

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed June 16, 2011, 12:00 a.m. through July 01, 2011, 11:59 p.m.

Number 2011-14
July 15, 2011

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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, 4120 State Office Building, Salt Lake City, Utah 84114-1201, telephone 801-538-3764, FAX 801-359-0759. Additional rulemaking information, and electronic versions of all administrative rule publications are available at: <http://www.rules.utah.gov/>

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

Division of Administrative Rules, Salt Lake City 84114

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Utah state bulletin.

Semimonthly.

1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.

I. Utah. Office of Administrative Rules.

KFU440.A73S7

348.792'025--DDC

85-643197

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SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for August 2011 Medicaid Rate Changes

Effective August 1, 2011, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between June 16, 2011, 12:00 a.m., and July 01, 2011, 11:59 p.m. are included in this, the July 15, 2011 issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least August 15, 2011. 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 November 12, 2011, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses and the agency must start the process over.

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

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

The Proposed Rules Begin on the Following Page

Agriculture and Food, Animal Industry
R58-24
Community Spay and Neuter Grants

NOTICE OF PROPOSED RULE

(New Rule)
 DAR FILE NO.: 34957
 FILED: 06/21/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Creation of rule in response to amendments made to Title 4, Chapter 40, that were enacted by H.B. 495, Animal Control Modification, from the 2011 General Session.

SUMMARY OF THE RULE OR CHANGE: This rule provides the requirements and procedures for community spay and neuter grants established by Title 4, Chapter 40, and defines what constitutes a person having low income for purposes of that statute.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 4-40-102(5)(c)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will be a cost to administer the program that will have to be absorbed by the existing budget.
- ◆ **LOCAL GOVERNMENTS:** For city or county animal services that apply for the grants, they may see a lower operational budget if they currently provide for low cost spay and neuter procedures.
- ◆ **SMALL BUSINESSES:** This may give more business to veterinarians that have small animal practices and provide the service.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The low income individual may be able to receive a cost reduction if they have an animal that has a spay or neuter procedure, 501(c)(3) organizations may be able to reduce their costs if they are providing this service to low income individuals at this time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Administrative costs are to be borne by the Department and all organizations that receive grants.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to the statute made by the last legislature will allow more organizations to apply for the grant funds and more veterinary practitioners will be encouraged to provide these services.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 AGRICULTURE AND FOOD
 ANIMAL INDUSTRY
 350 N REDWOOD RD
 SALT LAKE CITY, UT 84116-3034
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Bruce King by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at bking@utah.gov
- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
- ◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
- ◆ Wyatt Frampton by phone at 801-538-7165, by FAX at 801-538-7169, or by Internet E-mail at wframpton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Leonard Blackham, Commissioner

R58. Agriculture and Food, Animal Industry.

R58-24. Community Spay and Neuter Grants.

R58-24-1. Authority and Purpose.

(1) This rule provides the requirements and procedures for community spay and neuter grants established by Title 4, Chapter 40 and defines what constitutes a person having low income for purposes of that statute.

(2) It is authorized by Section 4-40-102 (5)(c).

R58-24-2. Definitions.

The definitions as they appear in Section 4-40-102 (4) apply. In addition, "Department" means the Utah Department of Agriculture and Food.

R58-24-3. Grant Application.

An applicant responding to a request for grant application under this program shall submit its application as directed in the grant application guidance issued by the Department.

(1) An applicant with an organization that is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code shall submit an annual report for the organization as a whole which shall provide for the most current year end:

(a) IRS form 990 for non-profit corporation qualified under I.R.C. Section 501 (c)(3);

(b) a statement of assets, liabilities and fund balance;

(c) a statement of operations showing by summary sources of revenue and expenditures;

(d) a statement of mission or purpose and how the organization has met its objectives; and

(e) a list of directors and key administrators who are in control of the organization.

(2) An applicant which operates as a city or county animal shelter shall submit:

(a) a statement of mission or purpose and how the organization has met its objectives; and

(b) a list of directors and key administrators who are in control of the organization.

R58-24-4. Criteria for Awarding Grants.

In awarding grants, the Department shall consider the extent to which the applicant:

(1) demonstrates that it meets organization criteria in Section 4-40-102 (4);

(2) demonstrates that it will provide spay and neuter services for cats and dogs belonging to a low-income person as required in Section 4-40-102 (4);

(3) provides:

(a) information that requirements established in Section 4-40-102 (5) are met;

(b) an organization operation plan with a statement of specific measurable objectives and methods to be used to assess the achievement of those objectives;

(c) a schedule of fees the voucher shall cover; and

(d) the number of estimated animal procedures to be provided with the grant award.

R58-24-5. Qualified Service Recipient.

(1) A low-income person qualifies under poverty standards established by the applicant organization using the 200 percent of federal poverty level standard. Acceptable proof may be any of the following:

(a) Medicaid enrollment documentation;

(b) CHIP enrollment documentation;

(c) Food Stamps eligibility documentation;

(d) WIC enrollment documentation;

(e) Social Security Disability (SSD);

(f) HUD Section 8 eligibility documentation; or

(g) prior year's income tax return.

(2) The grantee must assure that each individual to whom it provides service under the grant awarded under this rule meets the requirements of this rule and Section 4-40-102 (5).

(3) No funds shall be used for administration costs.

R58-24-6. Quarterly Payments.

Reimbursement of vouchers will occur quarterly.

R58-24-7. Annual Report Requirements.

(1) The grant recipient shall provide an annual report as provided in R58-24-3 above.

(2) The recipient organization shall provide supplementary information related to the spay and neuter services described in the grant application, including a break down of:

(a) the number of cats neutered or spayed and an estimated cost per animal; and

(b) the number of dogs neutered or spayed and an estimated cost per animal.

(3) An organization that receives state funds under Section 4-40-102 must submit to the Department of Agriculture and Food, Animal Industry, an annual accounting of the grant funds including:

(a) the number of vouchers distributed to pet owners for spay and neuter services;

(b) the number of vouchers redeemed for services;

(c) a summary of total cost of voucher services provided; and

(d) an average total procedure cost per animal.

R58-24-8. Audit Provisions.

An organization that receives state funds under Section 4-40-102 must submit, upon request, to a Department audit of the recipients' compliance with the terms of the grant.

KEY: spay, neuter, pets, grants

Date of Enactment or Last Substantive Amendment: 2011

Authorizing, and Implemented or Interpreted Law: 4-40-102(5) (c)

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

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34982

FILED: 06/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Board reviewed the rule and determined amendments should be proposed to modify examination requirements as requested by the public and to make other technical corrections.

SUMMARY OF THE RULE OR CHANGE: Throughout the rule, capitalized the terms "Division" and "Board" where appropriate. In Subsection R156-11a-302a(1), added passing score of at least 75%; in Subsection R156-11a-302a(1)(e), corrected the name of the master esthetician practical examination; in Subsection R156-11a-302a(2), added that all applicants for licensure shall pass with a score of at least 75% the Utah Barber, Cosmetologist/Barber,

Esthetician, Electrologist and Nail Technician Law and Rule Examination; renumbered remaining subsection. In Section R156-11a-302c, added rule and statute citations which have inadvertently been left out from prior rule filings.

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

ANTICIPATED COST OR SAVINGS TO:

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

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

♦ SMALL BUSINESSES: The proposed amendments only apply to licensees in various license classifications provided in Title 58, Chapter 11a, and applicants for licensure in those classifications. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments only apply to licensees in various license classifications provided in Title 58, Chapter 11a, and applicants for licensure in those classifications. The law and rule examination, which is being added for all applicants for licensure under Title 58, Chapter 11a, will be included as a part of the application for licensure and no fees will be required for the this new examination.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensees in various license classifications provided in Title 58, Chapter 11a, and applicants for licensure in those classifications. The law and rule examination, which is being added for all applicants for licensure under Title 58, Chapter 11a, will be included as a part of the application for licensure and no fees will be required for the this new examination.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing clarifies that the required examination must be passed with a 75% passing rate, and adds a Utah law and rule examination to better prepare licensees for their practice, but no additional fee is assessed. It also makes other technical amendments with respect to rule and statute references. No fiscal impact to businesses is anticipated from this rule filing.

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

COMMERCE
OCCUPATIONAL AND PROFESSIONAL
LICENSING

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 08/01/2011 10:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-11a. Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule.
R156-11a-103. Authority - Purpose.

This rule is adopted by the [d]Division under the authority of Subsection 58-1-106(1)(a) to enable the [d]Division to administer Title 58, Chapter 11a.

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

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

(1) Applicants for each classification listed below shall pass within one year prior to the date of application, the respective examination with a passing score of at least 75% as determined by the examination provider.

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

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

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

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

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

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

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

(2) Applicants for licensure shall pass with a score of at least 75% the Utah Barber, Cosmetologist/Barber, Esthetician, Electrologist and Nail Technician Law and Rule Examination.

([2]3) Any equivalent theory, practical or instructor examination approved by the licensing authority of any other state is acceptable for any of the examinations specified in Subsection(1).

R156-11a-302c. Qualifications for Licensure - Acceptance of Credit Hours.

In accordance with Subsection 58-11a-302(18), credit hours toward graduation may be accepted as follows:

(1) A licensed school may accept credit hours toward the curriculum set forth in Sections R156-11a-700, R156-11a-701, R156-11a-702, R156-11a-703, R156-11a-704 and R156-11a-705 from a licensee under Title 58, Chapter 11a, based upon the licensee's schooling, apprenticeship, or experience.

(2) The credit hours accepted toward graduation shall not exceed the number of hours required in Subsections 58-11a-302(1)(d)(i), 58-11a-302(4)(d)(i), 58-11a-302(7)(d), 58-11a-302(10)(d)(i), 58-11a-302(11)(d)(i), and 58-11a-302(14)(d)(i) for that professional license in Utah.

R156-11a-610. Standards for the Use of Acids.

In accordance with Subsections 58-11a-102(25)(b) and (31)(a)(i)(C) and 58-11a-501(17), the standards for the use of any acid or concentration of acids, shall be:

(1) The use of any acid or acid solution which would exfoliate the skin below the stratum corneum, including those listed in Subsections (3) and (4), is prohibited unless used under the supervision of a licensed health care practitioner.

(2) The following acids are prohibited unless used under the supervision of a licensed health care practitioner:

- (a) phenol;
- (b) bichloroacetic acid;
- (c) resorcinol, except as provided in Subsection (4)(b);

and

(d) any acid in any concentration level that requires a prescription.

(3) Limited chemical exfoliation for a basic esthetician does not include the mixing, combining or layering of skin exfoliation products or services, but does include:

(a) alpha hydroxy acids of 30% or less, with a pH of not less than 3.0; and

(b) salicylic acid of 15% or less.

(4) Chemical exfoliation for a master esthetician includes:

(a) acids allowed for a basic esthetician;

(b) modified jessner solution on the face and the tissue immediately adjacent to the jaw line;

(c) alpha hydroxy acids with a pH of not less than 1.0 and at a concentration of 50% must include partially neutralized acids, and any acid above the concentration of 50% is prohibited;

(d) beta hydroxy acids with a concentration of not more than 30%;

(e) trichloroacetic acid, in accordance with Subsection 58-11a-501(17)(c), may be used in a concentration of not more than 15%, but no manual, mechanical or acid exfoliation can be used prior to treatment unless under the general supervision of a licensed health care practitioner; and

(f) vitamin based acids.

(5) A licensee may not apply any exfoliating acid to a client's skin that has undergone microdermabrasion within the previous seven days unless under the general supervision of a licensed health care practitioner.

(6)(a) A licensee shall prepare and maintain current documentation of the licensee's cumulative experience in chemical exfoliation, including:

- (i) courses of instruction;
- (ii) specialized training;
- (iii) on-the-job experience; and
- (iv) the approximate percentage that chemical exfoliation represents in the licensee's overall business.

(b) A licensee shall provide the documentation required by Subsection

(6)(a) to the [d]Division upon request.

(7) A licensee may not use an acid or perform a chemical exfoliation for which the licensee is not competent to use or perform through training and experience and as documented in accordance with Subsection (6).

(8) Only commercially available products utilized in accordance with manufacturers' instructions may be used for chemical exfoliation purposes.

(9) A patch test shall be administered to each client prior to beginning any chemical exfoliation series.

R156-11a-703. Curriculum for Esthetics School -- Master Esthetician Programs.

In accordance with Subsection 58-11a-302(13)(c)(iv), the curriculum for an esthetics school master esthetician program shall consist of 1,200 hours of instruction, 600 of which consist of the curriculum for a basic esthetician program, the remaining 600 of which shall be in the following subject areas:

- (1) introduction consisting of:
 - (a) history of esthetics and master esthetics; and
 - (b) an overview of the curriculum;
- (2) personal, client, and salon safety including:
 - (a) aseptic techniques and sanitary procedures;
 - (b) disinfection and sterilization methods and procedures;

and

- (c) health risks to the master esthetician;
- (3) business and salon management consisting of:
 - (a) developing clients;
 - (b) professional image;
 - (c) professional ethics;
 - (d) professional associations;
 - (e) advertising; and
 - (f) public relations;
- (4) legal issues including:
 - (a) malpractice liability;
 - (b) regulatory agencies; and
 - (c) tax laws;
- (5) the human immune system;
- (6) diseases and disorders of the skin including:
 - (a) bacteriology;
 - (b) sanitation;
 - (c) sterilization;
 - (d) contamination; and
 - (e) infection controls;

- (7) implements, tools and equipment for master esthetics;
- (8) first aid;
- (9) anatomy;
- (10) science of master esthetics;
- (11) analysis of the skin;
- (12) physiology of the skin;
- (13) advanced facials, manual and mechanical;
- (14) chemistry for master esthetics;
- (15) advanced chemical exfoliation, including:
 - (a) pre-exfoliation consultation;
 - (b) post-exfoliation treatments; and
 - (c) reactions;
- (16) temporary removal of superfluous hair by waxing and advanced waxing;
- (17) advanced pedicures;
- (18) advanced Aroma therapy;
- (19) the aging process and its damage to the skin;
- (20) medical devices;
- (21) cardio pulmonary resuscitation (CPR) training;
- (22) hydrotherapy;
- (23) advanced mechanical and electrical devices including instruction in using:
 - (a) sanding and microdermabrasion techniques;
 - (b) galvanic or high-frequency current for treatment of the skin;
 - (c) devices equipped with a brush to cleanse the skin;
 - (d) devices that apply a mixture of steam and ozone to the skin;
 - (e) devices that spray water and other liquids on the skin; and
 - (f) any other mechanical devices, esthetic preparations or procedures approved by the [d]Division in collaboration with the [b]Board for the care and treatment of the skin;
- (24) elective topics;
- (25) for schools teaching lymphatic massage, in accordance with Subsections 58-11a-102(31)(a)(ii) and 58-11a-302(11)(d)(i)(C), 200 hours of instruction is required and shall consist of:
 - (a) 40 hours of training in anatomy and physiology of the lymphatic system;
 - (b) 70 applications of one hour each in manual lymphatic massage of the full body; and
 - (c) 90 hours of training in lymphatic massage by other means, including but not limited to energy, mechanical devices, suction assisted massage with or without rollers, compression therapy with equipment, or garment therapy; and
- (26) Utah Master Esthetician Examination review.

R156-11a-801. Approved Cosmetologist/Barber Apprenticeship Requirements.

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

- (1) The instructor shall have only one apprentice at a time.
- (2) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training".

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

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

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

(6) The instructor shall provide training and technical instruction of 2,500 hours using the curriculum defined in Section R156-11a-705.

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

(8) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-705.

(9) Hours obtained while enrolled in a cosmetology/barber school shall not be used to satisfy the required 2,500 hours of apprentice training.

R156-11a-802. Approved Basic Esthetician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(2), the requirements for an approved basic esthetician apprenticeship include:

(1) The instructor shall have no more than one apprentice at a time.

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

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

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

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

(6) The instructor shall provide training and technical instruction of 800 hours using the curriculum defined in Section R156-11a-702.

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

(8) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours required in technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-702.

(9) Hours obtained while enrolled in an esthetics school or a cosmetology/barber school shall not be used to satisfy the required 800 hours of apprentice training.

R156-11a-803. Approved Master Esthetician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(3), the requirements for an approved master esthetician apprenticeship include:

- (1) The instructor shall have no more than one apprentice at a time.
- (2) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."
- (3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the [d]Division upon request.
- (4) A complete set of esthetics texts shall be available to the apprentice.
- (5) An apprentice may be compensated for services performed.
- (6) The instructor shall provide training and technical instruction of 1,500 hours using the curriculum defined in Section R156-11a-703.
- (7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the required hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Subsection R156-11a-703.

(9) Hours obtained while enrolled in an esthetics school or a cosmetology/barber school shall not be used to satisfy the required 1,500 hours of apprentice training.

R156-11a-804. Approved Nail Technician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(4), the requirements for an approved nail technician apprenticeship include:

- (1) The instructor shall have no more than two apprentices at a time.
- (2) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."
- (3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the [d]Division upon request.
- (4) A complete set of nail technician texts shall be available to the apprentice.
- (5) An apprentice may be compensated for services performed.
- (6) The instructor shall provide training and technical instruction of 375 hours using the curriculum defined in Section R156-11a-704.
- (7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Subsection R156-11a-704.

(9) Hours obtained while enrolled in a nail technology school or a cosmetology/barber school shall not be used to satisfy the required 375 hours of apprentice training.

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

Date of Enactment or Last Substantive Amendment: [November 29, 2010]2011

Notice of Continuation: April 12, 2007

Authorizing, and Implemented or Interpreted Law: 58-11a-101; 58-1-106(1)(a); 58-1-202(1)(a)

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**Commerce, Occupational and
Professional Licensing
R156-47b
Massage Therapy Practice Act Rule**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 34983
FILED: 06/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Board reviewed the rule and determined amendments should be proposed to implement changes to update and clarify the curriculum requirements and equivalent education qualifications for licensure. The proposed amendments also add apprenticeship standards and conduct, add administrative penalties in accordance with H.B. 243 which was passed during the 2011 General Session, and make other technical corrections.

SUMMARY OF THE RULE OR CHANGE: Throughout the rule, capitalized the term "Division" where appropriate. In Section R156-47b-102, updated the definition of "clinic"; added new definitions for "distance learning" and "hands on instruction". The remaining subsections have been renumbered accordingly. In Section R156-47b-302, proposed amendments clarify curriculum registration standards and curriculum requirements for massage schools are updated to include specific areas of instruction to ensure competency. Subsections R156-47b-302a(2) and (3) are being added to provide exclusions for instruction or training while a student as opposed to an apprentice that would qualify an applicant for licensure. In Section R156-47b-302c, minor technical

wording changes are made. Section R156-47b-302e is a new section and is being added to establish standards for massage therapy apprenticeship. In Section R156-47b-502, adds unsupervised practice as a licensed massage apprentice as an unprofessional conduct definition. Section R156-47b-503 is a new section and is being added with respect to administrative penalties.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-47b-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. Also, as a result of the fine authority allowed under H.B. 243, some general fund revenue may be generated. However, the Division is unable to determine any exact amount of revenue due to the lack of any degree of certainty as to how many citations may be issued by the Division to persons engaged in unlawful conduct with respect to the massage therapy profession.

◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed massage therapists and licensed massage apprentices and applicants for licensure in those classifications as well as massage therapy schools. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** The proposed amendments only apply to licensed massage therapists and licensed massage apprentices and applicants for license in those classifications and massage therapy schools. Licensees and applicants for licensure may work in a small business; however, the business would not be directly affected unless persons requiring licensure, who are not licensed, are hired by the business. The Division would then enforce fine authority and penalties granted by H.B. 243. The proposed changes also apply to massage therapy schools, which may qualify as a small business, and licensed massage therapists who supervise massage apprenticeships. There may be some unknown increase in costs to adjust the massage therapy school and apprenticeship curriculums to the updated standards. The Division is not able to determine an exact cost due to a varying degree of current circumstances.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments, with the exception of fine authority and penalties, only apply to licensed massage therapists and licensed massage apprentices and applicants for licensure in those classifications as well as massage therapy schools. The proposed amendments may increase the cost to the consumer to obtain massage therapy services. However, the Division is not able to determine an exact cost due to a varying degree of circumstances. The proposed amendments will also cost those persons involved in unlawful practice and will generate general fund revenue. The

proposed amendments will allow enforcement of the fine schedule proposed in Rule R156-1. The Division is not able to predict an exact cost due to the lack of any degree of certainty as to how many citations may be issued to persons engaged in unlawful conduct. There may be some unknown increase in costs to adjust the massage therapy school and apprenticeship curriculums to the updated standards. The Division is not able to determine an exact cost due to a varying degree of current circumstances.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments, with the exception of fine authority and penalties, only apply to licensed massage therapists and licensed massage apprentices and applicants for licensure in those classifications as well as massage therapy schools. The proposed amendments may increase the cost to the consumer to obtain massage therapy services. However, the Division is not able to determine an exact cost due to a varying degree of circumstances. The proposed amendments will also cost those persons involved in unlawful practice and will generate general fund revenue. The proposed amendments will allow enforcement of the fine schedule proposed in Rule R156-1. The Division is not able to predict an exact cost due to the lack of any degree of certainty as to how many citations may be issued to persons engaged in unlawful conduct. There may be some unknown increase in costs to adjust the massage therapy school and apprenticeship curriculums to the updated standards. The Division is not able to determine an exact cost due to a varying degree of current circumstances.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated regarding the Division's fine authority beyond those already addressed in the 2011 Legislative Session. The rule filing also makes technical changes, clarifies curriculum requirements and sets standards for conduct of apprentices and apprenticeship supervision. No fiscal impact to businesses is anticipated from such changes.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 08/01/2011 11:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-47b. Massage Therapy Practice Act Rule.

R156-47b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 47b, as used in Title 58, Chapters 1 and 47b, or this rule:

(1) "Accrediting agency" means an organization, association or commission nationally recognized by the United States Department of Education as a reliable authority in assessing the quality of education or training provided by the school or institution.

(2) "Clinic" means performing the techniques and skills learned as a student under the curriculum of a registered school or an accredited school on the public, while in a supervised student setting.

(3) "Direct supervision" as used in Subsection 58-47b-302(3)(e) means that the apprentice supervisor, acting within the scope of the supervising licensee's license, is in the facility where massage is being performed and directs the work of an apprentice pursuant to this chapter under Subsection R156-1-102a(4)(a) while the apprentice is engaged in performing massage.

(4) "Distance learning" means the acquisition of knowledge and skills through information and instruction encompassing all technologies and other forms of learning at a distance, outside a school of massage meeting the standards in Section R156-47b-302 including internet, audio/visual recordings, mail or other correspondence.

(~~4~~)⁵ "FSMTB" means the Federation of State Massage Therapy Boards.

(6) "Hands on instruction" means direct experience with or application of the education or training in either a school of massage therapy or apprenticeship.

(~~5~~)⁷ "Lymphatic massage" means a method using light pressure applied by the hands to the skin in specific maneuvers to promote drainage of the lymphatic fluid from the tissue.

(~~6~~)⁸ "Massage client services" means practicing the techniques and skills learned as an apprentice on the public in training under direct supervision.

(~~7~~)⁹ "NCBTMB" means the National Certification Board for Therapeutic Massage and Bodywork.

(~~8~~)¹⁰ "Recognized school" means a school located in a state other than Utah, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that jurisdiction.

(~~9~~)¹¹ "Unprofessional conduct" as defined in Title 58, Chapters 1 and 47b, is further defined, in accordance with Subsection 58-1-203(1)(e) in Section R156-47b-502.

R156-47b-103. Authority - Purpose.

This rule is adopted by the [~~d~~]Division under the authority of Subsection 58-1-106(1)(a) to enable the [~~d~~]Division to administer Title 58, Chapter 47b.

R156-47b-302. Qualifications for Licensure as a Massage Therapist - Massage School Curriculum Standards.

(~~+~~)⁻In accordance with Subsection 58-47b-302(2)(e)(i) (A), an applicant must graduate from a school of massage with a curriculum, which at the time of graduation, meets the following standards:

(~~a~~)¹ Curricula [~~must~~]shall:

(a) be registered with the Utah Department of Commerce, Division of Consumer Protection; or

(b) be registered with an accrediting agency recognized by the United States Department of Education.

(~~b~~)² Curricula shall be a minimum of 600 hours and shall include the following:

(~~i~~)^a anatomy, physiology and kinesiology - 125 hours;

(~~i~~)^b pathology - 40 hours;

(~~ii~~)^c massage theory, massage techniques including the five basic Swedish massage strokes, and hands on instruction - 285 hours;

(~~iv~~)^d professional standards, ethics and business practices - 35 hours;

(~~v~~)^e sanitation and universal precautions including CPR and first aid - 15 hours;

(~~vi~~)^f clinic - 100 hours; and

(~~vii~~)^g other related massage subjects as approved by the Division in collaboration with the Board.

(~~e~~)³ In addition to the curriculum requirements of Subsection R156-47b-302a(~~+~~)²(~~b~~), new curricula shall include the major content areas, but are not required to meet the percentage weights of the National Certification Examination for Therapeutic Massage and Bodywork (NCBTMB) Content Outline, published January 2010, and the National Certification Examination for Therapeutic Massage (NCETM) Content Outline, published January 2010 which are adopted and incorporated by reference.

R156-47b-302a. Qualifications for Licensure - Equivalent Education and Training.

(1) In accordance with Subsection 58-47b-302(2)(e)(i) (B), an applicant who completes equivalent education and training must provide documentation of:

(a)(i) graduation from a licensed or recognized school outside the state of Utah with a minimum of 500 hours;

(ii) completion of the examination requirements; and

(iii) practice as a licensed massage therapist for a minimum of 2,000 hours; or

(b)(i) foreign education and training approval by NCBTMB as evidenced by current NCBTMB certification; and

(ii) practice as a licensed massage therapist for a minimum of 2,000 hours; or

(c)(i) completion of an equivalent apprenticeship program outside the state of Utah;

(ii) completion of the examination requirements; and

(iii) practice as a licensed massage therapist for a minimum of 4,000 hours.

(2) Hours of supervised training while licensed as a massage therapy apprentice trained in accordance with Subsection R156-47b-302c(5) may not be used to satisfy any of the required minimum of 600 hours of school instruction specified in Section R156-47b-302(2).

(3) Hours of instruction or training obtained while enrolled in a school of massage having a curriculum meeting the standards in accordance with Section R156-47b-302(2) may not be used to satisfy the required minimum of 1,000 hours of supervised apprenticeship training specified in Subsection R156-47b-302c(5).

R156-47b-302c. Apprenticeship Standards for a Supervisor.

In accordance with Subsection 58-47b-302(2)(e)(ii), an apprentice supervisor shall:

- (1) not begin an apprenticeship program until:
 - (a) the apprentice is licensed; and
 - (b) the supervisor is approved by the [d]Division;
- (2) not begin a new apprenticeship program until:
 - (a) the apprentice being supervised passes the FSMTB MBLEx and becomes licensed as a massage therapist, unless otherwise approved by the [d]Division in collaboration with the [b]Board; and
 - (b) the supervisor complies with subsection (1);
 - (3) if an apprentice being supervised fails the FSMTB MBLEx three times:
 - (a) together with the apprentice being supervised, meet with the Board at the next appropriate Board meeting;
 - (b) explain to the Board why the apprentice is not able to pass the examination;
 - (c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination; and
 - (d) upon successful completion of the review as provided in Subsection (3)(c), the apprentice shall again be eligible to take the FSMTB MBLEx;
 - (4) supervise not more than two apprentices at one time, unless otherwise approved by the [d]Division in collaboration with the [b]Board;
 - (5) train the massage apprentice in the areas of:
 - (a) anatomy, physiology and kinesiology - 125 hours;
 - (b) pathology - 40 hours;
 - (c) massage theory - 50 hours;
 - (d) massage techniques including the five basic Swedish massage strokes - 120 hours;
 - (e) massage client service - 300 hours;
 - (f) hands on instruction - 310 hours;
 - (g) professional standards, ethics and business practices - 40 hours; and
 - (h) sanitation and universal precautions including CPR and first aid - 15 hours;
 - (6) submit a curriculum content outline with the apprentice application, including a list of the resource materials to be used;
 - (7) display a conspicuous sign near the work station of the apprentice stating "Apprentice in Training";
 - (8) keep a daily record which shall include:

(a) the number of hours of instruction and training completed[;];

(b) the number of hours of client services performed[;]; and

(c) the number of hours of training completed;

(9) make available to the [d]Division upon request, the apprentice's training records;

(10) verify the completion of the apprenticeship program on forms available from the [d]Division;

(11) notify the [d]Division within ten working days if the apprenticeship program is terminated;

(12) must not have been disciplined for any unprofessional or unlawful conduct within five years of the start of any apprenticeship program; and

(13) ensure that the massage client services required in Subsection (5)(d) only be performed on the public; all other hands on instruction or practice must be performed by the apprentice on an apprentice or supervisor.

R156-47b-302e. Standards for an Apprentice.

In accordance with Subsection 58-47b-302(2)(e)(ii), an apprentice shall:

(1) not begin an apprenticeship program until:

(a) the apprentice is licensed; and

(b) the supervisor is approved by the Division;

(2) obtain training from an approved apprentice supervisor in the areas of:

(a) anatomy, physiology and kinesiology - 125 hours;

(b) pathology - 40 hours;

(c) massage theory - 50 hours;

(d) massage techniques including the five basic Swedish massage strokes - 120 hours;

(e) massage client service - 300 hours;

(f) hands on instruction - 310 hours;

(g) professional standards, ethics and business practices - 40 hours; and

(h) sanitation and universal precautions including CPR and first aid - 15 hours;

(3) follow the approved curriculum content outline:

(a) submitted with the apprentice application including the list of the resource materials to be used; or

(b) previously submitted by the approved supervisor meeting current requirements including the list of the resource materials to be used;

(4) display a conspicuous sign near the work station of the apprentice stating "Apprentice in Training";

(5) keep a daily record which shall include:

(a) the number of hours of instruction and training completed;

(b) the number of hours of client services performed; and

(c) the number of hours of training completed;

(6) make available to the Division, upon request, the training records;

(7) verify the completion of the apprenticeship program on forms available from the Division;

(8) notify the Division within ten working days if the apprenticeship program is terminated; and

(9) perform the massage client services required in Subsection (2)(d) only on the public under direct supervision; all

other hands on instruction or practice must be performed by the apprentice on an apprentice or supervisor.

R156-47b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

- (1) engaging in any lewd, indecent, obscene or unlawful behavior while acting as a massage therapist;
- (2) as an apprentice supervisor, failing to provide direct supervision to a massage apprentice;
- (3) practicing as a massage apprentice without direct supervision in accordance with Subsection 58-47b-102(4);
- (4) as an apprentice supervisor, failing to provide and document adequate instruction or training as applicable;
- ([4]5) as an apprentice supervisor, advising, directing or instructing an apprentice in any instruction or behavior that is inconsistent, contrary or contradictory to established professional or ethical standards of the profession;
- ([5]6) failing to notify a client of any health condition the licensee may have that could present a hazard to the client;
- ([6]7) failure to use appropriate draping procedures to protect the client's personal privacy; and
- ([7]8) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the Utah Chapter of the American Massage Therapy Association "Utah Code of Ethics and Standards of Practice", September 17, 2005 edition, which is hereby incorporated by reference.

R156-47b-503. Administrative Penalties - Unlawful Conduct.

In accordance with Subsection 58-1-501(1)(a) and (c), unless otherwise ordered by the presiding officer, the fine schedule in Section R156-1-502 shall apply to citations issued under Title 58, Chapter 47b.

KEY: licensing, massage therapy, massage therapist, massage apprentice

Date of Enactment or Last Substantive Amendment: [February 22, 2010]2011

Notice of Continuation: December 6, 2010

Authorizing, Implemented, or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-47b-101

Commerce, Occupational and
Professional Licensing
R156-60b
Marriage and Family Therapist
Licensing Act Rule

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 34952
FILED: 06/20/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Marriage and Family Therapist Licensing Board reviewed the rule and determined a few minor changes should be made in the rule.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-60b-102(2), rule citation reference is updated. In Subsection R156-60b-102(4), deletes a reference to an administrative rule that is no longer needed. Subsection R156-60b-102(5) is added to define the term "practicum" and last subsection is renumbered accordingly. In Subsection R156-60b-302a(1), the proposed amendment adds the word "clinical" to emphasize the need for an acceptable degree to have a clinical emphasis. The words "or equivalent" are added to indicate the Division's precedent of accepting degrees with titles other than marriage and family therapy as long as the degree is found to be equivalent to a degree in marriage and family therapy. The word "Education" is added to reflect the correct name of the Commission on Accreditation for Marriage and Family Therapy Education. Subsection R156-60b-302d(4) is deleted because it only applies to applicants who submit applications before 01/01/2010 and it is no longer necessary. Subsection R156-60b-304(8) is added to allow for marriage and family therapists to count 10 extra contact hours of continuing education completed during one renewal cycle toward meeting the continuing education requirement of the subsequent renewal cycle.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-60-301 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. Some employers of licensed marriage and family therapists, such as state agencies, pay for a portion of or all of the cost of required continuing education courses. Allowing licensed marriage and family therapists to count 10 extra contact hours of continuing education completed during one renewal cycle toward meeting the continuing education requirement of the subsequent renewal cycle may translate into a cost savings for such entities. However, the Division is not able to determine any exact amount of savings due to varying circumstances.

♦ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed marriage and family therapists and applicants for licensure in that classification. Some employers of licensed marriage and family therapists, such as local governments, pay for a portion of or all of the cost of required continuing education courses. Allowing licensed marriage and family therapists to count 10 extra contact hours of continuing education completed during one renewal cycle toward meeting the continuing education requirement of the subsequent renewal cycle may translate into a cost

savings for such entities. However, the Division is not able to determine any exact amount of savings due to varying circumstances.

♦ **SMALL BUSINESSES:** The proposed amendments only apply to licensed marriage and family therapists and applicants for licensure in that classification. Some employers of licensed marriage and family therapists, such as small businesses, pay for a portion of or all of the cost of required continuing education courses. Allowing licensed marriage and family therapists to count 10 extra contact hours of continuing education completed during one renewal cycle toward meeting the continuing education requirement of the subsequent renewal cycle may translate into a cost savings for such entities. However, the Division is not able to determine any exact amount of savings due to varying circumstances.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to licensed marriage and family therapists and applicants for licensure in that classification. A licensed marriage and family therapist may also save money by being able to count up to 10 extra hours of continuing education completed during a renewal cycle toward the continuing education requirement of the subsequent renewal cycle. However, the Division is not able to determine any exact amount of savings due to varying circumstances.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed marriage and family therapists and applicants for licensure in that classification. A licensed marriage and family therapist may also save money by being able to count up to 10 extra hours of continuing education completed during a renewal cycle toward the continuing education requirement of the subsequent renewal cycle. However, the Division is not able to determine any exact amount of savings due to varying circumstances.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing makes technical changes, adds clarifying language, and allows the carry-over of continuing education hours to the next renewal cycle. The only fiscal impact anticipated is a positive one for licensees and their employers.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 08/01/2011 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-60b. Marriage and Family Therapist Licensing Act Rule.
R156-60b-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or this rule:

(1) "AAMFT" means the American Association for Marriage and Family Therapy.

(2) "Face to face supervision" as described in Subsection R156-60b-302a(1)(b)(~~vii~~)(ii)(G) includes both individual and group supervision.

(3) "Group supervision" means supervision between the supervisor and no more than three supervisees, unless preapproved by the Board.

(4) "Individual supervision" means supervision between the supervisor and one or two supervisees [~~in accordance with standards set forth in Subsection R156-60b-302b(1)(d)~~].

(5) "Practicum", as used in R156-60b-302a(1)(b)(ii)(G), means a clinical program of training at an accredited school under general supervision in a setting other than a student's private practice.

(~~5~~) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 60, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-60b-502.

R156-60b-302a. Qualifications for Licensure - Education Requirements.

(1) Pursuant to Subsection 58-60-305(1)(d), an applicant applying for licensure as a marriage and family therapist shall:

(a) produce certified transcripts evidencing completion of a clinical master's or doctorate degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education at the time the applicant obtained the education; or

(b)(i) produce certified transcripts evidencing completion of a clinical master's degree in marriage and family therapy or equivalent from a program accredited by a professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education at the time the applicant obtained the education.

(ii) A program under Subsection (1)(b)(i) shall include the following:

(A) six semester hours/nine quarter hours of course work in theoretical foundations of marital and family therapy;

(B) nine semester hours/12 quarter hours of course work in assessment and treatment in marriage and family therapy, including Diagnostic Statistical Manual (DSM);

(C) six semester hours/nine quarter hours of course work in human development and family studies which include ethnic minority issues, and gender issues including sexuality, sexual functioning, and sexual identity;

(D) three semester hours/four quarter hours in professional ethics;

(E) three semester hours/four quarter hours in research methodology and data analysis;

(F) three semester hours/four quarter hours in electives in marriage and family therapy; and

(G) a clinical practicum of not fewer than 600 hours which includes not fewer than 100 hours of face to face supervision and not fewer than 500 direct contact hours of face to face supervised clinical practice of which not less than 250 hours shall be with couples or families who are physically present in the therapy room.

R156-60b-302d. Qualifications to be a Marriage and Family Therapist Training Supervisor.

Pursuant to the provisions of Subsection 58-60-307(1), to be qualified as a marriage and family therapist supervisor for training required under Subsections 58-60-305(1)(e) and (f), an individual shall:

(1) be licensed as a marriage and family therapist in good standing for not less than two years;

(2) be currently licensed as a marriage and family therapist in the state in which the training is being performed; and

(3) meet one of the following three options:

(a) be currently approved by AAMFT as a marriage and family therapist supervisor;

(b) have successfully completed a supervision course in a Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) accredited marriage and family therapy (MFT) program at an accredited university; or

(c)(i) have successfully completed 20 clock hours of instruction sponsored by AAMFT or the Utah Association for Marriage and Family Therapy (UAMFT).

