37593	5YR	05/06/2013	2013-11/104
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R657-64	Predator Control Incentives	37609	AMD	07/08/2013	2013-11/48
R657-65	Urban Deer Control	37716	NEW	08/08/2013	2013-13/195

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R671-510	Evidence for Issuance of Warrants	37457	AMD	05/22/2013	2013-8/26
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R671-513	Expedited Determination of Parolee Challenge to Probable Cause	37459	AMD	05/22/2013	2013-8/28
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R686-102 (Changed to R686-105)	Drug Related Offenses	37675	AMD	09/10/2013	2013-12/34
R686-104 (Changed to R686-103)	Utah Professional Practices Advisory Commission Review of License Due to Background Check Offenses	37863	NSC	09/10/2013	Not Printed

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R722-900	Review and Challenge of Criminal Record	37769	R&R	08/21/2013	2013-14/81

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R708-21	Third-Party Testing	37717	AMD	08/08/2013	2013-13/198
R708-30	Motorcycle Rider Training Schools	37613	5YR	05/13/2013	2013-11/105
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R746-330	Rules for Water and Sewer Utilities Operating in Utah	37385	5YR	03/05/2013	2013-7/68
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R746-340	Service Quality for Telecommunications Corporations	37758	5YR	06/24/2013	2013-14/120
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R765-254	Secure Area Hearing Rooms	37552	5YR	04/29/2013	2013-10/216
R765-555	Policy on Colleges and Universities Providing Facilities, Goods and Services in Competition with Private Enterprise	37553	5YR	04/29/2013	2013-10/217
R765-604	New Century Scholarship	37586	AMD	07/08/2013	2013-11/61
R765-605	Utah Centennial Opportunity Program for Education	37539	5YR	04/24/2013	2013-10/217
R765-605	Utah Centennial Opportunity Program for Education	37547	AMD	06/24/2013	2013-10/195
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R805-1	Operating Regulations for Bicycles, Skateboards and Scooters	37770	AMD	08/21/2013	2013-14/85
R805-2	Government Records Access and Management Act Procedures	37824	5YR	07/08/2013	2013-15/134

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R810-1-14	Living In A Motor Vehicle On Campus	37098	AMD	03/21/2013	2013-1/13
R810-2-1	Parking Meters	37092	AMD	03/21/2013	2013-1/14
R810-12	Bicycles, Skateboards and Other Toy Vehicles	37387	EXD	03/07/2013	2013-7/71

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R861-1A-26	Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63G-4-204 through 63G-4-209	37104	AMD	02/21/2013	2013-1/15
R861-1A-37	Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404	37106	AMD	02/21/2013	2013-1/17
R861-1A-46	Procedures for Purchaser Refund Requests Pursuant to Utah Code Ann. Sections 59-1-1410 and 59-12-110	37107	AMD	02/21/2013	2013-1/18

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R865-9I-13	Pass-Through Entity Withholding Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2, and 59-10-1405	37108	AMD	02/21/2013	2013-1/20
R865-9I-46	Medical Savings Account Administration Pursuant to Utah Code Ann. Sections 31A-32a-106, 59-10-114, and 59-10-1021	37178	NSC	01/31/2013	Not Printed

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R907-64	Longitudinal and Wireless Access to Interstate Highway Rights-of-Way for Installation of Telecommunications Facilities	37094	R&R	02/07/2013	2013-1/23
R907-64	Longitudinal and Wireless Access to Interstate System Rights-of-Way for Installation of Telecommunication Facilities	37951	5YR	09/03/2013	2013-18/64
R907-65	Compensation Schedule for Longitudinal Access to Interstate Highway Rights-of-Way for Installation of Telecommunications Facilities	37952	5YR	09/03/2013	2013-18/64
R907-67	Debarment of Contractors from Work on Department Projects -- Reasons	37953	5YR	09/03/2013	2013-18/65

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R909-19-7	Towing Notice Requirements	37624	EMR	05/14/2013	2013-11/93

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R930-7-5	Application	37957	NSC	09/13/2013	Not Printed
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R926-10	Tollway Development Agreements	37954	5YR	09/03/2013	2013-18/65
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R940-4	Airports of Regional Significance	37956	5YR	09/03/2013	2013-18/66