(ii) The instruction under Subsection (3)(c)(i) shall include the following:

(A) four hours of review of models of MFT and supervision;

(B) eight hours of MFT supervision processes and practice;

(C) four hours of research on effective outcomes and processes of supervision; and

(D) four hours of AAMFT Code of Ethics, state rules and case studies related to MFT supervision. [

~~(4) Subsection (3) shall not apply to hours of supervised training completed on or before December 31, 2008 for applicants who submit their applications before January 1, 2010.]~~

R156-60b-304. Continuing Education.

(1) In accordance with Section 58-60-105, there is hereby established a continuing education requirement for all individuals licensed under Title 58, Chapter 60, Part 3, as a marriage and family therapist.

(2) During each two year period commencing October 1st of each even numbered year, a marriage and family therapist shall be required to complete not fewer than 40 hours of continuing education directly related to the licensee's professional practice of which:

(a) at least 15 hours must be directly related to marriage and family therapy; and

(b) at least six hours must be in ethics/law, of which at least three hours must be directly related to marriage and family therapy.

(3) The required number of hours of continuing education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(4) Continuing education under this section shall:

(a) be relevant to the licensee's professional practice;

(b) be prepared and presented by individuals who are qualified by education, training, and experience to provide continuing education relevant to the practice of a mental health therapist; and

(c) have a method of verification of attendance and completion.

(5) Credit for continuing education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences which meet the criteria listed in Subsection (4) above, and which are approved by, conducted by, or under the sponsorship of universities, colleges or professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of mental health therapy;

(b) a maximum of 14 hours per two year period may be recognized for:

(i) teaching courses under Subsection (5)(a); or

(ii) supervision of an individual completing the experience requirement for licensure as a mental health therapist;

(c) a maximum of ten hours per two year period may be recognized for clinical readings, internet or distance learning courses directly related to practice as a mental health therapist; and

(d) a maximum of two hours per two year period may be for continuing education from the Division of Occupational and Professional Licensing.

(6) A licensee shall be responsible for maintaining competent records of completed continuing education for a period of four years.

(7) A licensee requesting a waiver of the continuing education requirement must comply with requirements as established by rule in R156-1-308d.

(8) If a licensee completes more than the required number of hours of continuing education during a two year renewal cycle

specified in Subsection (2), up to ten hours of the excess over the required number may be carried over to the next two year renewal cycle. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted.

KEY: licensing, therapists, marriage and family therapist

Date of Enactment or Last Substantive Amendment: [~~August 16, 2010~~2011]

Notice of Continuation: August 31, 2009

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-60-301

Commerce, Real Estate **R162-2c-202** Qualifications for Licensure

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 34986
FILED: 06/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify when a misdemeanor disqualifies an individual from licensure; and to change an existing reference to the Securities and Exchange Commission.

SUMMARY OF THE RULE OR CHANGE: A misdemeanor occurring within the three-year period prior to the date of application automatically disqualifies an individual for licensure only if the Commission and Division consider that the court made a finding of fraud, misrepresentation, theft, or dishonesty. Absent such a finding, the Commission and Division will be able to exercise discretion in determining whether a misdemeanor proceeding indicates a lack of good moral character, honesty, integrity, or truthfulness such that a license should be denied. The reference to the National Association of Securities Dealers is changed to refer to the Financial Industry Regulatory Authority because of the name change at the federal level.

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** These amendments do not create any new requirements or programs for the Division to enforce or administer. No fiscal impact to the state budget is anticipated.

♦ **LOCAL GOVERNMENTS:** Local government is not subject to the rules governing the mortgage industry. Therefore, no fiscal impact to local government is anticipated.

♦ **SMALL BUSINESSES:** This amendment does not create new qualifications for licensure (such as increased education) that would pose a cost to a small business. Therefore, no fiscal impact to small businesses is anticipated.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment does not create new qualifications for licensure (such as increased education) that would pose a cost to an affected person. Therefore, no fiscal impact to small businesses is anticipated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Persons will be affected only in the way their criminal history is reviewed and evaluated by the Commission and the Division. No compliance is required. Therefore, no compliance costs are associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing clarifies the provision regarding fitness for licensure and updates a reference. No fiscal impact to businesses is anticipated.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

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

R162-2c-202. Qualifications for Licensure.

(1) Character. Individual applicants and control persons shall evidence good moral character, honesty, integrity, and truthfulness.

(a) An applicant may not have:

(i) been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner to, or resolved by diversion or its equivalent:

(A) a felony involving an act of fraud, dishonesty, a breach of trust, or money laundering;

(B) any felony in the seven years preceding the day on which an application is submitted to the division;

(C) in the five years preceding the day on which an application is submitted to the division:

(I) a misdemeanor involving moral turpitude; or

(II) a crime in another jurisdiction that is the equivalent of a misdemeanor involving moral turpitude;

(D) in the three years preceding the day on which an application is submitted to the division, any misdemeanor involving a finding of:

(I) fraud;

(II) misrepresentation;

(III) theft; or

(IV) dishonesty;

(ii) had a license as a mortgage loan originator revoked by a government regulatory body at any time, unless the revocation is subsequently vacated or converted;

(iii) had a professional license or registration, whether issued by a Utah regulatory body or by another jurisdiction, suspended, surrendered, canceled, or denied in the five years preceding the date the individual applies for licensure if the suspension, surrender, cancellation, or denial is based on misconduct in a professional capacity that relates to:

(A) moral character;

(B) honesty;

(C) integrity;

(D) truthfulness; or

(E) the competency to transact the business of residential mortgage loans;

(iv) in the five years preceding the day on which an application is submitted to the division, been the subject of a bar by the:

(A) Securities and Exchange Commission;

(B) New York Stock Exchange; or

(C) ~~[National Association of Securities Dealers]~~ Financial Industry Regulatory Authority;

(v) had a permanent injunction entered against the individual:

(A) by a court or administrative agency; and

(B) on the basis of:

(I) conduct or a practice involving the business of residential mortgage loans; or

(II) conduct involving fraud, misrepresentation, or deceit.

(b) An applicant may be denied a license or issued a restricted license for incidents in the applicant's past other than those specified in this Subsection (1)(a) that reflect negatively on the applicant's moral character, honesty, integrity, and truthfulness. In evaluating an applicant for these qualities, the division and commission may consider any evidence, including the following:

(i) criminal convictions or plea agreements, with particular consideration given to convictions or plea agreements relative to charges that involve moral turpitude;

(ii) the circumstances that led to any criminal conviction or plea agreement under consideration;

(iii) past acts related to honesty or moral character, with particular consideration given to any such acts involving the business of residential mortgage loans;

(iv) dishonest conduct that would be grounds under Utah law for sanctioning an existing licensee;

(v) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;

(vi) court findings of fraudulent or deceitful activity;

(vii) evidence of non-compliance with court orders or conditions of sentencing;

(viii) evidence of non-compliance with:

(A) terms of a diversion agreement still subject to prosecution;

(B) a probation agreement; or

(C) a plea in abeyance; or

(ix) failure to pay taxes or child support obligations.

(2) Competency. Individual applicants and control persons shall evidence competency to transact the business of residential mortgage loans. In evaluating an applicant for competency, the division and commission may consider any evidence that reflects negatively on an applicant's competency, including:

(a) civil judgments, with particular consideration given to any such judgments involving the business of residential mortgage loans;

(b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;

(c) failure of any previous mortgage loan business in which the individual was engaged, as well as the circumstances surrounding that failure;

(d) evidence as to the applicant's business management and employment practices, including the payment of employees, independent contractors, and third parties;

(e) the extent and quality of the applicant's training and education in mortgage lending;

(f) the extent and quality of the applicant's training and education in business management;

(g) the extent of the applicant's knowledge of the Utah Residential Mortgage Practices Act;

(h) evidence of disregard for licensing laws;

(i) evidence of drug or alcohol dependency;

(j) sanctions placed on professional licenses; and

(k) investigations conducted by regulatory agencies relative to professional licenses.

(3) Financial responsibility. Individual applicants shall evidence financial responsibility. To evaluate an applicant for financial responsibility, the division shall:

(a) access the credit information available through the NMLS of:

(i) an applicant for initial licensure, beginning October 18, 2010; and

(ii) a licensee who requests renewal during the 2010 renewal period, unless the licensee's credit report was reviewed in issuing the initial license; and

(b) give particular consideration to:

(i) outstanding civil judgments;

(ii) outstanding tax liens;

(iii) foreclosures;

(iv) multiple social security numbers attached to the individual's name;

(v) child support arrearages; and

(vi) bankruptcies.

(4) Age. An applicant shall be at least 18 years of age.

(5) Minimum education. An applicant shall have a high school diploma, GED, or equivalent education as approved by the commission.

KEY: residential mortgage, loan origination, licensing, enforcement

Date of Enactment or Last Substantive Amendment: [May 10, 2011]

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

Commerce, Real Estate **R162-2c-401** Administrative Proceedings

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 34987

FILED: 06/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to correct an inconsistency with regard to certain deadlines in an administrative proceeding.

SUMMARY OF THE RULE OR CHANGE: An applicant or respondent will be given at least 30 days notice of a hearing, to coincide with the existing rule that allows 30 days from the date of notice for the person to file an answer.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment does not create a new requirement or program for the Division to enforce or administer. No fiscal impact to the state budget is anticipated.

◆ **LOCAL GOVERNMENTS:** Local government is not subject to the rules governing the mortgage industry. Therefore, no fiscal impact to local government is anticipated.

◆ **SMALL BUSINESSES:** This amendment will require the Division to give a small business 30 days notice of a hearing rather than 10 days. It does not impose any new requirements on small businesses. Therefore, no fiscal impact to small businesses is anticipated.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment will require the Division to give an affected person 30 days notice of a hearing rather than 10 days. It does not impose any new requirements on affected persons. Therefore, no fiscal impact to affected persons is anticipated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment will require the Division to give affected persons 30 days notice of a hearing rather than 10 days. No compliance is required of affected persons. Therefore, there are no compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule corrects an inconsistency in the rules regarding administrative proceedings. No fiscal impact to businesses is anticipated.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

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

R162-2c-401. Administrative Proceedings.

(1) Request for agency action.

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

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

(ii) an original or renewal application for a school certification;

(iii) an original or renewal application for a course certification; and

(iv) an original or renewal application for an instructor certification.

(b) Any other request for agency action shall:

(i) be in writing;

(ii) be signed by the requestor; and
 (iii) comply with Utah Administrative Procedures Act, Section 63G-4-201(3).

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

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

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

(3) Informal adjudicative proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Procedures for hearings in informal adjudicative proceedings.

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

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

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

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

(iii) the rules promulgated by the division.

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

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

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

(f) Formal discovery is prohibited.

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

(i) on its own behalf; or

(ii) on behalf of a party where:

(A) the party makes a written request;

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

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

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

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

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

(k) Intervention is prohibited.

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

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

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

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

(7) Additional procedures for disciplinary proceedings.

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

- (i) a notice of agency action;
- (ii) a petition setting forth the allegations made by the division;

- (iii) a witness list, if applicable; and
- (iv) an exhibit list, if applicable.

(b) Answer.

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

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

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

(c) Witness and exhibit lists.

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

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

(iii) Any witness list shall contain:

- (A) the name, address, and telephone number of each witness; and
- (B) a summary of the testimony expected from each witness.

(iv) Any exhibit list:

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

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

(d) Pre-hearing motions.

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

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

KEY: residential mortgage, loan origination, licensing, enforcement

Date of Enactment or Last Substantive Amendment: [May 10, 2011]

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

**Commerce, Real Estate
R162-2f-407
Administrative Proceedings**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34988

FILED: 06/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to correct an inconsistency with regard to certain deadlines in an administrative proceeding.

SUMMARY OF THE RULE OR CHANGE: An applicant or respondent will be given at least 30 days notice of a hearing, to coincide with the existing rule that allows 30 days from the date of notice for the person to file an answer.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2f-103(1)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment does not create a new requirement or program for the Division to enforce or administer. No fiscal impact to the state budget is anticipated.

◆ **LOCAL GOVERNMENTS:** Local government is not subject to the rules governing the real estate industry. Therefore, no fiscal impact to local government is anticipated.

◆ **SMALL BUSINESSES:** Small real estate businesses are registered by the Division, but do not license. As such, no regulatory mechanism exists under which they could be required to appear for hearing. Therefore, the rules governing administrative proceedings do not apply to real estate businesses, and modifying those rules will have no fiscal impact for those businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment will require the Division to give an affected person 30 days notice of a hearing rather than 10 days. It does not impose any new requirements on affected persons. Therefore, no fiscal impact to affected persons is anticipated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment will require the Division to give affected persons 30 days notice of a hearing rather than 10 days. No compliance is required of affected persons. Therefore, there are no compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule corrects an inconsistency in the rules regarding administrative proceedings. No fiscal impact to businesses is anticipated.

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

COMMERCE
REAL ESTATE

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

R162-2f. Real Estate Licensing and Practices Rules.

R162-2f-407. Administrative Proceedings.

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

(2) Informal adjudicative proceedings.

(a) An adjudicative proceeding as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as an informal adjudicative proceeding.

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

(3) Hearings required. A hearing before the commission shall be held in a proceeding:

(a) commenced by the division for disciplinary action pursuant to Section 61-2f-401 and Subsection 63G-4-201(2); and

(b) to adjudicate an appeal from an automatic revocation under Subsection 61-2f-204(1)(e), if the appellant requests a hearing.

(4) Procedures for hearings in informal adjudicative proceedings.

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

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

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

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

(iii) the rules promulgated by the division.

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

(d) In any proceeding under this Subsection 407, the commission and the division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the commission and the division in

conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(e) Upon the scheduling of a hearing by the division and at least ~~ten business~~ 30 days prior to the hearing, the division shall, by first class postage-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing:

(i) to the respondent at the address last provided to the division pursuant to Section 61-2f-207; and

(ii) if the respondent is an actively licensed sales agent or associate broker, to the principal broker with whom the respondent is affiliated.

(f) Formal discovery is prohibited.

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

(i) on its own behalf; or

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

(A) makes a written request;

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

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

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

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

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

(k) Intervention is prohibited.

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

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

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

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

(5) Additional procedures for disciplinary proceedings.

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

(i) a notice of agency action;

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

(iii) a witness list, if applicable; and

(iv) an exhibit list, if applicable.

(b) Answer.

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

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

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

- (c) Witness and exhibit lists.
 - (i) Where applicable, the division shall provide its witness and exhibit lists to the respondent at the time it mails its notice of hearing.
 - (ii) The respondent shall provide its witness and exhibit lists to the division no later than thirty days after the mailing date of the division's notice of agency action and petition.
 - (iii) Any witness list shall contain:
 - (A) the name, address, and telephone number of each witness; and
 - (B) a summary of the testimony expected from the witness.
 - (iv) Any exhibit list:
 - (A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and
 - (B) shall be accompanied by copies of the exhibits.
 - (d) Pre-hearing motions.
 - (i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.
 - (ii) The division director shall receive and rule upon any pre-hearing motions.

Licensed General Contractor	1 pt/month
Bank Officer in Real Estate Loans	1 pt/month
Certified Real Estate Prelicensing Instructor	.5 pt/month

KEY: real estate business, licensing, enforcement
Date of Enactment or Last Substantive Amendment:
[December 22, 2010]2011
Authorizing, and Implemented or Interpreted Law: 61-2f-103(1)

Commerce, Real Estate **R162-101** Authority and Definitions

NOTICE OF PROPOSED RULE
 (Repeal)
 DAR FILE NO.: 34941
 FILED: 06/16/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The substantive provisions are incorporated into a new rule, R162-2g. (DAR NOTE: The proposed new rule, R162-2g, was published in the July 1, 2011, issue of the Utah State Bulletin under DAR No. 34917.)

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2g-201(2)(h)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact to the state.
- ◆ **LOCAL GOVERNMENTS:** Local government is not subject to the appraiser administrative rules. No fiscal impact to local government is anticipated.
- ◆ **SMALL BUSINESSES:** The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact on affected persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule is repealed. No compliance is required.

TABLE 1
 APPENDIX 1 - REAL ESTATE TRANSACTIONS EXPERIENCE TABLE

RESIDENTIAL - points can be accumulated from either the selling or the listing side of a real estate closing:	
(a) One unit dwelling	2.5 points
(b) Two- to four-unit dwellings	5 points
(c) Apartments, 5 units or over	10 points
(d) Improved lot	2 points
(e) Vacant land/subdivision	10 points
COMMERCIAL	
(f) Hotel or motel	10 points
(g) Industrial or warehouse	10 points
(h) Office building	10 points
(i) Retail building	10 points
(j) Leasing of commercial space	5 points

TABLE 2
 APPENDIX 2 - PROPERTY MANAGEMENT EXPERIENCE TABLE

RESIDENTIAL	
(a) Each unit managed	0.25 pt/month
COMMERCIAL - hotel/motel, industrial/warehouse, office, or retail building	
(b) Each contract OR each separate property address or location for which licensee has direct responsibility	1 pt/month

TABLE 3
 APPENDIX 3 - OPTIONAL EXPERIENCE TABLE

Real Estate Attorney	1 pt/month
CPA-Certified Public Accountant	1 pt/month
Mortgage Loan Officer	1 pt/month
Licensed Escrow Officer	1 pt/month
Licensed Title Agent	1 pt/month
Designated Appraiser	1 pt/month

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule repeal as a substitute new rule containing the substance of these provisions is also proposed by the Division.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

[R162-101. Authority and Definitions.

R162-101-1. Authority.

~~101.1 The following administrative rules, applicable to the Division of Real Estate, Department of Commerce, have been established under the authority granted by Section 61-2b-6(1):~~

~~101.2 The authority to establish and collect fees is granted by Section 61-2b-37.~~

~~101.3 The authority to exempt specific persons from complying with USPAP standards is granted by Section 61-2b-8(5) (c) within certain limitations as imposed by Section 61-2b-27(1)(c).~~

R162-101-2. Definitions.

~~101.2.1 "Affiliation" means an ongoing business association~~

~~(a) between:~~

~~(i) two individuals registered, licensed, or certified under Section 61-2b; or~~

~~(ii) an individual registered, licensed, or certified under Section 61-2b and:~~

~~(A) an appraisal entity; or~~

~~(B) a government agency;~~

~~(b) for the purpose of providing an appraisal service; and~~

~~(c) regardless of whether an employment relationship exists between the parties.~~

~~101.2.2 The acronym "AQB" stands for the Appraiser Qualifications Board of The Appraisal Foundation.~~

~~101.2.3 "Board" means the Utah Real Estate Appraiser Licensing and Certification Board.~~

~~101.2.4 "Business day" means a day other than:~~

~~(a) a Saturday;~~

~~(b) a Sunday; or~~

~~(c) a federal or state holiday.~~

~~101.2.5 "Classification" means the type of license or certification held by an appraiser.~~

~~101.2.6 "Day" means calendar day unless specified as "business day."~~

~~101.2.7 "Division" means the Division of Real Estate of the Department of Commerce.~~

~~101.2.8 "Entity" means:~~

~~(a) a corporation;~~

~~(b) a partnership;~~

~~(c) a sole proprietorship;~~

~~(d) a limited liability company;~~

~~(e) another business entity; or~~

~~(f) a subsidiary or unit of an entity described in Subsections (a) through (e).~~

~~101.2.9 "Person" means an individual or an entity.~~

~~101.2.10 "Reinstatement" means renewing a license or certification for an additional period after its expiration date has passed but prior to 12 months after the expiration date.~~

~~101.2.11 "Renewal" means extending a license or certification for an additional period upon its expiration.~~

~~101.2.12 "Trainee" means a person who is working under the direct supervision of a State-certified residential appraiser or a State-certified general appraiser to earn hours for licensure, and who meets the requirements of R162-110.~~

~~101.2.13 The acronym "USPAP" stands for The Uniform Standards of Professional Appraisal Practice published by The Appraisal Foundation.~~

KEY: real estate appraisals, definitions

Date of Enactment or Last Substantive Amendment: October 9, 2010

Notice of Continuation: April 18, 2007

Authorizing, and Implemented or Interpreted Law: 61-2b-20 to 61-2b-31]

Commerce, Real Estate
R162-102
 Application Procedures

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 34942

FILED: 06/16/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The substantive provisions are incorporated into a new rule, R162-2g. (DAR NOTE: The proposed new rule, R162-2g, was published in the July 1, 2011, issue of the Utah State Bulletin under DAR No. 34917.)

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2g-201(2)(h)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact to the state.

◆ **LOCAL GOVERNMENTS:** Local government is not subject to the appraiser administrative rules. No fiscal impact to local government is anticipated.

◆ **SMALL BUSINESSES:** The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact on small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact on affected persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule is repealed. No compliance is required.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule repeal as a substitute new rule containing the substance of these provisions is also proposed by the Division.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

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THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

[R162-102. Application Procedures:

R162-102-1. Application:

~~102.1.1 Initial Review – An applicant for licensure or certification as an appraiser will be required to submit, on forms provided by the Division, documentation indicating successful completion of the education and experience required by the State of Utah. Until January 1, 2008, an applicant may submit education documentation and experience documentation to the Division for approval separately. Effective January 1, 2008, an applicant shall submit education documentation and experience documentation to the Division at the same time.~~

~~102.1.1.1 Education documentation may be reviewed by an Appraiser Education Review Committee appointed by the Real Estate Appraiser Licensing and Certification Board to determine if the education requirement has been met.~~

~~102.1.1.1.1 As a prerequisite to sitting for either the licensing examination or the certification examination, the applicant shall submit proof of successful completion of the 15-hour National USPAP Course or its equivalent from an instructor or instructors, at least one of whom is a State-Certified Residential or State-Certified General Appraiser and has been certified by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. Equivalency to the 15-hour National USPAP Course will be determined through the Course Approval Program of the Appraiser Qualifications Board (AQB) of the Appraisal Foundation.~~

~~102.1.1.2 The applicant shall provide evidence of meeting the experience requirement by completing the form required by the Division. The Division and the Board shall not award experience credit toward qualification as a state-licensed appraiser for any work performed at a time when the applicant was not registered with the Division as a trainee.~~

~~102.1.1.3 The candidate shall submit the appropriate license or certification fee at the time of application.~~

~~102.1.1.4 If an applicant has submitted education or experience documentation to the Division prior to January 1, 2008 and has obtained approval of only the education component or only the experience component required for licensure or certification, the applicant must submit proper documentation of the remaining component to the Division prior to January 1, 2011 or any approval of a component shall lapse.~~

~~102.1.2 Exam Application~~

~~102.1.2.1 Upon determining the candidate has completed the education and experience requirements, the Division will issue to the candidate a form permitting the candidate to register to sit for the examination. The permission to register to sit for the examination shall be valid for twenty-four months after issuance.~~

~~102.1.2.2 The candidate shall make application to take the examination by returning the application form and the appropriate testing fee to the testing service designated by the Division. If the applicant fails to take the examination, the fee will be forfeited.~~ 102.1.3 Final Application

~~102.1.3.1 Within 90 days after successful completion of the exam, the appraiser applicant shall return to the Division each of the following:~~

~~102.1.3.1.1 A report from the testing service indicating successful completion of the exam.~~

~~102.1.3.1.2 The application form required by the Division shall include:~~

- ~~(a) the applicant's business and home addresses;~~
- ~~(b) the name and business address of any appraisal entity or government agency with which the applicant is affiliated; and~~
- ~~(c) the fee for the federal registry if the applicant is applying for certification.~~

~~102.1.3.2 A post office box without a street address is unacceptable as a business or home address. The applicant may designate either address to be used as a mailing address.~~

R162-102-2. Status Change.

~~102.2.1~~

~~(a) A licensed appraiser, certified appraiser, or trainee shall notify the Division within ten business days of any status change, including a change in affiliation. Status changes are effective on the date the properly executed forms and appropriate fees are received by the Division. Notice shall be made in writing on the forms required by the Division.~~

~~(b) A licensed appraiser, certified appraiser, or trainee is not required to report an affiliation that:~~

- ~~(i) is created to facilitate a single transaction; and~~
- ~~(ii) is not part of an ongoing business association.~~
- ~~(c) If a deadline for notification falls on a day when the Division is closed, the deadline shall be extended to the next business day.~~

~~102.2.1.1 Change of name requires submission of official documentation such as a marriage or divorce certificate, or driver's license.~~

~~102.2.1.2 Change of business, home address or mailing address requires written notification. A post office box without a street address is unacceptable as a business or home address. Any address may be designated as a mailing address.~~

~~102.2.2 State-licensed Appraisers, upon meeting the appropriate requirements for certification and upon filing a completed application within six months from their last renewal, will be allowed to transfer to the categories of either Certified Residential or Certified General by paying only a transfer fee.~~

~~102.2.2.1 Transfer to a certified category will not change the individual's expiration date.~~

R162-102-3. Renewal.

~~102.3.1 At least 30 days before expiration, a renewal notice shall be sent by the Division to the licensed appraiser, certified appraiser, or trainee at the mailing address shown on the Division records. The applicant for renewal shall return the completed renewal notice and the applicable renewal fee to the Division on or before the expiration shown on the notice.~~

~~102.3.1.1 The licensed appraiser, certified appraiser, or trainee shall return proof of completion of the following continuing education taken during the preceding two years:~~

- ~~(a) the 7-hour National USPAP Update Course; and~~
- ~~(b) 21 additional hours of Division-approved continuing education.~~

~~102.3.1.1.4 All appraisers and trainees must take the 7-hour National USPAP Update Course or its equivalent once for each renewal in order to maintain a license, certification, or registration.~~

In order to qualify as continuing education for renewal, the course must have been taken from an instructor or instructors, at least one of whom is a State-Certified Residential or State-Certified General Appraiser and has been certified by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. Equivalency to the 7-hour National USPAP Update Course will be determined through the Course Approval Program of the Appraiser Qualifications Board (AQB) of the Appraisal Foundation.

~~102.3.2 If the renewal fee and documentation are not received within the prescribed time period, the license, certification, or registration shall expire.~~

~~102.3.2.1 A license, certification, or registration may be renewed for a period of 30 days after the expiration date upon payment of a late fee in addition to the requirements of Section 102.3.1.~~

~~102.3.2.2 Reinstatement.~~

~~(a) After the 30-day period described in Subsection 102.3.2.1 and until six months after the expiration date, an individual may reinstate an expired license, certification, or registration by~~

- ~~(i) complying with Subsection 102.3.1;~~
- ~~(ii) paying a late fee; and~~
- ~~(iii) paying a reinstatement fee.~~

~~(b) After the six-month period described in Subsection (a) and until one year after the expiration date, an individual may reinstate an expired license, certification, or registration by~~

- ~~(i) complying with Subsection 102.3.1;~~
- ~~(ii) paying a late fee;~~
- ~~(iii) paying a reinstatement fee; and~~
- ~~(iv) completing 24 hours of additional continuing education.~~

~~(c)(i) An individual who does not reinstate an expired license, certification, or registration within 12 months of the expiration date must:~~

- ~~(A) reapply with the Division as a new applicant;~~
- ~~(B) retake and pass the 15-hour USPAP course; and~~
- ~~(C) retake and pass any applicable licensing or certification examination.~~

~~(ii) An individual reapplying under Subsection (i) shall receive credit for previously credited prelicensing education if:~~

- ~~(A) it was completed within the five-year period prior to the date of reapplication; and it was either~~
- ~~(B) completed after January 1, 2008; or~~
- ~~(C) certified by the Division and the AQB prior to January 1, 2008, as approved, qualified prelicensing education.~~

~~102.3.3 If the Division has received renewal documents in a timely manner but the information is incomplete, the appraiser or trainee may be extended a 15-day grace period to complete the application.~~

~~102.3.4 Renewal while on active military service. An appraiser or trainee who is unable to renew a license or certification because active military service has prevented the completion of the appraiser's or trainee's required continuing education may submit a timely application for renewal that is complete, except for proof of continuing education, and may request that the application for renewal be held in suspense pending the completion of the continuing education requirement.~~

~~102.3.4.1 The appraiser or trainee shall have 120 days after completion of active military service to complete the~~

continuing education required for the renewal and submit proof of the continuing education to the Division.

~~102.3.4.2~~ An appraiser may not act as an appraiser in Utah after the expiration of the appraiser's current license while the appraiser's application for renewal is held in suspense by the Division pending the completion of military service and the completion of the continuing education required for renewal. The appraiser may not act as an appraiser in Utah until the appraiser submits proof of completion of the required continuing education and the appraiser's application for renewal is processed by the Division.

R162-102-4. Six-Month Temporary Permits.

~~102.4.1~~ A non-resident of this state may obtain a six-month temporary permit to perform one or more specific appraisal assignments in Utah. In order to qualify for a temporary permit, the specific appraisal assignments must be covered by a contract to provide appraisals. In order to obtain a temporary permit, an applicant must:

~~102.4.1.1~~ Submit an application in writing requesting temporary licensure or certification. The application shall include the name of the client, the specific property address(es) to be appraised, the type of property being appraised, and the estimated time to complete the assignment;

~~102.4.1.2~~ Answer and submit a "Utah Appraiser Qualifying Questionnaire" in the form designated by the Division;

~~102.4.1.3~~ Sign an irrevocable consent to service authorizing the Division to receive service of any lawful process on his behalf in any noncriminal proceeding arising out of his practice as an appraiser in this state;

~~102.4.1.4~~ Pay an application fee in the amount established by the Division; and

~~102.4.1.5~~ Provide the starting date of the appraisal assignment for which the temporary permit is being obtained.

~~102.4.2~~ A non-resident is limited to two temporary permits per calendar year, each of which may be extended one time for an additional six-month period if the assignments have not been completed within the original six-month term of the temporary permit. A temporary permit may be extended by submitting any forms required by the Division.

R162-102-5. Reciprocity.

~~102.5.1~~ An individual who is licensed or certified as an appraiser by another state may be licensed or certified in Utah by reciprocity on the following conditions:

~~102.5.1.1~~ The other state must have required the applicant to satisfactorily complete classroom hours of appraisal education approved by that state which are substantially equivalent in number to the hours required for the class of licensure or certification for which he is applying in Utah;

~~102.5.1.2~~ The education must have included a course in the Uniform Standards of Professional Appraisal Practice. The course must either be the 15-hour National USPAP Course or its equivalent. Equivalency to the 15-hour National USPAP Course will be determined through the Course Approval Program of the Appraiser Qualifications Board (AQB) of the Appraisal Foundation;

~~102.5.1.3~~ The applicant shall obtain and study the Utah Real Estate Appraiser Licensing and Certification Act and the rules

promulgated thereunder and shall sign an attestation that he understands and will abide by them;

~~102.5.1.4~~ The applicant shall provide evidence of having passed an examination that has been approved by the AQB for the class of licensure or certification for which he is applying;

~~102.5.1.5~~ If the applicant resides outside of the state of Utah, the applicant shall sign an irrevocable consent to service authorizing the Division to receive service of any lawful process on his behalf in any noncriminal proceeding arising out of his practice as an appraiser in this state;

~~102.5.1.6~~ The applicant shall provide a complete licensing history sent directly to the Division by his home state and any other state in which he has been licensed, which shall include the applicant's full name, home and business addresses and telephone numbers, the date first licensed, the type or types of licenses or certifications held, the date the current license or certification expires, and a statement concerning whether disciplinary action has ever been taken, or is pending, against the individual;

~~102.5.1.7~~ The applicant shall not have been convicted of a criminal offense involving moral turpitude relating to his ability to provide services as an appraiser; and

~~102.5.1.8~~ The applicant shall agree, as a condition of licensure or certification, to furnish to the Division upon demand all records requested by the Division relating to the applicant's appraisal practice in Utah. Failure to do so will be considered grounds for revocation of license or certification.

KEY: real estate appraisals, licensing

Date of Enactment or Last Substantive Amendment: October 9, 2010

Notice of Continuation: February 15, 2007

Authorizing, and Implemented or Interpreted Law: 61-2b-6(1)]

Commerce, Real Estate **R162-103** Appraisal Education Requirements

NOTICE OF PROPOSED RULE (Repeal)

DAR FILE NO.: 34943

FILED: 06/16/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The substantive provisions are incorporated into a new rule, R162-2g. (DAR NOTE: The proposed new rule, R162-2g, was published in the July 1, 2011, issue of the Utah State Bulletin under DAR No. 34917.)

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2g-201(2)(h)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact to the state.
- ◆ **LOCAL GOVERNMENTS:** Local government is not subject to the appraiser administrative rules. No fiscal impact to local government is anticipated.
- ◆ **SMALL BUSINESSES:** The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact on affected persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule is repealed. No compliance is required.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule repeal as a substitute new rule containing the substance of these provisions is also proposed by the Division.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Deanna Sabey, Director

**R162. Commerce, Real Estate.
 [R162-103. Appraisal Education Requirements.
 R162-103-1. Definitions:**

- 103.1.1 For the purposes of this rule, "school" includes:
 - (a) An accredited college, university, junior college or community college;
 - (b) Any state or federal agency or commission;

- (c) A nationally recognized real estate appraisal or real estate related organization, society, institute, or association;
- (d) Any school or organization approved by the Board.
- 103.1.2 "School director" means an authorized individual in charge of the educational program at a school.

R162-103-2. School Certification.

- 103.2.1 Each school requesting certification shall make application for approval on the form prescribed by the Division, and shall submit the applicable fees. The application shall include, and the Board may consider, the following information in determining the school's eligibility for certification:
 - 103.2.1.1 Name, phone number, and address of the school, school director and all owners of the school.
 - 103.2.1.2 Attestation to upstanding moral character by individuals who are school directors or owners of the school, and whether any individual:
 - (a) has had an appraiser license or certification, or any other professional license or certification, denied, restricted, suspended, or revoked.
 - (b) has been permitted to resign or surrender an appraiser license or certification, or any other professional license or certification.
 - (c) has ever allowed an appraiser license or certification or any other professional license or certification to expire while the individual was under investigation, or while action was pending against the individual by an appraiser licensing or any other agency.
 - (d) has any action now pending by any appraiser licensing or other agency.
 - (e) is currently under investigation for, or charged with, or has ever pled guilty or no contest to, been convicted of, or agreed to a plea in abeyance or diversion agreement for a misdemeanor or felony, excluding minor traffic offenses.
 - (f) has ever been placed on probation in connection with any criminal offense or a licensing action.
 - 103.2.1.3 A description of the type of school and a description of the school's physical facilities. All courses shall be taught in an appropriate classroom facility and not in any private residence, except for courses approved for specific home study purposes;
 - 103.2.1.4 A copy of the statement which shall be provided for each student outlining the days, times and locations of classes; the number of quizzes and examinations; the grading system, including methods of testing and standards of grading; the requirements for attendance; and the school's refund policy.
 - 103.2.2 A public school may schedule its courses within the criteria of its regular schedule, for example, quarter, semester, or similar schedule. A quarter hour of college credit is the equivalent of 10 classroom hours, and a semester hour of college credit is the equivalent of 15 classroom hours.
 - 103.2.3 Upon approval by the Board, a school shall be issued certification. A school certification shall be issued for a two-year term and expire twenty-four months from the date of issuance. School certifications may be renewed by submitting a properly completed application for renewal prior to the expiration date of the school's current certification, using the form required by the Division, and paying the applicable fee. The term of a renewed school certification shall be twenty-four months. Conditions of certification include the following:

~~_____ (a) A school shall teach the approved course of study as outlined in the State Approved Course Outline;~~

~~_____ (b) A school shall require each student to attend the required number of hours and pass a final examination;~~

~~_____ (c) A school shall maintain a record of each student's attendance for a minimum of five years after his enrollment;~~

~~_____ (d) A school shall not make any misrepresentation in its advertising about any course of instruction, and shall be able to provide substantiation of any claim made. All advertising and public notices shall be free of statements or implications which do not enhance the dignity and integrity of the appraisal profession. A school shall refrain from disparaging a competitor's services or methods of operation;~~

~~_____ (e) Within 15 calendar days after the occurrence of any material change in the school which could affect its approval, including the events listed in R162-103.2.1.2, the school shall give the Division written notice of that change; and~~

~~_____ (f) A school shall not attempt by any means to obtain or use the questions on the state licensure or certification exam unless those questions have been dropped from the current exam bank.~~

~~_____ (g) A school shall provide to all students at the time of registration a copy of the qualifying questionnaire the student will be required by the Division to answer as part of the prelicensing or precertification examination.~~

R162-103-3. Course Certification.