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R986-100-118a	Improper Access of Public Assistance Benefits	37541	AMD	06/27/2013	2013-10/200
R986-700-710	Income Limits for ES CC	37025	AMD	01/02/2013	2012-22/146
R986-900-902	Options and Waivers	37067	AMD	01/08/2013	2012-23/50

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R990-101	Qualified Emergency Food Agencies Fund (QEFAF)	37542	AMD	07/01/2013	2013-10/201
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R994-202	Employing Units	37543	5YR	04/25/2013	2013-10/218
R994-208	Wages	37544	5YR	04/25/2013	2013-10/219
R994-305	Collection of Contributions	37066	AMD	01/08/2013	2012-23/52
R994-305-1201	Offer in Compromise	37023	AMD	01/02/2013	2012-22/147
R994-306	Charging Benefit Costs to Employers	37652	5YR	05/16/2013	2013-12/58
R994-307	Social Costs -- Relief of Charges	37651	5YR	05/16/2013	2013-12/59
R994-315	Centralized New Hire Registry Reporting	37650	5YR	05/16/2013	2013-12/59
R994-403	Claim for Benefits	37647	5YR	05/16/2013	2013-12/60
R994-403	Claim for Benefits	37517	AMD	06/12/2013	2013-9/23
R994-403-115c	Period of Ineligibility	37671	AMD	08/01/2013	2013-12/38
R994-405	Ineligibility for Benefits	37648	5YR	05/16/2013	2013-12/60
R994-406	Fraud, Fault and Nonfault Overpayments	37024	AMD	01/02/2013	2012-22/148
R994-406-301	Claimant Fault	37238	AMD	04/02/2013	2013-4/48
R994-406-403	Fraud Disqualification and Penalty	37516	AMD	06/12/2013	2013-9/26

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R994-508-102	Time Limits for Filing an Appeal from an Initial Department Determination	37670	AMD	08/01/2013	2013-12/39

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**ABBREVIATIONS**

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>401 Certification</u>					
Environmental Quality, Water Quality	37362	R317-15	NEW	08/19/2013	2013-6/44
	37362	R317-15	CPR	08/19/2013	2013-14/101
<u>access</u>					
Environmental Quality, Drinking Water	37732	R309-545	NSC	07/09/2013	Not Printed
<u>access to information</u>					
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	37654	R17-6	5YR	05/17/2013	2013-12/49
	37659	R17-7	5YR	05/28/2013	2013-12/50
	37658	R17-7	AMD	08/15/2013	2013-12/8
	37655	R17-8	5YR	05/17/2013	2013-12/50
<u>access to records</u>					
Public Safety, Criminal Investigations and Technical Services, Criminal Identification	37769	R722-900	R&R	08/21/2013	2013-14/81
<u>accessing records</u>					
Human Services, Recovery Services	37668	R527-5-3	AMD	07/22/2013	2013-12/30
<u>acquit</u>					
Pardons (Board Of), Administration	37352	R671-519	5YR	02/15/2013	2013-5/217
	37464	R671-519	AMD	05/22/2013	2013-8/35
<u>adhesives</u>					
Environmental Quality, Air Quality	37275	R307-342	NEW	08/01/2013	2013-5/17
	37275	R307-342	CPR	08/01/2013	2013-13/208
<u>adjudicative procedures</u>					
Environmental Quality, Administration	36554	R305-6	REP	01/31/2013	2012-16/28
	36554	R305-6	CPR	01/31/2013	2013-1/32
	36553	R305-7	NEW	01/31/2013	2012-16/45
	36553	R305-7	CPR	01/31/2013	2013-1/32
<u>adjudicative proceedings</u>					
Environmental Quality, Drinking Water	37783	R309-115	NSC	07/19/2013	Not Printed
Environmental Quality, Environmental Response and Remediation	37513	R311-500	NSC	04/29/2013	Not Printed
Environmental Quality, Radiation Control	37192	R313-17	AMD	03/19/2013	2013-3/40
Environmental Quality, Solid and Hazardous Waste	37314	R315-12	AMD	04/25/2013	2013-5/101
Environmental Quality, Water Quality	37239	R317-9	5YR	01/31/2013	2013-4/51