~~_____ 103.3.1 Each school requesting approval of a course designed to meet the education requirements of licensure or certification shall make application for approval on a form prescribed by the Division and shall pay the applicable fee. The application shall include, and the Board may consider, the following information in determining eligibility for approval:~~

~~_____ (a) A course outline including a description of the course, the length of time to be spent on each subject area broken into segments of no more than 30 minutes each, and three to five learning objectives for every three hours;~~

~~_____ (b) Indication of any method of instruction other than lecture method including: a slide presentation, CD, DVD, webinar, satellite broadcast, cassette, video tape, movie, or other;~~

~~_____ (c) A copy of the three final examinations of the course and the answer keys which are used to determine if the student has passed the course;~~

~~_____ (d) An explanation of what the school procedure is for maintaining the security of the final exams and the answer keys;~~

~~_____ (e) A list of the titles, authors and publishers of all required textbooks;~~

~~_____ (f) A list of the instructors and evidence of their certification by the Division, and a list of any guest lecturers to be used and evidence of their qualifications as an instructor for a specific course;~~

~~_____ (g) Days, times, and location of classes; and~~

~~_____ (h) A commitment to give no more than eight credit hours per day to any student.~~

~~_____ 103.3.2 Upon approval by the Board, a course shall be issued certification. All original course certifications and all renewed course certifications shall be issued with an expiration date of twenty-four months after issuance.~~

~~_____ 103.3.3 Each course of study shall meet the minimum standards set forth in the State Approved Course Outline provided for each approved course and be approved by the AQB Course Approval Program. The school may alter the sequence of presentation of the required topics.~~

~~_____ 103.3.4 All courses of study shall meet the minimum hourly requirement of that course. A credit hour is defined as 50 minutes of supervised contact by a certified instructor within a 60-minute time period. A 10-minute break shall be given for each 50 minutes in class. Registration or certification credit shall be limited to a maximum of eight credit hours per day. The limitation applies only to the credit a student may receive and is not intended to limit the number of classroom hours offered.~~

~~_____ 103.3.5 A public school or institution may use any faculty member to teach an approved course provided the individual demonstrates to the satisfaction of the Division and the Board academic training or appraisal experience qualifying the faculty member to teach the course.~~

~~_____ 103.3.6 Distance education is defined as any educational process based on the geographical separation of instructor and student (e.g., CD-ROM, On-line learning, correspondence courses, video conferencing, etc.). Distance education courses must provide interaction between the learner and instructor and must include testing. A distance education course may be acceptable to meet the classroom hour requirement or its equivalent providing each course meets the following conditions:~~

~~_____ (a) The course:~~

~~_____ (i)(A) has been presented by an accredited college or university which offers distance education programs in other disciplines and where accreditation has been made by the Commission on Colleges or a regional accreditation association; or~~

~~_____ (B) has received approval by the International Distance Education Certification Center, also known as IDECC; and~~

~~_____ (ii) has been approved under the AQB Course Approval Program.~~

~~_____ (b) The learner must successfully complete a written examination personally proctored by an official approved by the presenting entity; and~~

~~_____ (c) The course must meet the requirements established by the AQB and be equivalent to the minimum of 15 classroom hours.~~

~~_____ 103.3.7 A maximum of 10% of the required class time may be spent in testing, including review test and final examination. A student cannot challenge a course or any part of a course of study by taking an exam in lieu of attendance.~~

~~_____ 103.3.7.1 If a student fails a school final examination, he shall not be allowed to retest for a minimum of three days. The student shall not be allowed to retake the same final exam, but shall be given a new exam with different questions.~~

~~_____ 103.3.7.2 If the student fails the final exam a second time, the student shall not be allowed to retest for a minimum of two weeks at which time the student shall be given an entirely new exam with completely new questions. If the student fails this third exam, the student shall fail the course.~~

~~_____ 103.3.8 All texts, workbooks, supplement pamphlets and any other materials shall be appropriate and current in their application to the required course outline.~~

~~_____ 103.3.9 Within 15 calendar days after the occurrence of any material change in a course which could affect approval, the school shall give the Division written notice of the change.~~

R162-103-4. Education Credit for Nonecertified Courses.

~~103.4.1 Education credit shall be granted towards licensure or certification for an appraisal education course which has been taken and which has not been previously certified in Utah for prelicensing education credit, and has been provided by a school which meets the criteria as outlined in 103.1.~~

~~103.4.1.1 The course content shall have met the minimum standards set forth in the Utah State Approved Course Outline and be approved by the AQB Course Approval Program.~~

~~103.4.1.2 A course must be at least 15 hours in duration, including the examination. An hour is defined as 50 minutes of supervised contact by a certified instructor within a 60-minute time period.~~

~~103.4.1.3 A final examination shall be administered at the end of each course pertinent to that education offering.~~

~~103.4.2 Credit shall not be granted for a course taken in which the applicant obtained credit from the course provider by challenge examination without having attended the course.~~

~~103.4.3 Credit shall not be given for duplicate or highly comparable classes. Each course must represent a progression in the appraiser's knowledge.~~

~~103.4.4 Except as provided in R162-105.3.3, there is no time limit regarding when education credit must have been obtained.~~

~~103.4.5 Hourly credit for a course taken from a professional appraisal organization shall be granted based upon the Division approved list which verifies hours for these courses.~~

~~103.4.6 Credit shall only be granted for a course that has been successfully completed. Successful completion of a course means that the applicant has attended 100% of the scheduled class hours, has completed all required exercises and assignments, and has achieved a passing score on a course final examination. The final examination shall not be an open book examination.~~

~~103.4.7 Submission for Education Approval.~~

~~103.4.7.1 Courses that have not been previously certified for prelicensing credit shall be reviewed by the Education Review Committee. It is the responsibility of the applicant to establish that a particular education offering shall qualify to meet the education requirement for licensing or certification.~~

~~103.4.7.2 The applicant shall submit on a form provided by the Division a list of the courses that documents the course title, the name of the sponsoring organization, the number of classroom hours, and the date the course was completed.~~

~~103.4.7.3 The applicant shall attest on a notarized affidavit that the courses have been completed as documented.~~

~~103.4.7.4 The applicant shall support the claim for education credit if requested by the Division by providing proof of completion of the courses in the form of certificates, transcripts, report cards, letters of verification, or similar proof.~~

R162-103-5. Instructor Application for Certification.

~~103.5.1 Each instructor requesting approval to be certified as an instructor to teach the education requirements of appraisal licensure or certification shall make application for approval on a form prescribed by the Division and shall submit the applicable fees. The application shall include, and the Board may consider, the following information in determining the instructor's eligibility for approval:~~

~~103.5.1.1 Attestation to upstanding moral character, including whether the individual:~~

~~(a) has had an appraiser license or certification, or any other professional license or certification, denied, restricted, suspended, or revoked.~~

~~(b) has been permitted to resign or surrender an appraiser license or certification, or any other professional license or certification.~~

~~(c) has ever allowed an appraiser license or certification or any other professional license or certification to expire while the individual was under investigation, or while action was pending against the individual by an appraiser licensing or any other agency.~~

~~(d) has any action now pending by any appraiser licensing or other agency.~~

~~(e) is currently under investigation for, or charged with, or has ever pled guilty or no contest to, been convicted of, or agreed to a plea in abeyance or diversion agreement for a misdemeanor or felony, excluding minor traffic offenses.~~

~~(f) has ever been placed on probation in connection with any criminal offense or a licensing action.~~

~~103.5.2 The instructor shall demonstrate evidence of knowledge of the subject matter by the following:~~

~~103.5.2.1 A minimum of five years active experience in appraising, or~~

~~103.5.2.2 Evidence of having completed college or other appropriate courses specific to the topic the instructor proposes to teach, or~~

~~103.5.2.3 Evidence of other qualifications of experience, education, or credentials which are acceptable to the Board; and~~

~~103.5.2.4 Evidence of having passed an examination designed to test knowledge of the subject matter he proposes to teach.~~

~~103.5.3 An applicant to teach the course on USPAP shall conform to all of the above criteria and in addition shall have been certified by the AQB as an AQB-Certified USPAP instructor.~~

~~103.5.4 Upon approval by the Board, an applicant shall be issued certification. Instructor certifications shall be issued for a term that expires twenty-four months from the date of issuance. Conditions of renewal of certification include providing proof of the following:~~

~~103.5.4.1 The instructor must have taught at least 20 hours of in-class instruction in a certified course during the preceding two years; and~~

~~103.5.4.2 The instructor must have attended a real estate instructor development workshop sponsored or approved by the Division during the preceding two years.~~

~~103.5.4.3 Instructor certifications may be renewed by submitting a properly completed application for renewal prior to the expiration date of the instructor's current certification, using the form required by the Division. Renewed instructor certifications shall be issued for a term of twenty-four months. If the instructor does not submit a properly completed renewal form, renewal fee, and any required documentation prior to the expiration date of the current certification, the certification shall expire. When a certification expires, the certification may be reinstated for a period of thirty days after the expiration date upon payment of a late fee in addition to completing the requirements for a timely renewal. After this thirty day period, and until three months after the expiration~~

date, an instructor certification may be reinstated upon payment of a non-refundable late fee and submission of proof of completion of six classroom hours of education related to real estate appraisal or teaching techniques in addition to completing the requirements for a timely renewal. Following the three month period, an instructor shall be required to apply as an original applicant in order to obtain a new certification.

103.5.5 Within 15 calendar days after the occurrence of any of the events listed in Section 103.5.1, an applicant or instructor shall give written notice to the Division of that event.

R162-103-6. Education Review Committee.

103.6 A committee may be appointed by the Board to review submissions for education credit for license or certification applicants and also to review submissions for certification of appraiser courses and instructors.

103.6.1 The Education Review Committee shall:

103.6.1.1 Review all applications for adherence to the education credit required for licensure or certification and make recommendations to the Division and the Board for approval or disapproval of the education claimed.

103.6.1.2 Review all submissions requesting certification of appraiser courses and instructors for prelicensing education purposes and make recommendations to the Division and the Board for approval or disapproval.

103.6.2 The Committee shall be composed of appraisers from the following categories: residential appraisers; commercial appraisers; farm and ranch appraisers; right-of-way appraisers; and ad valorem appraisers.

103.6.2.1 The chairperson of the committee shall be appointed by the Board.

103.6.2.2 Meetings may be called upon the request of the chairperson or upon the written request of a quorum of committee members.

103.6.3 If the review of an application has been performed by the Education Review Committee, and the Board has denied the application based on insufficient education or an inability to meet the certification of education requirements, the applicant may request that the Board review the issue again by making a request in writing to the Board within thirty days after the denial stating specific grounds upon which relief is requested. The Board shall thereafter consider the request and issue a written decision.

R162-103-7. Continuing Education Course Certification.

103.7 As a condition of renewal, all appraisers shall complete the equivalent of 28 classroom hours of appraisal education during the two year term preceding renewal.

103.7.1 Except as provided in R162-103.7.6, continuing education credit shall be given to students only for courses that are certified by the Division at the time the courses are taught. Course sponsors shall apply for course certification by submitting all forms and fees required by the Division not less than 30 days prior to the course being taught. Applications shall include the following information which shall be used in determining approval:

(a) name and contact information of the course sponsor and the entity through which the course will be provided;

(b) a description of the physical facility where the course will be taught;

(c) the proposed number of credit hours for the course;

(d)(i) identification of whether the method of instruction will be traditional education or distance education;

(ii) if distance education, the course shall meet the requirements for distance learning outlined in R162-103.3.6, except that:

(A) testing for continuing education course competency need not be a proctored examination if the course mechanisms require a student to demonstrate mastery and fluency;

(B) the course may be approved by the Division, rather than by the AQB Course Approval program; and

(C) a course need not be a minimum of 15 classroom hours;

(e) the title of the course;

(f) a statement defining how the course will meet the objectives of continuing education by increasing the licensee's knowledge, professionalism, and ability to protect and serve the public;

(g) a course outline including, for each segment of no more than 15 minutes, a description of the subject matter;

(h) a minimum of one learning objective for every hour of class time;

(i) the name and certification number of each certified instructor who will teach the course;

(j) copies of all materials that will be distributed to the participants;

(k) the procedure for pre-registration, the tuition or registration fee and a copy of the cancellation and refund policy;

(l) except for courses approved for distance education, the procedure for taking and maintaining control of attendance during class time, which procedure shall be more extensive than having the student sign a class roll;

(m) a sample of the completion certificate which shall bear the following information:

(i) space for the licensee's name, type of license and license number, and date of course;

(ii) The name of the course provider, course title, hours of credit, certification number, and certification expiration date; and

(iii) Space for signature of the course sponsor and a space for the licensee's signature;

(n)(i) a signed statement agreeing to upload the following, within 10 days after the end of a course offering, to the database specified by the Division:

(A) course name;

(B) course certificate number assigned by the Division;

(C) date the course was taught;

(D) number of credit hours; and

(E) names and license numbers of all students receiving continuing education credit;

(o) a signed statement agreeing not to market personal sales products;

(p) a commitment to give no more than eight credit hours per day to any student; and

(q) other information the Division may require.

103.7.2 Real estate appraisal related field trips are acceptable for continuing education credit; however, transit time to or from the field trip location may not be included when awarding credit if instruction does not occur.

~~103.7.3 Prelicensing education credit awarded to individuals seeking a different classification than that held, can also be used to satisfy a continuing education requirement.~~

~~103.7.4 Alternative Continuing Education Credit — continuing education credit may be granted for participation, other than as a student, in an appraisal practicum course.~~

~~103.7.4.1 Up to one-half of an individual's continuing education credit requirement may be granted on a case-by-case basis for teaching, program development, authorship of textbooks, or similar activities which are determined by the Board to be equivalent to obtaining continuing education.~~

~~103.7.4.2 The Education Review Committee shall review claims of equivalent education and also alternative continuing education proposed to be used for continuing education purposes.~~

~~103.7.4.3 The Board may award continuing education credit to members of the Education Review Committee, the Experience Review Committee, and the Technical Advisory Panel if approved by the Board and offered as a practicum course under R162-103.7.4 or as a course under R162-103.7.4.1 in accordance with AQB standards.~~

~~103.7.4.4 The Division may award continuing education credit to Board Members for participation on the Board in accordance with AQB standards.~~

~~103.7.5 Courses that are approved for continuing education credit for real estate sales agents, real estate brokers, or mortgage officers licensed by the Division are not acceptable for appraiser continuing education credit unless the courses have been previously approved by the Division for appraiser continuing education.~~

~~103.7.6(a) The Division may grant continuing education credit for non-certified courses submitted by a renewal applicant in the form required by the Division if:~~

~~(i) the course was not required by these rules to be certified and the Division determines that the course meets the continuing education objectives listed in this rule; or~~

~~(ii) the course was taught outside the state of Utah.~~

~~(b) A licensee shall retain original course completion certificates for three years following renewal and produce those certificates when audited by the Division.~~

~~103.7.7 The Division may only certify course topics approved as continuing education topics by the AQB.~~

~~103.7.8(a) A course sponsor is not responsible for uploading information for students who fail to provide an accurate name or license number registered with the Division.~~

~~(b) Continuing education credit shall not be given to any student who fails to provide to a course sponsor an accurate name or license number registered with the Division within 7 days of attending the course.~~

~~103.7.9 A course sponsor shall upon completion of a course offering, provide a certificate of completion, in the form required by the Division, to those students who attend 100% of the required class time.~~

~~103.7.10 Except for distance education courses, a course may only be approved if taught in an appropriate classroom facility and not in a private residence.~~

~~103.7.11(a) For purposes of this rule, a credit hour is defined as 50 minutes within a 60 minute segment. A course may not be approved for fewer than two credit hours.~~

R162-103-8. Administrative Proceedings.

~~The Division may deny certification or renewal of certification to any course, school or instructor that does not meet the standards required by this chapter.~~

R162-103-9. Continuing Education Instructor Certification.

~~103.9.1(a) Except for courses exempted from certification under R162-103.7.6, continuing education credit shall be given to students only for courses that are taught by an instructor who is certified by the Division at the time the courses are taught.~~

~~(b) Applicants for instructor certification shall submit all forms and fees required by the Division not less than 30 days prior to the course being taught.~~

~~(c) Applications shall include at a minimum the following information:~~

~~(i) name and contact information of the applicant;~~

~~(ii) Evidence of graduation from high school or its equivalent;~~

~~(iii) evidence of any combination of at least three years of full time experience or college-level education related to the course subject;~~

~~(iv) evidence of at least twelve months of full time teaching experience or an equivalent number of months of part time teaching experience, or attendance at the Division's Instructor Development Workshop;~~

~~(v) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the Division or its representative;~~

~~(vi) a signed statement agreeing not to market personal sales products; and~~

~~(vii) any other information the Division may require.~~

~~103.9.2 The Division shall certify instructors based on the applicant's honesty, integrity, truthfulness, reputation, and competency.~~

~~103.9.3 Instructor certifications are valid for two years. A certification may be renewed by submitting all forms and fees required by the Division prior to the expiration date of the current certification.~~

~~103.9.4 Certifications not properly renewed shall expire on the expiration date.~~

~~103.9.4.1 A certification may be reinstated for a period of thirty days after expiration by complying with all requirements for a timely renewal and paying a non-refundable late fee.~~

~~103.9.4.2 A certification may be reinstated after thirty days and within six months after expiration by complying with all requirements for a timely renewal and paying a nonrefundable reinstatement fee.~~

~~103.9.4.3 A certification that has been expired for more than six months may not be reinstated and an applicant must apply for a new certification following the same procedure as an original certification.~~

~~103.9.5 To renew an instructor certification, an instructor must have taught a minimum of 12 continuing education credit hours during the previous renewal period.~~

~~103.9.5.1 If the instructor has not taught a minimum of 12 hours during the previous renewal period, written explanation outlining the reason for not meeting the requirement and satisfactory documentation of the applicant's present level of expertise shall be provided to the Division.~~

~~R162-103-10. Marketing of Continuing Education Courses.~~~~103.10.1 A course sponsor may not advertise or market a continuing education course where Division continuing education course credit will be offered or provided to a licensed attendee unless the course:~~~~(a) is approved and has been issued a current continuing education course certification number by the Division; and~~~~(b) is advertised with the continuing education course certification number issued by the Division displayed in all advertising materials.~~~~103.10.2 A course sponsor may not advertise, market, or promote a continuing education course with language which indicates Division continuing education course approval is "pending" or otherwise forthcoming.~~~~KEY: real estate appraisals, education~~~~Date of Enactment or Last Substantive Amendment: April 27, 2011~~~~Notice of Continuation: April 18, 2007~~~~Authorizing, and Implemented or Interpreted Law: 61-2b-8]~~

Commerce, Real Estate
R162-104
 Experience Requirement

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 34944

FILED: 06/16/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The substantive provisions are incorporated into a new rule, R162-2g. (DAR NOTE: The proposed new rule, R162-2g, was published in the July 1, 2011, issue of the Utah State Bulletin under DAR No. 34917.)

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2g-201(2)(h)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact to the state.

♦ LOCAL GOVERNMENTS: Local government is not subject to the appraiser administrative rules. No fiscal impact to local government is anticipated.

♦ SMALL BUSINESSES: The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes

are proposed that are anticipated to have a fiscal impact on small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact on affected persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule is repealed. No compliance is required.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule repeal as a substitute new rule containing the substance of these provisions is also proposed by the Division.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

~~[R162-104. Experience Requirement.~~

~~R162-104-1. Measuring Experience.~~

~~104.1.1 Except for those applicants who qualify under Section 104-14, appraisal experience shall be measured in hours according to the Appraisal Experience Hours Schedules in Section R162-104-15 of this rule.~~

~~104.1.1.1 Experience for state-licensed applicants shall have been accrued in no fewer than 12 months. Experience for the certified residential applicants shall have been accrued in no fewer than 24 months, as required by the AQB. Experience for the certified general applicants shall have been accrued in no fewer than 30 months, as required by the AQB.~~

~~104.1.1.2 Applicants shall submit proof of experience as follows:~~

~~(a) State-licensed appraiser: at least 2,000 hours of appraisal experience.~~

~~(b) Certified residential appraiser: 500 hours accrued after state-licensed status was obtained, for a minimum of 2,500 hours of appraisal experience.~~

~~_____ (e) Certified general appraiser: 1,000 hours accrued after state-licensed status was obtained, for a minimum of 3,000 hours of appraisal experience.~~

~~R162-104-2. Maximum Hours Per Year.~~

~~_____ 104.2 An applicant may not accrue more than 2,000 experience hours in any 12-month period.~~

~~R162-104-3. Time Allowed for Meeting Experience Requirement.~~

~~_____ 104.3 Credit will be given for appraisal experience earned only within five years immediately preceding the licensure or certification application.~~

~~R162-104-4. Proof of Experience.~~

~~_____ 104.4 The Division shall require the applicant to substantiate the experience claimed using the form required by the Division.~~

~~R162-104-5. Compliance with USPAP and Licensing Requirements; Local Experience Requirement.~~

~~_____ 104.5 No experience credit will be given for appraisals which were performed in violation of Utah law, the law of another jurisdiction, or the administrative rules adopted by the Division and the Board.~~

~~_____ 104.5.1 No experience credit will be given for appraisals unless the appraisals were done in compliance with USPAP.~~

~~_____ 104.5.2 In order to qualify as experience credit toward certification, the additional hours for certification required by Subsection R162-104.1.1.2 must have been accrued while the applicant was licensed as an appraiser in Utah, or in another state if licensure was required in that state, at the time the appraisal was performed.~~

~~_____ 104.5.3 Except for experience hours claimed under Subsection R162-104.15.3, appraisals where only an exterior inspection of the subject property is performed shall be granted 25% of the credit awarded an appraisal which includes an interior inspection of the subject property. Not more than 25% of the total experience required for licensure or certification may be earned from appraisals where the interior of the subject property is not inspected.~~

~~_____ 104.5.4 At least 50% of the appraisals submitted for experience credit shall be appraisals of properties located in Utah.~~

~~R162-104-6. State-Licensed and State-Certified Applicants.~~

~~_____ 104.6.1 Except for those applicants who qualify under Section R162-104-14, applicants applying for licensure as State-Licensed Appraisers shall be awarded hours from the Hours Schedules in Section R162-104-15 for their experience prior to licensure only if the experience claimed was gained in compliance with Subsection R162-105-3.~~

~~_____ 104.6.2 Applicants applying for certification as State-Certified Residential Appraisers must document at least 75% of the hours submitted from the Residential Experience Hours Schedule or the residential portion of the Mass Appraisal Hours Schedule. No more than 25% of the total hours submitted may be from the General Experience Hours Schedule or from assignments listed on the Mass Appraisal Hours Schedule other than 1 to 4 unit residential properties.~~

~~_____ 104.6.3 Applicants applying for certification as State-Certified General Appraisers may claim hours for experience from any of the Hours Schedules in Section R162-104-15, so long as at least 50% of the total hours has been earned from the General Experience Hours Schedule or from assignments listed on the Mass Appraisal Hours Schedule other than 1 to 4 unit residential properties.~~

~~R162-104-7. Review or Supervision of Appraisals.~~

~~_____ 104.7 Review appraisals will be awarded experience credit when the appraiser has performed technical reviews of appraisals prepared by either employees, associates or others, provided the appraiser complied with Uniform Standards of Professional Appraisal Practice Standards Rule 3 when the appraiser was required to comply with the rule. The following hours shall be awarded for review or supervision of appraisals:~~

~~_____ 104.7.1 Review of an appraisal which includes verification of the data, but which does not include a physical inspection of the property, commonly known as a desk review, shall be worth 30% of the hours awarded to the appraisal if a separate written review appraisal report is prepared. Except as provided in Subsection R162-104.7.5, a maximum of 500 hours may be earned by desk review of appraisals.~~

~~_____ 104.7.2 Review of appraisals which includes a physical inspection of the property and verification of the data, commonly known as a field review, shall be worth 50% of the hours awarded to the appraisal if a separate written review appraisal report is prepared. Except as provided in Subsection R162-104.7.5, a maximum of 500 hours may be earned by field review of appraisals.~~

~~_____ 104.7.3 Supervision of appraisers shall be worth 20% of the hours awarded to the appraisal. A maximum of 500 hours may be earned by supervision of appraisers.~~

~~_____ 104.7.4 Except as provided in Subsection R162-104.7.5, not more than 50% of the total experience required for certification may be granted under Subsections R162-104.7.1 through R162-104.7.3 and R162-104.9.1 and R162-104.9.3 combined.~~

~~_____ 104.7.5 Applicants whose experience was earned through review of appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies are not subject to the hour limitations in Subsections R162-104.7.1, R162-104.7.2, and R162-104.7.4.~~

~~R162-104-8. Condemnation Appraisals.~~

~~_____ 104.8 Condemnation appraisals shall be worth an additional 50% of the hours normally awarded for the appraisal if the condemnation appraisal included a before and after appraisal because of a partial taking of the property.~~

~~R162-104-9. Preliminary Valuation Estimates, Comparative Market Analysis, Real Estate Consulting Services, and Other Real Estate Experience.~~

~~_____ 104.9.1 Preliminary valuation estimates, range of value estimates or similar studies, and other real estate related experience gained by bankers, builders, city planners and managers, or other individuals may be granted credit for up to 50% of the experience required for certification in accordance with Section R162-104-14, so long as the experience demonstrates to the Board that the applicant has the ability to arrive at a fair market value of property and to properly document value conclusions.~~

~~104.9.2 Comparative market analysis by real estate licensees may be granted up to 100% experience credit toward certification in accordance with Section R162-104-14, when the analysis is prepared in conformity with USPAP Standards Rules 1 and 2 and the individual can demonstrate to the Board that he is using similar techniques as appraisers to value properties and effectively utilize the appraisal process.~~

~~104.9.3 Appraisal analysis, real estate counseling or consulting services, and feasibility analysis/study will be awarded experience credit in accordance with Section R162-104-14 for up to 50% of the experience required toward certification so long as the services were performed in accordance with USPAP Standards Rules 4 and 5.~~

~~104.9.4 Not more than 50% of the total experience required for certification may be granted under Subsections R162-104.9.1 and R162-104.9.3 and R162-104.7.1 through R162-104.7.3 combined.~~

R162-104-10. Experience Participation.

~~104.10 An applicant for certification must be able to prove more than 50% participation in the data collection, verification of data, reconciliation, analysis, identification of property and property interests, compliance with USPAP standards, and preparation and development of the appraisal report in order to count the appraisal for experience credit. With the exception of experience claimed under Subsection R162-104.15.3, experience credit will be granted to only one licensed appraiser per completed appraisal even though more than one may have participated in the development of the appraisal.~~

R162-104-11. Unacceptable Experience.

~~104.11 An applicant will not receive hours toward satisfying the experience requirement for licensure or certification for performing the following:~~

- ~~(a) Appraisals of the value of a business as distinguished from the appraisal of commercial real estate; or~~
- ~~(b) Personal property appraisals.~~

R162-104-12. Verification of Experience.

~~104.12 The Board, at its discretion, may verify the claimed experience by any of the following methods: verification with the clients; submission of selected reports to the Board; and field inspection of reports identified by the applicant at the applicant's office during normal business hours.~~

R162-104-13. Experience Review Committee.

~~104.13 There may be a committee appointed by the Board to review the experience claimed by applicants for licensure or certification:~~

~~104.13.1 The Committee shall:~~

~~104.13.1.1 Review all applications for adherence to the experience required for licensure or certification;~~

~~104.13.1.2 Correspond with applicants concerning submissions, if necessary; and~~

~~104.13.1.3 Make recommendations to the Division and the Board for licensure or certification approval or disapproval.~~

~~104.13.2 Committee composition. The Committee shall be composed of appraisers from the following categories:~~

~~residential appraisers; commercial appraisers; farm and ranch appraisers; right-of-way appraisers; and mass appraisers.~~

~~104.13.2.1 The chairperson of the committee shall be appointed by the Board.~~

~~104.13.2.2 Meetings may be called upon the request of the chairperson or upon the written request of a quorum of committee members.~~

~~104.13.3 New Review. If the review of an application has been performed by the Experience Review Committee, and the Board has denied the application based on insufficient experience, the applicant may request that the Board review the issue again by making a written request within thirty days after the denial stating specific grounds upon which relief is requested. The Board shall thereafter consider the request and issue a written decision.~~

R162-104-14. Special Circumstances.

~~104.14 Applicants having experience in categories other than those shown on the Appraisal Experience Hours Schedules and applicants who believe the Experience Hours Schedules do not adequately reflect their experience or the complexity or time spent on an appraisal may petition the Board on an individual basis for evaluation and approval of their experience as being substantially equivalent to that required for licensure or certification. Upon a finding that an applicant's experience is substantially equivalent to that required for licensure or certification, the Board may accept the alternate experience and award the applicant an appropriate number of hours for the alternate experience.~~

~~104.14.1 Fulltime elected county assessors and any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll are not subject to the scope of authority limitations in Subsection R162-105.3.~~

~~104.14.2(a) If an applicant's education was approved prior to January 1, 2008, and his or her experience was approved prior to January 1, 2011 (under a system referred to by the division and industry as a segmented application), but the applicant did not pass the applicable examination required for licensure or certification by December 31, 2010, the applicant shall, by December 31, 2011:~~

~~(i) complete all additional education as required under the AQB standards;~~

~~(ii) pass the required examination applicable to the license or certification sought by the individual; and~~

~~(iii) submit a complete application to the division.~~

~~(b) An applicant who fails to comply with the December 31, 2011 deadline established in Subsection (a) shall:~~

~~(i) complete all additional education as required under the AQB standards;~~

~~(ii) pass the required examination applicable to the license or certification sought by the individual;~~

~~(iii) submit recent appraisals that meet the requirements of all applicable statutes and rules for review by the experience review committee; and~~

~~(iv) submit a complete application to the division according to deadlines established in Subsection R162-102.1.3.1.~~

R162-104-15. Appraisal Experience Hours Schedules.

~~104.15.1 Residential Experience Hours Schedule. The following hours shall be awarded to form appraisals: Fifteen hours~~

may be added to the hours shown if the appraisal was a narrative appraisal instead of a form appraisal.

TABLE 1

(a) One-unit dwelling, above-grade living area less than 4,000 square feet, including a site	5 hours
(1) One-unit dwelling, above-grade living area 4,000 square feet or more, including a site	7.5 hours
(b) Multiple one-unit dwellings in the same subdivision or condominium project which are substantially similar	5 hours per dwelling up to a maximum of 30 hours
(1) 1-25 dwellings	A total of 50 hours
(2) Over 25 dwellings	20 hours
(c) Two to four unit dwelling	10 hours
(d) Employee Relocation Counsel reports completed on currently accepted Employee Relocation Counsel form	5 hours
(e) Residential lot, 1-4 unit	5 hours per lot up to a maximum of 30 hours
(f) Multiple lots in the same subdivision which are substantially similar	A total of 50 hours
(1) 1-25 lots	5 hours per lot up to a maximum of 30 hours
(2) Over 25 lots	20-40 hours, as determined by the Board
(g) Small parcel up to 5 acres	5 hours
(h) Vacant land, 20-500 acres	20-40 hours, as determined by the Board
(i) Recreational, farm, or timber acreage suitable for a house site, up to 10 acres	10 hours
Over 10 acres	15 hours
(j) All other unusual structures or acreages, which are much larger or more complex than typical properties	5-35 hours as determined by the Board
(k) Review of residential appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies	10-50 hours

~~104.15.1.1 Government Agency Experience. Applicants whose experience was earned primarily through review of residential appraisals with no opinion of value developed as part of the review that were performed in conjunction with investigations by government agencies will be required to submit proof of having performed at least the following number of one-unit dwelling appraisals conforming to USPAP Standards 1 and 2:~~

~~104.15.1.1.1 Applicants for State-Licensed Appraiser: five.~~

~~104.15.1.1.2 Applicants for State-Certified Residential Appraiser: eight.~~

~~104.15.1.2 A maximum of 250 experience hours may be earned from appraisal of vacant land.~~

~~104.15.2 General Experience Hours Schedule. All appraisal reports claimed in the following areas must be narrative appraisal reports unless specified otherwise. Experience hours listed in Table 2 may be increased by 50% for unique and complex properties if the applicant notes the number of extra hours claimed on the Appraiser Experience Log submitted by the applicant and~~

maintains in the workfile for the appraisal an explanation about why the extra hours are claimed.

TABLE 2

(a) Apartment buildings, 5-100 units	40 hours
Over 100 units	50 hours
(b) Hotel or motels, 50 units or fewer	30 hours
51-150 units	40 hours
Over 150 units	50 hours
(c) Nursing home, rest home, care facilities,	40 hours
Fewer than 80 beds	50 hours
Over 80 beds	30 hours
(d) Industrial or warehouse building,	30 hours
Fewer than 20,000 square feet	40 hours
Over 20,000 square feet, single tenant	50 hours
Over 20,000 square feet, multiple tenants	30 hours
(e) Office buildings	30 hours
Fewer than 10,000 square feet	40 hours
Over 10,000 square feet, single tenant	50 hours
Over 10,000 square feet, multiple tenants	approach to value
(f) Entire condominium projects, using income approach to value	5-30 unit project 30 hours
5-30 unit project	31 or more unit project 50 hours
(g) Retail buildings	30 hours
Fewer than 10,000 square feet	40 hours
More than 10,000 square feet, single tenant	50 hours
More than 10,000 square feet, multiple tenants	20-40 hours
(h) Commercial, multi-unit, industrial, or other nonresidential use acreage	20-40 hours
1 to 99 acres	50-60 hours
100 acres or more, income approach to value	5 to 100 hours as determined by Board
(i) All other unusual structures or assignments which are much larger or more complex than the properties described in (a) to (h) herein.	determined by Board
(j) Entire Subdivisions or Planned Unit Developments (PUDs)	30 hours
1- to 25-unit subdivision or PUD	50 hours
Over 25-unit subdivision or PUD	5 to 100 hours as determined by Board
(k) Feasibility or market analysis,	5 to 100 hours as determined by Board
maximum 500 hours	20 hrs. 25 hrs. or permits
Farm and Ranch appraisals	Form Narrative
(l) Separate grazing privileges	20 hrs. 25 hrs. or permits
(m) Irrigated cropland, pasture other than rangeland, 1 to 10 acres	10 hrs. 15 hrs.
11-50 acres	12.5 hrs. 20 hrs.
51-200 acres	15 hrs. 25 hrs.
201-1000 acres	25 hrs. 40 hrs.
More than 1000 acres	40 hrs. 50 hrs.
(n) Dry farm, 1 to 1000 acres	15 hrs. 25 hrs.
More than 1000 acres	20 hrs. 40 hrs.
(o) Improvements on properties other than a rural residence, maximum 10 hours:	5 hrs. 5 hrs.
Dwelling	2.5 hrs. 2.5 hrs.
Sheds	15 hrs. 20 hrs.
(p) Cattle ranches	25 hrs. 30 hrs.
0-200 head	30 hrs. 40 hrs.
201-500 head	40 hrs. 50 hrs.
501-1000 head	25 hrs. 30 hrs.
More than 1000 head	35 hrs. 45 hrs.
(q) Sheep ranches	20 hrs. 25 hrs.
0-2000 head	25 hrs. 30 hrs.
More than 2000 head	25 hrs. 30 hrs.
(r) Dairies, includes all improvements except a dwelling	20 hrs. 25 hrs.
1-100 head	25 hrs. 30 hrs.
101-300 head	30 hrs. 35 hrs.
More than 300 head	

(s) Orchards		
5-50 acres	30 hrs.	40 hrs.
More than 50 acres	40 hrs.	50 hrs.
(t) Rangeland/timber		
0-640 acres	20 hrs.	25 hrs.
More than 640 acres	30 hrs.	35 hrs.
(u) Poultry		
0-100,000 birds	30 hrs.	40 hrs.
More than 100,000 birds	40 hrs.	50 hrs.
(v) Mink		
0-5000 cages	30 hrs.	35 hrs.
More than 5000 cages	40 hrs.	50 hrs.
(w) Fish farms	40 hrs.	50 hrs.
(x) Hog farms	40 hrs.	50 hrs.
(y) Review of Table 2 appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies	20	100 hours

104.15.2.1 Government Agency Experience. Applicants for certification as a State-Certified General Appraiser whose experience was earned primarily through review of appraisals that are listed on Table 2 with no opinion developed as part of the review that were performed in conjunction with investigations by government agencies will be required to submit proof of having performed at least eight Table 2 appraisals conforming to USPAP Standards 1 and 2.

104.15.2.2 Appraisals on commercial or multi-unit form reports shall be worth 75% of the hours normally awarded for the appraisal.

104.15.3 Mass Appraisal Experience Hours Schedule.

TABLE 3

(a) One-unit dwelling, above-grade living area less than 4,000 square feet	
— (1) Exterior inspection, highest and best use analysis, data collection only	.5 hours
— (2) Interior and exterior inspection, highest and best use analysis, data collection only	1 hour
— (3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	3.75 hours
(b) One-unit dwelling, above-grade living area 4,000 square feet or more	
— (1) Exterior inspection, highest and best use analysis, data collection only	.75 hours
— (2) Interior and exterior inspection, highest and best use analysis, data collection only	1.5 hours
— (3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	5 hours
(c) Two to four unit dwelling	
— (1) Exterior inspection, highest and best use analysis, data collection only	1.5 hours
— (2) Interior and exterior inspection, highest and best use analysis, data collection only	3 hours
— (3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	15 hours
(d) Commercial and industrial buildings, depending on complexity	
— (1) Exterior inspection, highest and best use analysis, data collection only	1 to 5 hours
— (2) Interior and exterior inspection, highest and best use analysis, data collection only	2 to 10 hours

— (3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	3 to 37.5 hours
(e) Agricultural and other improvements, depending on complexity	
— (1) Exterior inspection, highest and best use analysis, data collection only	.5 to 2.5 hours
— (2) Interior and exterior inspection, highest and best use analysis, data collection only	1 to 5 hours
— (3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	3.75 to 20 hours
(f) Vacant land, depending on complexity	
— (1) Inspection, highest and best use analysis, data collection only	.5 to 2.5 hours
— (2) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	2.5 to 25 hours
— (3) Land segregation (division) analysis and processing, no field inspection	.25 hours
— (4) Land segregation (division) analysis and processing, field inspection	.5 hours
(g) Data input and review for experience hours claimed under Subsections R162-104-15.3(a) through (f)	.25 hours
(h) Land valuation guideline	
— (1) 25 or fewer parcels	10 hours
— (2) 26 to 500 parcels	30 hours
— (3) Over 500 parcels	25 additional hours for each 500 parcels, up to a maximum of 125 hours
(i) Assessment/sales ratio study, data collection, verification, sample inspection, analysis, conclusion, and implementation	
— (1) Base study of 100 reviewed sales	125 hours
— (2) Additional increments of 100 sales	Add 25 hours for each 100 additional sales, up to a maximum of 375 hours
(j) Multiple Regression Model, Development and Implementation	
— (1) Less than 5,000 parcels	100 hours
— (2) Additional increments of 500 parcels	Add 5 hours for each additional 500 parcels, up to a maximum of 375 hours
(k) Depreciation study and analysis	100 hours
(l) Reviews of "Land Value in Use" in accordance with U.C.A. Section 59-2-505	
— (1) Office review only	.25 hours
— (2) Field review	.5 hours
(m) Natural Resource Properties, depending on complexity	
— (1) Sand and Gravel, per site	7.5 to 20 hours
— (2) Mine	7.5 to 110 hours
— (3) Oil and Gas, per site	1.65 to 50 hours
(n) Pipelines and gas distribution properties, depending on complexity	10 to 40 hours
(o) Telephone and electric properties, depending on complexity	5 to 80 hours
(p) Airline and railroad properties, depending on complexity	10 to 80 hours

~~(q) Appraisal review/audit, depending on complexity 2.5 to 125 hours~~
~~(r) Capitalization rate study 80 hours~~

~~104.15.3.1 Single property appraisals performed under USPAP Standards 1 and 2 by mass appraisers will receive the same number of hours shown in Tables 1 and 2.~~

~~104.15.3.2 Review and supervision of appraisals by mass appraisers will receive hours in accordance with Subsection R162-104.7.~~

~~104.15.3.3 Mass appraisers and mass appraisal trainees who perform 60% or more of the appraisal work will receive 100% of the hours shown on Table 3. Mass appraisers and mass appraisal trainees who perform between 25% and 59% of the appraisal work will receive 50% of the hours shown on Table 3. Mass appraisers and mass appraisal trainees who perform less than 25% of the appraisal work will receive no credit for the appraisal assignment.~~

~~104.15.3.4 Applicants for State Licensed Appraiser whose experience was earned primarily through mass appraisal will be required to submit proof of having performed at least five appraisals conforming to USPAP Standards 1 and 2. Applicants for certification as a State Certified Residential Appraiser whose experience was earned primarily through mass appraisal will be required to submit proof of having performed at least eight one-unit residential appraisals conforming to USPAP Standards 1 and 2. Applicants for certification as a State Certified General Appraiser whose experience was earned primarily through mass appraisal will be required to submit proof of having performed at least eight Table 2 appraisals conforming to USPAP Standards 1 and 2.~~

~~104.15.3.5 No more than 60% of the total hours submitted for licensure or certification may have been earned from Subsections R162-104.15.3(a)(1) and (2), R162-104.15.3(b)(1) and (2), R162-104.15.3(c)(1) and (2), R162-104.15.3(d)(1) and (2), R162-104.15.3(e)(1) and (2), and R162-104.15.3(f)(1) combined.~~

~~104.15.3.6 No more than 25% of the total hours submitted for licensure or certification may have been earned from Subsections R162-104.15.3(f)(3) and (4) combined.~~

~~104.15.3.7 No more than 20% of the total hours submitted for licensure or certification may have been earned from Subsection R162-104.15.3(g).~~

~~104.15.3.8 Mass appraisal of property with a personal property component of less than 50% of value will be allowed the full experience hours shown on Table 3 for the category of property appraised. Mass appraisal of property with a personal property component of 50% to 85% of value will be allowed 50% of the experience hours shown on Table 3 for the category of property appraised. Mass appraisal of property with a personal property component greater than 85% will be awarded no experience hours.~~

KEY: real estate appraisals, experience requirement

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

Notice of Continuation: February 15, 2007

Authorizing, and Implemented or Interpreted Law: 61-2b-1 through 61-2b-40]

Commerce, Real Estate R162-105 Scope of Authority

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 34945

FILED: 06/16/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The substantive provisions are incorporated into a new rule, R162-2g. (DAR NOTE: The proposed new rule, R162-2g, was published in the July 1, 2011, issue of the Utah State Bulletin under DAR No. 34917.)