<u>administrative fines</u>					
Commerce, Securities	37660	R164-31	5YR	05/28/2013	2013-12/52
	37042	R164-31-1	AMD	01/08/2013	2012-23/26
<u>administrative law</u>					
Human Services, Recovery Services	37113	R527-258	AMD	02/22/2013	2013-2/20
<u>administrative procedures</u>					
Administrative Services, Administration	37839	R13-1	5YR	07/11/2013	2013-15/123
Commerce, Real Estate	36973	R162-2g	AMD	01/02/2013	2012-22/19
Crime Victim Reparations, Administration	37063	R270-2	AMD	01/07/2013	2012-23/33
	37167	R270-2	NSC	01/30/2013	Not Printed
Environmental Quality, Administration	36554	R305-6	REP	01/31/2013	2012-16/28
	36554	R305-6	CPR	01/31/2013	2013-1/32
	36553	R305-7	NEW	01/31/2013	2012-16/45
	36553	R305-7	CPR	01/31/2013	2013-1/32
Environmental Quality, Drinking Water	37781	R309-100	NSC	07/19/2013	Not Printed
Environmental Quality, Radiation Control	37192	R313-17	AMD	03/19/2013	2013-3/40
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	37574	R477-15	AMD	07/01/2013	2013-10/180
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	37139	R612-11	REP	02/25/2013	2013-2/54
	37140	R612-12	REP	02/25/2013	2013-2/55
	37141	R612-13	REP	02/25/2013	2013-2/57
	37124	R612-100	NEW	02/25/2013	2013-2/58
Lieutenant Governor, Administration	37910	R622-1	5YR	08/09/2013	2013-17/57
Natural Resources, Forestry, Fire and State Lands	37751	R652-7	5YR	06/19/2013	2013-14/117
	37623	R652-70-2300	AMD	07/08/2013	2013-11/46
<u>administrative proceedings</u>					
Commerce, Real Estate	37677	R162-2e	AMD	08/28/2013	2013-12/19
Environmental Quality, Drinking Water	37783	R309-115	NSC	07/19/2013	Not Printed
Environmental Quality, Environmental Response and Remediation	37482	R311-201	NSC	04/29/2013	Not Printed
	37513	R311-500	NSC	04/29/2013	Not Printed
Environmental Quality, Solid and Hazardous Waste	37314	R315-12	AMD	04/25/2013	2013-5/101
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	37146	R277-502	AMD	02/21/2013	2013-2/10	
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	37507	R277-498-4	NSC	04/29/2013	Not Printed	
	37147	R277-517	NEW	02/21/2013	2013-2/15	
	37359	R277-517-5	NSC	03/15/2013	Not Printed	
	37399	R277-518	5YR	03/12/2013	2013-7/61	
	37537	R277-531-3	AMD	06/24/2013	2013-10/26	
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	37218	R414-306	5YR	01/23/2013	2013-4/55	
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	37396	R156-82	NSC	04/01/2013	Not Printed	
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	37223	R414-308	5YR	01/23/2013	2013-4/55
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	37409	R426-2	EMR	03/14/2013	2013-7/55
	37411	R426-2	NEW	05/30/2013	2013-7/32
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	37410	R426-6	NEW	05/30/2013	2013-7/36
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	36725	R307-340	CPR	02/01/2013	2013-1/48
	36727	R307-345	NEW	02/01/2013	2012-19/67
	36727	R307-345	CPR	02/01/2013	2013-1/54
	36728	R307-346	NEW	02/01/2013	2012-19/69
	36728	R307-346	CPR	02/01/2013	2013-1/57
	36729	R307-347	NEW	02/01/2013	2012-19/71
	36729	R307-347	CPR	02/01/2013	2013-1/59
	36730	R307-348	NEW	02/01/2013	2012-19/73
	36730	R307-348	CPR	02/01/2013	2013-1/61
	36731	R307-349	NEW	02/01/2013	2012-19/74
	36731	R307-349	CPR	02/01/2013	2013-1/63
	36732	R307-350	NEW	02/01/2013	2012-19/76
	36732	R307-350	CPR	02/01/2013	2013-1/65
	36734	R307-352	NEW	02/01/2013	2012-19/84
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	37410	R426-6	NEW	05/30/2013	2013-7/36