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2g-201(2)(h)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact to the state.

♦ **LOCAL GOVERNMENTS:** Local government is not subject to the appraiser administrative rules. No fiscal impact to local government is anticipated.

♦ **SMALL BUSINESSES:** The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact on small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact on affected persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule is repealed. No compliance is required.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule repeal as a substitute new rule containing the substance of these provisions is also proposed by the Division.

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

COMMERCE
REAL ESTATE

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

[R162-105. Scope of Authority.

R162-105-1. Scope of Authority.

~~105.1 Transaction value. "Transaction value" means:~~

~~105.1.1 For loans or other extensions of credit, the amount of the loan or extension of credit;~~

~~105.1.2 For sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and~~

~~105.1.3 For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.~~

~~105.2 State-Licensed Appraisers. In federally-related transactions, the Utah Real Estate Appraiser Licensing Act and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and related federal regulations allow State-Licensed Appraisers to perform the appraisal of non-complex one to four residential units having a transaction value of less than \$1,000,000 and complex one to four residential units having a transaction value of less than \$250,000.~~

~~105.2.1 Subject to the transaction value limits in Section 105.2, State-Licensed Appraisers may also perform appraisals in federally-related transactions of vacant or unimproved land that is utilized for one to four family purposes, or for which the highest and best use is 1-4 family purposes, so long as net income capitalization analysis is not required by the terms of the assignment.~~

~~105.2.2 State-Licensed Appraisers may not perform appraisals of subdivisions in federally-related transactions for which a development analysis/appraisal is necessary or for which discounted cash flow analysis is required by the terms of the assignment.~~

~~105.3 Trainees.~~

~~105.3.1 For the purposes of these rules, "trainee" means a person who is working under the direct supervision of a State-Certified Appraiser to earn hours for licensure.~~

~~105.3.2 Appraisal-related duties by unlicensed persons. Unlicensed persons who have not qualified as trainees as provided in Subsection 110 may perform only clerical duties in connection with an appraisal. For the purposes of this rule, appraisal-related~~

~~clerical duties include typing an appraiser's research notes or an appraiser's report, taking photographs of properties, and obtaining copies of public records. Only those persons who have properly qualified as trainees as provided in Subsection 110 may perform the following appraisal-related duties: participating in property inspections, measuring or assisting in the measurement of properties, performing appraisal-related calculations, participating in the selection of comparables for an appraisal assignment, making adjustments to comparables, and drafting or assisting in the drafting of an appraisal report. The supervising appraiser shall be responsible to determine the point at which a trainee is competent to participate in each of these activities.~~

~~105.3.2.1 A trainee may not solicit an assignment or accept an assignment on behalf of anyone other than the trainee's supervisor or the supervisor's appraisal firm. All engagement letters shall be addressed to the supervisor or the supervisor's appraisal firm, not to the trainee. In all appraisal assignments, the supervisor shall delegate only such duties as are appropriate to the trainee and shall directly supervise the trainee in the performance of those duties.~~

~~105.3.4 Supervising Appraisers. A trainee may have more than one state-certified supervising appraiser. A supervising appraiser may supervise a maximum of three trainees at one time.~~

~~105.3.5 Residential Property Inspections. A trainee, including a trainee who was previously a state-registered appraiser, shall be accompanied by a supervising State-Certified Appraiser on all inspections of residential property until the trainee has performed 100 inspections of residential properties in which both the interior and the exterior of the properties are inspected. All reports in appraisals in which a trainee participated in the inspection of the subject property shall comply with the requirements of Section 106.9.~~

~~105.3.6 Non-Residential Property Inspections. A trainee, including a trainee who was previously a state-registered appraiser, shall be accompanied by a supervising State-Certified General Appraiser on all inspections of non-residential property until the trainee has performed 20 inspections of non-residential properties in which both the interior and the exterior of the properties are inspected. All reports in appraisals in which a trainee participated in the inspection of the subject property shall comply with the requirements of Section 106.9.~~

~~105.3.7 Hours for Licensure. A trainee may accumulate experience hours for each duty listed below with the respective percentages, not to exceed the maximum number of hours awarded by the Appraisal Experience Hour Schedule under Sections 104-15.1, 104-15.2, and 104-15.3. No more than one-third of the experience hours submitted toward licensure may come from any one of the following categories:~~

~~(a) participation in highest and best use analysis - 10% of total hours;~~

~~(b) participation in neighborhood description and analysis - 10% of total hours;~~

~~(c) as provided in Sections 105.3.5 and 105.3.6, inspecting the interior and exterior, including measurement of the exterior of a property that is the subject of an appraisal and inspection of the exterior of a property that may be used as a comparable in an appraisal. No hours will be granted for inspections that do not include both an interior and exterior inspection of the subject property - 20% of total hours;~~

- ~~_____ (d) participation in land value estimate - 20% of total hours;~~
- ~~_____ (e) participation in sales comparison property selection and analysis - 30% of total hours;~~
- ~~_____ (f) participation in cost analysis - 20% of total hours;~~
- ~~_____ (g) participation in income analysis - 30% of total hours;~~
- ~~_____ (h) participation in the final reconciliation of value - 10% of total hours;~~
- ~~_____ (i) participation in report preparation - 20% of total hours.~~

~~_____ 105.3.8 Credit will be given for appraisal experience earned only within five years immediately preceding the licensure or certification application.~~

~~_____ 105.3.9 All trainees are prohibited from signing an appraisal report or discussing an appraisal assignment with anyone other than the appraiser responsible for the assignment, state enforcement agencies and such third parties as may be authorized by due process of law, or a duly authorized professional peer review committee.~~

~~_____ 105.3.10 A state-certified appraiser who supervises a trainee shall be responsible for the training and direct supervision of the trainee.~~

~~_____ 105.3.10.1 Direct supervision shall consist of critical observation and direction of all aspects of the appraisal process and accepting full responsibility for the appraisal and the contents of the appraisal report. The supervising appraiser shall be responsible to personally inspect each residential property that is appraised with a trainee until the trainee has performed 100 residential inspections as provided in Subsection 105.3.5 and 20 non-residential inspections as provided in Subsection 105.3.6. The supervising appraiser shall actively supervise those inspections and the resulting appraisals. In addition, the supervising appraiser shall personally inspect all property when the appraisal report scope of work or certification requires appraiser inspection.~~

~~_____ 105.3.11 A supervising appraiser shall require the trainee to maintain a log in a form satisfactory to the Board which shall contain, at a minimum, the following information for each appraisal:~~

- ~~_____ (a) file number;~~
- ~~_____ (b) report date;~~
- ~~_____ (c) subject address;~~
- ~~_____ (d) client name;~~
- ~~_____ (e) type of property;~~
- ~~_____ (f) report form number or type; and~~
- ~~_____ (g) number of work hours.~~

~~_____ 105.3.12 The trainee shall maintain a separate appraisal log for each supervising appraiser.~~

~~_____ 105.4. Trainee Status after Revocation, Surrender, Denial, or Suspension of License or Certification.~~

~~_____ 105.4.1 Trainee Status after Revocation, Surrender, or Denial of License or Certification. Unless otherwise ordered by the Board, an appraiser whose appraiser certification or license has been revoked by the Board, whose application for renewal of a certification or license has been denied by the Board, or who has surrendered a certification or license as a result of an investigation by the Division, may not serve as a trainee for a period of four years after the date of the revocation, denial, or surrender, nor may a licensed or certified appraiser employ or supervise the former~~

~~appraiser in the performance of the activities permitted trainees for that same period of time.~~

~~_____ 105.4.2 Trainee Status while License or Certification is Suspended. Unless otherwise ordered by the Board, any appraiser whose appraiser license or certificate has been suspended by the Board as a result of an investigation by the Division may not serve as a trainee during the period of suspension. While an appraiser is suspended, a licensed or certified appraiser may not employ or supervise the suspended appraiser in the performance of the activities permitted trainees.~~

~~**KEY: real estate appraisals**
Date of Enactment or Last Substantive Amendment: January 27, 2010
Notice of Continuation: November 10, 2008
Authorizing, and Implemented or Interpreted Law: 61-2b-6(1) (4)~~

Commerce, Real Estate
R162-106
Professional Conduct

NOTICE OF PROPOSED RULE
 (Repeal)

DAR FILE NO.: 34946
 FILED: 06/16/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The substantive provisions are incorporated into a new rule, R162-2g. (DAR NOTE: The proposed new rule, R162-2g, was published in the July 1, 2011, issue of the Utah State Bulletin under DAR No. 34917.)

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2g-201(2)(h)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact to the state.
- ◆ **LOCAL GOVERNMENTS:** Local government is not subject to the appraiser administrative rules. No fiscal impact to local government is anticipated.
- ◆ **SMALL BUSINESSES:** The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact on small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact on affected persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule is repealed. No compliance is required.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule repeal as a substitute new rule containing the substance of these provisions is also proposed by the Division.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

[R162-106. Professional Conduct.

R162-106-1. Uniform Standards.

~~(1) Unless exempted in Subsection 2, all appraisers and appraiser trainees must comply with the current edition of the Uniform Standards of Professional Appraisal Practice (USPAP). All persons licensed or certified under this chapter must also observe the Advisory Opinions of USPAP.~~

~~(2) An individual is exempt from complying with all provisions of USPAP when acting in an official capacity as:~~

- ~~(a) a Division staff member or employee;~~
- ~~(b) a member of the experience review committee as appointed and approved by the Board;~~
- ~~(c) a member of the technical review panel as appointed and approved by the Board;~~
- ~~(d) a hearing officer;~~
- ~~(e) a member of a county board of equalization;~~
- ~~(f) an administrative law judge;~~
- ~~(g) a member of the Utah State Tax Commission; or~~
- ~~(h) a member of the Board.~~

R162-106-2. Use of Terms.

~~106.2. The terms "State-Certified Residential Appraiser," "State-Certified General Appraiser," and State-Licensed Appraiser shall not be abbreviated or reduced to a letter or group of letters. If these terms are used on letterhead or in advertising, the appraiser's certificate number or license number must follow his name.~~

R162-106-3. Signatures and Use of Seal.

~~106.3.1. State-Licensed Appraisers.— State-Licensed appraisers may not place a seal on an appraisal report or use a seal in any other manner likely to create the impression that the appraiser is a state-certified appraiser.~~

~~106.3.2. Signatures.~~

~~106.3.2.1. Signature stamps. Appraisers may not affix their signatures to appraisal reports by means of a signature stamp.~~

~~106.3.2.2. Appraisers may not affix their signatures to blank or partially-completed appraisal reports which will be filled in later by anyone other than the appraiser who has signed the reports.~~

~~106.3.2.3. If it is necessary for an appraiser to delegate authority to another individual to sign the appraiser's signature on an appraisal report, the other individual may sign the report for the appraiser only if: a) the report explicitly discloses that the other individual has been authorized to sign the report for the appraiser; b) the permission must have been granted in writing and limited to a specific property address; c) a copy of the written permission to sign must be attached to the report; and d) the appraiser who signs the other's signature must write the word "by" followed by his own name after the other's signature.~~

~~106.3.2.4. Digital signatures. A digital signature may be used in place of a handwritten signature only if: a) the software program which generates the digital signature has a security feature; and b) the appraiser ensures that his signature is protected and that no one other than the appraiser has control of that signature.~~

R162-106-4. Testimony by an Appraiser.

~~106.4. Testimony. An appraiser who testifies as to an appraisal opinion in a deposition or an affidavit, or before any court, public body, or hearing officer, shall prepare a written appraisal report or a file memorandum prior to giving such testimony.~~

~~106.4.1. File memoranda. For the purpose of this rule, a file memorandum shall include work sheets, data sheets, the reasoning and conclusions upon which the testimony is based, and other sufficient information to demonstrate substantial compliance with USPAP Standards Rule 2-2, or in the case of mass appraisal, Standards Rule 6-7.~~

R162-106-5. Failure to Respond to Notice.

~~106.5.~~

~~(a) When the Division notifies an appraiser or registered expert witness of a complaint, or when the Division notifies an appraiser or registered expert witness that information is needed from the individual, the notified individual must respond to the notice in the manner specified in the notice within ten business days of receipt of the notice from the Division. Failure to respond within the required time period to a notice or any written request for information from the Division shall be considered a violation of these rules and separate grounds for disciplinary action against the appraiser or registered expert witness.~~

~~_____ (b) If a deadline for response under Subsection (a) falls on a day when the Division is closed, the deadline shall be extended to the next business day.~~

~~**R162-106-6. Recordkeeping Requirements.**~~

~~_____ 106.6. The true copy of an appraisal report which an appraiser is required by Section 61-2b-34(1) to retain shall be a photocopy or other exact copy of the report as it was provided to the client, including the appraiser's signature.~~

~~**R162-106-7. Sales and Listing History.**~~

~~_____ In order to comply with Standard 1 of the Uniform Standards of Professional Appraisal Practice (USPAP), appraisers who are licensed or certified under this chapter shall analyze and report the sales and listing history of the subject property for the three years preceding the appraisal if such information is available to the appraiser from a multiple listing service, listing agent(s), or the property owner.~~

~~**R162-106-8. Draft Reports.**~~

~~_____ For the purpose of this rule, a "draft report" is defined as an appraisal report that is a work in progress and that has not yet been finished by the Appraiser.~~

~~_____ 106.8.1. One to Four Unit Residential Real Property. An appraiser may not release a draft report to a client in the appraisal of one to four unit residential real property.~~

~~_____ 106.8.2. An appraiser may release a draft report to a client in the appraisal of other than one to four unit residential real property if: a) the first page of the report prominently identifies the report as a draft; b) the draft report has been signed by the appraiser; and c) the appraiser complies with USPAP in the preparation of the draft report.~~

~~**R162-106-9. Inspections.**~~

~~_____ All appraisal reports shall include a statement indicating whether or not the subject property was inspected as part of the appraisal process, and if any inspections were done, the following information concerning the inspections shall also be included:~~

~~_____ (a) the names of all appraisers and appraisal trainees who participated in each property inspection;~~

~~_____ (b) whether each inspection was an exterior inspection only or both an exterior and an interior inspection; and~~

~~_____ (c) the date that each inspection was performed.~~

~~**KEY: real estate appraisals, conduct**~~

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

~~**Notice of Continuation: February 15, 2007**~~

~~**Authorizing, and Implemented or Interpreted Law: 61-2b-29; 61-2b-8(5)(e)**~~

Commerce, Real Estate **R162-107** Unprofessional Conduct

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 34947

FILED: 06/16/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The substantive provisions are incorporated into a new rule, R162-2g. (DAR NOTE: The proposed new rule, R162-2g, was published in the July 1, 2011, issue of the Utah State Bulletin under DAR No. 34917.)

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2g-201(2)(h)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact to the state.

♦ **LOCAL GOVERNMENTS:** Local government is not subject to the appraiser administrative rules. No fiscal impact to local government is anticipated.

♦ **SMALL BUSINESSES:** The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact on small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact on affected persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule is repealed. No compliance is required.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule repeal as a substitute new rule containing the substance of these provisions is also proposed by the Division.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO
LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

[R162-107. Unprofessional Conduct.

R162-107-1. Unprofessional Conduct.

~~107.1 Unprofessional conduct includes the following specific acts or omissions:~~

~~107.1.1 Violating or disregarding a disciplinary order of the Utah Appraiser Licensing and Certification Board or the division;~~

~~107.1.2 Signing an appraisal report containing a statement indicating that an appraiser has inspected a property if the appraiser has not inspected the property;~~

~~107.1.3 Signing an appraisal report as the supervising appraiser without having given adequate supervision to the registered appraiser or the unclassified assistant;~~

~~107.1.4 Allowing an appraiser in his employ, or an appraiser whom he is otherwise responsible to supervise, to:~~

~~(a) exceed the authority of the subordinate appraiser's classification;~~

~~(b) engage in conduct which is a violation of Title 61, Chapter 2b;~~

~~107.1.5 Allowing a non-appraiser to:~~

~~(a) exceed the authority granted to an unclassified person by these rules;~~

~~(b) engage in conduct which would be a violation of Title 61, Chapter 2b if done by an appraiser; or~~

~~(c) accept an appraisal assignment.~~

~~107.1.6 Splitting appraisal fees with any person who is not a State-Licensed Appraiser or a State-Certified Appraiser, except that an appraisal trainee may be paid reasonable compensation proportionate to lawful services actually performed in connection with appraisals. Such payment must be paid to the trainee by the trainee's supervisor or the supervisor's appraisal firm and not by any other person or entity.~~

~~107.2 The Board may appoint members of the appraisal industry to serve as a Technical Advisory Panel to provide advice to the Division concerning technical appraisal issues and conduct constituting unprofessional conduct.~~

~~KEY: real estate appraisals, conduct~~

~~Date of Enactment or Last Substantive Amendment: November 23, 2005~~

~~Notice of Continuation: July 16, 2007~~

~~Authorizing, and Implemented or Interpreted Law: 61-2b-8]~~

Commerce, Real Estate **R162-109** Administrative Proceedings

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 34948

FILED: 06/16/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The substantive provisions are incorporated into a new rule, R162-2g. (DAR NOTE: The proposed new rule, R162-2g, was published in the July 1, 2011, issue of the Utah State Bulletin under DAR No. 34917.)