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	36727	R307-345	CPR	02/01/2013	2013-1/54
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Health, Disease Control and Prevention, Environmental Services	37589	R392-103	NEW	08/01/2013	2013-11/28	
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	37744	R277-606	REP	08/07/2013	2013-13/55
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	37235	R307-351-4	NSC	02/15/2013	Not Printed
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	37483	R311-203	NSC	04/29/2013	Not Printed	
	37484	R311-204	NSC	04/29/2013	Not Printed	
	37486	R311-206	NSC	04/29/2013	Not Printed	
	37491	R311-212	NSC	04/29/2013	Not Printed	
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Transportation, Administration	37094 37951	R907-64 R907-64	R&R 5YR	02/07/2013 09/03/2013	2013-1/23 2013-18/64	
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<u>MACT</u>						
Environmental Quality, Air Quality	37703	R307-214	AMD	09/12/2013	2013-13/60	
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Public Service Commission, Administration	37116	R746-313	AMD	02/21/2013	2013-2/87	
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	37422	R414-1-5	AMD	05/29/2013	2013-8/10	
	37715	R414-1-5	AMD	08/07/2013	2013-13/123	
	37905	R414-1-5	EMR	08/08/2013	2013-17/41	
	37546	R414-1-30	AMD	07/01/2013	2013-10/142	

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	37578	R414-11	AMD	07/01/2013	2013-10/143
	37656	R414-14A-26	AMD	07/22/2013	2013-12/23
	37177	R414-27	5YR	01/09/2013	2013-3/109
	37085	R414-29	AMD	05/16/2013	2012-24/28
	37085	R414-29	CPR	05/16/2013	2013-7/49
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	37580	R414-52	5YR	05/01/2013	2013-10/214
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	37807	R414-55	5YR	06/28/2013	2013-14/106
	37528	R414-70	AMD	07/01/2013	2013-10/144
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	37577	R414-506	AMD	07/01/2013	2013-10/147
	37665	R414-508	5YR	05/30/2013	2013-12/53
	37548	R414-509	EMR	05/01/2013	2013-10/209
	37549	R414-509	AMD	06/28/2013	2013-10/148
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Governor, Planning and Budget, Inspector General of Medicaid Services (Office of)	37536	R367-1	R&R	06/21/2013	2013-10/135
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Natural Resources, Oil, Gas and Mining; Non-Coal	37467	R647-1	5YR	04/01/2013	2013-8/65	
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	37469	R647-3	5YR	04/01/2013	2013-8/66	
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	37471	R647-5	5YR	04/01/2013	2013-8/67	
	37476	R647-6	5YR	04/02/2013	2013-9/41	
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Environmental Quality, Drinking Water	37724	R309-510	AMD	08/28/2013	2013-13/77	
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onsite professional

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operation and maintenance

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optometry

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orthodontia

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Health, Center for Health Data, Vital Records and Statistics					
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	37513	R311-500	NSC	04/29/2013	Not Printed	
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 37895 R657-59 5YR 08/05/2013 2013-17/59  
 37896 R657-60 5YR 08/05/2013 2013-17/59  
 37609 R657-64 AMD 07/08/2013 2013-11/48  
 37716 R657-65 NEW 08/08/2013 2013-13/195

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 37069 R657-13 AMD 01/22/2013 2012-24/29  
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 36738 R307-343 CPR 05/01/2013 2013-1/49  
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	37125	R612-200	NEW	02/25/2013	2013-2/62
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	37126	R612-300	NEW	02/25/2013	2013-2/66
	37127	R612-400	NEW	02/25/2013	2013-2/76
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	37183	R313-28	NSC	01/31/2013	Not Printed
	37197	R313-30	AMD	03/19/2013	2013-3/76
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	37188	R313-70	NSC	01/31/2013	Not Printed

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