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2g-201(2)(h)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact to the state.

♦ LOCAL GOVERNMENTS: Local government is not subject to the appraiser administrative rules. No fiscal impact to local government is anticipated.

♦ SMALL BUSINESSES: The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact on small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact on affected persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule is repealed. No compliance is required.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule

repeal as a substitute new rule containing the substance of these provisions is also proposed by the Division.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

~~**[R162-109. Administrative Proceedings.**~~

~~**R162-109-1. Formal Adjudicative Proceedings.**~~

~~109.1. Any proceedings conducted subsequent to the issuance of a cease and desist order or other emergency order shall be conducted as formal adjudicative proceedings.~~

~~**R162-109-2. Informal Adjudicative Proceedings.**~~

~~109.2.1 Proceedings in which the Division seeks disciplinary action pursuant to U.C.A. Section 61-2b-29 against a licensed or certified appraiser shall be conducted as informal adjudicative proceedings.~~

~~109.2.2 Proceedings on original applications for licensure or certification, or renewal applications for licensure or certification, as an appraiser, or for certification of appraisal courses, schools, or instructors, and all proceedings on applications for a temporary permit or registration as an expert witness, shall be conducted as informal adjudicative proceedings.~~

~~109.2.3 All adjudicative proceedings as to any other matters not specifically designated as formal adjudicative proceedings shall be conducted as informal adjudicative proceedings.~~

~~109.2.4 A hearing will be held in an informal adjudicative proceeding only if required or permitted by the Appraiser Licensure and Certification Act or these rules.~~

~~109.2.5 Application forms which shall be filled out and submitted to the Division for registration as an expert witness, licensure or certification as an appraiser, or for certification of courses, schools, or instructors, and all applications for a temporary permit shall be deemed a request for agency action pursuant to the Utah Administrative Procedures Act, Section 63G-4-102 et seq.~~

~~109.2.5.1 Upon receipt of an application, the Division shall:~~

~~(a) issue and mail a license, certification, temporary permit, or registration as an expert witness, which shall be deemed notification that the application is granted;~~

~~(b) notify the applicant that the application is incomplete and that further information is needed;~~

~~(c) notify the applicant that a hearing shall be scheduled before the Utah Appraiser Licensure and Certification Board for the purpose of determining the applicant's fitness for appraiser licensure or certification, or issuance to the applicant of a temporary permit; or~~

~~(d) notify the applicant that the application is denied, and, if the proceeding is one in which a hearing is permitted, that he may request a hearing to challenge the denial.~~

~~109.2.6. Other Requests for Agency Action~~

~~109.2.6.1. Other requests for agency action shall be in writing and signed by the requestor, and shall contain the following:~~

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

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

~~(c) the date of mailing of the request for agency action;~~

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

~~(e) a statement of the relief or action sought from the Division; and~~

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

~~109.2.6.2. Upon receipt of a request for agency action other than an application for registration, licensure or certification, the Division shall:~~

~~(a) notify the requestor in writing that the request is granted;~~

~~(b) notify the requestor that the request is incomplete and that further information is needed before the Division is able to make a determination on the request;~~

~~(c) notify the requestor that the Division does not have the legal authority or jurisdiction to grant the relief requested or the action sought; or~~

~~(d) notify the requestor that the request is denied, and, if the proceeding is one in which a hearing is permitted, that he may request a hearing to challenge the denial.~~

~~109.2.6.3. A complaint against an appraiser or the holder of a temporary permit requesting that the Division commence an investigation or a disciplinary action is not a request for agency action.~~

~~**R162-109-3. Hearings Not Required.**~~

~~109.3. A hearing is not required and will not be held in the following informal adjudicative proceedings:~~

~~109.3.1. The issuance, renewal or reinstatement of an appraiser license or certification;~~

~~109.3.2. The issuance or renewal of an appraisal course, school, or instructor certification;~~

~~109.3.3. The issuance of any interpretation of statute, rule or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the Division; or~~

~~109.3.4. The denial of renewal or reinstatement of an appraiser license or certification for failure to complete any continuing education required by Section 61-2b-40.~~

~~R162-109-4. Hearings Permitted.~~

~~109.4.1. In the following informal adjudicative proceedings, a hearing will be held only if requested in writing by a party within 20 days from the date a notice of agency action or the Division's response to a request for agency action is mailed:~~

~~109.4.1.1. The denial of an application for certification as an instructor on the grounds that his attestation to upstanding moral character is false;~~

~~109.4.1.2. The denial of an application for an initial appraiser license or certification due to insufficient education or experience, as determined by the appropriate review committee appointed by the Appraiser Licensing and Certification Board; or~~

~~109.4.1.3. The denial of an application for a temporary permit.~~

~~109.4.2. A request by a party for a hearing shall include the grounds upon which relief is requested.~~

~~109.4.3. Hearings permitted by this rule will be before the Utah Appraiser Licensing and Certification Board.~~

~~R162-109-5. Hearings Required.~~

~~109.5.1. Hearings will be held in all proceedings in which the Division seeks to deny an application for original or renewed licensure or certification for failure of the applicant to meet the criteria of good moral character, honesty, integrity or truthfulness.~~

~~109.5.2. Hearings will be held in all proceedings conducted subsequent to the issuance of a cease and desist order or other emergency order.~~

~~109.5.3. Hearings will be held in all proceedings in which the Division seeks disciplinary action pursuant to U.C.A. Section 61-2b-29 against a licensed or certified appraiser.~~

~~R162-109-6. Procedures for Hearings in Informal Adjudicative Proceedings.~~

~~109.6.1. The procedures to be followed in all informal adjudicative proceedings shall be as set forth in Title 63G, Chapter 4, Utah Administrative Procedures Act, the Department of Commerce Administrative Procedures Act Rules, Utah Administrative Code Section R151-46b, and in this Section R162-109-6.~~

~~109.6.2. Notice of Agency Action and Petition. The Division shall commence a proceeding for disciplinary action pursuant to U.C.A. Section 61-2b-29 by the filing and service of a Notice of Agency Action and a Petition setting forth the allegations made by the Division.~~

~~109.6.3. Answer. The presiding officer may, upon a determination of good cause, require a person against whom a disciplinary proceeding has been initiated pursuant to U.C.A. Section 61-2b-29 to file an Answer to the Petition by ordering in the Notice of Agency Action that the respondent shall file an Answer with the Division. All Answers are required to be filed with the Division within thirty days of the mailing date of the Notice of Agency Action and Petition.~~

~~109.6.4. Assistance of Administrative Law Judge. In any proceeding under this subsection, the Board may delegate the hearing to an Administrative Law Judge or may request that an~~

~~Administrative Law Judge assist the Board in conducting the hearing.~~

~~109.6.5. Notice of hearing. Upon the scheduling of a hearing by the Division or upon receipt of a timely request for a hearing where hearings are permitted, the Division shall mail written notice of the date, time, and place scheduled for the hearing at least ten days prior to the hearing.~~

~~109.6.6. Discovery is prohibited, but the Division may issue subpoenas or other orders to compel production of necessary evidence. All parties shall have access to the Division's files and to all materials and information gathered in any investigation to the extent permitted by law.~~

~~109.6.7. Intervention is prohibited.~~

~~109.6.8. Hearings shall be open to all parties, except that a hearing on an applicant's fitness for licensure or certification may be conducted in a closed session which is not open to the public if the presiding officer closes the hearing pursuant to Title 63G, Chapter 4, Utah Administrative Procedures Act or Title 52, Chapter 4, the Open and Public Meetings Act. The parties named in the Notice of Agency Action or the Request for Agency Action may be represented by counsel and shall have the opportunity to testify, present witnesses and other evidence, and comment on the issues.~~

~~109.6.9. Within a reasonable time after the hearing, the presiding officer shall cause to be issued and mailed to the parties a signed order in writing based on the facts appearing in the agency's files and on the facts presented in evidence at the hearing. The order shall state the decision and the reasons for the decision, and a notice of the right of administrative review and judicial review available to the parties including applicable time limits.~~

~~109.6.10. The Division may, but shall not be required to, record the hearing. If a record has been made, any party, at his own expense, may have a reporter approved by the Division prepare a transcript from the Division's record of the proceedings.~~

~~KEY: real estate appraisals~~

~~Date of Enactment or Last Substantive Amendment: July 27, 2005~~

~~Notice of Continuation: April 18, 2007~~

~~Authorizing, and Implemented or Interpreted Law: 61-2b-30]~~

Commerce, Real Estate
R162-110
Trainee Registration

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 34949

FILED: 06/16/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The substantive provisions are incorporated into a new rule, R162-2g. (DAR NOTE: The proposed new rule,

R162-2g, was published in the July 1, 2011, issue of the Utah State Bulletin under DAR No. 34917.)

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2g-201(2)(h)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact to the state.

◆ LOCAL GOVERNMENTS: Local government is not subject to the appraiser administrative rules. No fiscal impact to local government is anticipated.

◆ SMALL BUSINESSES: The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact on small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The substantive provisions of this rule are incorporated into a new rule, R162-2g. No changes are proposed that are anticipated to have a fiscal impact on affected persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule is repealed. No compliance is required.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule repeal as a substitute new rule containing the substance of these provisions is also proposed by the Division.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

[R162-110. Trainee Registration:

R162-110-1. Trainee Registration:

- ~~_____ (1) Registration Required:~~
- ~~_____ (a) An individual who intends to obtain a license to practice as a state-licensed appraiser must first register with the Division as a trainee.~~
- ~~_____ (b) The Division and the Board shall not award or recognize experience hours toward licensure for any appraisal work that is performed by an individual during a period of time when the individual is not validly and currently registered as a trainee.~~
- ~~_____ (2) Character. An individual registering with the Division as a trainee shall evidence honesty, integrity, and truthfulness:~~
 - ~~_____ (a) A trainee applicant shall be denied registration for~~
 - ~~_____ (i) Any felony that resulted in~~
 - ~~_____ (A) a conviction occurring within five years of the date of application; or~~
 - ~~_____ (B) a jail or prison release date falling within five years of the date of application;~~
 - ~~_____ (ii) Any misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in~~
 - ~~_____ (A) a conviction occurring within three years of the date of application; or~~
 - ~~_____ (B) a jail or prison release date falling within three years of the date of application;~~
 - ~~_____ (b) A trainee applicant may be denied registration upon consideration of the following:~~
 - ~~_____ (i) criminal convictions and pleas entered at any time prior to the date of application;~~
 - ~~_____ (ii) the circumstances that led to any criminal convictions or pleas under consideration;~~
 - ~~_____ (iii) past acts related to honesty or moral character, with particular consideration given to any such acts involving the business of appraising;~~
 - ~~_____ (iv) dishonest conduct that would be grounds under Utah law for sanctioning an existing licensee;~~
 - ~~_____ (v) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;~~
 - ~~_____ (vi) court findings of fraudulent or deceitful activity in civil lawsuits;~~
 - ~~_____ (vii) evidence of non-compliance with court orders or conditions of sentencing;~~
 - ~~_____ (viii) evidence of non-compliance with terms of a probation agreement, plea in abeyance, or diversion agreement; and~~
 - ~~_____ (ix) failure to pay taxes or child support obligations.~~
- ~~_____ (3) Competency. An individual registering with the Division as a trainee shall evidence competency. In evaluating an applicant for competency, the Division and Commission may consider any evidence, including the following:~~
 - ~~_____ (a) civil judgments, with particular consideration given to any such judgments involving the appraisal business;~~
 - ~~_____ (b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;~~
 - ~~_____ (c) the extent and quality of the applicant's training and education in appraising;~~
 - ~~_____ (d) the extent of the applicant's knowledge of the Utah Real Estate Appraiser Licensing and Certification Act;~~

~~(e) evidence of disregard for licensing laws;~~
~~(f) evidence of drug or alcohol dependency; and~~
~~(g) the amount of time that has passed since any incident under consideration.~~

~~(4) Pre-registration Education. Within the five-year period preceding the date of application, an applicant must successfully complete 75 classroom hours of AQB-approved education as follows:~~

~~(a) 30 hours of appraisal principles;~~
~~(b) 30 hours of appraisal procedures; and~~
~~(c) the 15-hour Uniform Standards of Professional Appraisal Practice (USPAP) course.~~

~~(5) Examination. An applicant must pass the final examination in all pre-registration courses.~~

~~(6) Application to the Division. An applicant shall submit the following to the Division:~~

~~(a) a completed application as provided by the Division;~~
~~(b) course completion certificates for the 75 hours of pre-registration education;~~

~~(c)(i) two fingerprint cards in a form acceptable to the Division; or~~

~~(ii) evidence that the applicant's fingerprints have been scanned at a testing center;~~

~~(d) all court documents related to any past criminal proceeding;~~

~~(e) complete documentation of any sanction taken against any license in any jurisdiction;~~

~~(f) a signed letter of waiver authorizing the Division to obtain the fingerprints of the applicant, review past and present employment records, review education records, and conduct a criminal background check;~~

~~(g) the fee for the criminal background check;~~

~~(h) the name of the state-certified appraiser(s) with whom the trainee is affiliated;~~

~~(i) the name and business address of any appraisal entity or government agency with which the trainee is affiliated; and~~

~~(j) the application fee.~~

~~(7) Affiliation with a Certified Appraiser. Applicants shall affiliate with at least one supervising certified appraiser and evidence that affiliation by:~~

~~(a) identifying each supervising certified appraiser on a form supplied by the Division; and~~

~~(b) obtaining each supervising certified appraiser's signature on the application.~~

~~(8) Notification Requirements. A registered trainee must complete a change card and submit it to the Division within 10 business days whenever the trainee:~~

~~(a) affiliates with a new supervising certified appraiser;~~

~~(b) terminates an affiliation with a supervising certified appraiser; or~~

~~(c) changes affiliation with an appraisal entity or government agency.~~

~~(9) Re-registration of Existing Trainees.~~

~~(a) Any trainee who registered with the Division without undergoing a background check shall re-register with the Division according to the following schedule:~~

~~(i) a trainee who registered prior to January 1, 2008 must re-register by January 1, 2011;~~

~~(ii) a trainee who registered during the 2008 calendar year must re-register in 2011 by the anniversary of the trainee's registration date;~~

~~(iii) a trainee who registered on or after January 1, 2009 must re-register on the two-year anniversary of the registration date.~~

~~(b) To re-register, a trainee shall submit the following to the Division:~~

~~(i) a completed application as provided by the Division;~~

~~(ii)(A) two fingerprint cards in a form acceptable to the Division; or~~

~~(B) evidence that the applicant's fingerprints have been scanned at a testing center;~~

~~(iii) all court documents related to any past criminal proceeding;~~

~~(iv) complete documentation of any sanction taken against any license in any jurisdiction;~~

~~(v) a signed letter of waiver authorizing the Division to obtain the fingerprints of the applicant, review past and present employment records, review education records, and conduct a criminal background check;~~

~~(vi) the fee for the criminal background check;~~

~~(vii) evidence of having completed the 28 hours of continuing education or AQB qualifying education required for renewal under Subsection 162-102-3;~~

~~(viii) the name of the state-certified appraiser(s) with whom the trainee is affiliated;~~

~~(ix) the name and address of any appraisal entity or government agency with which the trainee is affiliated; and~~

~~(x) the application fee.~~

~~(d) A Division hearing officer shall review the application of any trainee re-registering under Subsection (9) who fails to meet the character and competency requirements of Subsections (2) and (3). The hearing officer may:~~

~~(i) approve the application with the concurrence of the Board;~~

~~(ii) approve the application subject to probation or restriction; or~~

~~(iii) refer the application to the Board for decision.~~

~~(10) Registration Renewal.~~

~~(a) A trainee registration is valid for two years and must be renewed according to Subsection R162-102-3 before the expiration date printed on the registration certificate.~~

~~(b) If the renewal fee and required documentation are not received by the expiration date, the registration shall expire. It shall be grounds for disciplinary sanction if, after the registration has expired, the trainee continues to perform work for which the trainee is required to be registered.~~

~~(c) An expired registration may be renewed or reinstated according to the same rules that govern the renewal and reinstatement of appraiser licenses and certifications, as outlined in Subsections R162-102.3.2 through R162-102.3.4.~~

KEY: real estate appraisals, trainees, registration

Date of Enactment or Last Substantive Amendment: October 9, 2010

Authorizing, and Implemented or Interpreted Law: 61-2b-6(4); 61-2b-8(2)(d)]

**Community and Culture, Home Energy
Assistance Target (HEAT)
R195-2
Energy Assistance Programs
Standards**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35005

FILED: 06/30/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to update and clarify language and policy for program standards and eligibility requirements for the state Home Energy Assistance Target (HEAT) Program.

SUMMARY OF THE RULE OR CHANGE: The changes indicate that the program may continue through September 30 each program year if federal funds are still available; clarify how Navajo Tribal residents may apply for HEAT; delete a reference to residents of hotels and trailer courts since they are not eligible for HEAT; require verification of SSNs of all applicant household members; update crisis assistance policy; and clarify credit refund policy language.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 9-12-101 through 9-12-105

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no aggregate anticipated cost or savings to the state as the program is 100% federally funded.
- ◆ **LOCAL GOVERNMENTS:** Local government is not involved in the administration of this program and as noted above, the program is 100% federally funded and therefore there are no cost or savings to local governments.
- ◆ **SMALL BUSINESSES:** Likewise, as noted above, there are no cost or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Again, as noted above, there are no cost or savings to persons and/or other entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any affected persons. No one is required to pay any costs to comply with this rule or to participate in the HEAT Program. All costs are borne by the HEAT Program and as noted above, it is a 100% federally funded program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
There are no cost or savings to businesses.

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

COMMUNITY AND CULTURE
HOME ENERGY ASSISTANCE TARGET (HEAT)
ROOM 500
324 S STATE ST
SALT LAKE CITY, UT 84111-2388
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Sherm Roquero by phone at 801-538-8644, by FAX at 801-538-8888, or by Internet E-mail at shermr@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Michael Hansen, Acting Executive Director

R195. Community and Culture, Home Energy Assistance Target (HEAT).

R195-2. Energy Assistance Programs Standards.

R195-2-1. Opening and Closing Dates for HEAT Program.

1. Each November 1, or the first working day thereafter, the HEAT Program opens for the general population.
2. The HEAT Program closes the following April 30, or the last business day of the month, or when federal LIHEAP funds are exhausted, whichever comes first. If federal LIHEAP funds are yet available, the program may be extended beyond April 30 and through to September 30 with the approval of the State HEAT Program Manager. Applications taken on or before the program closing date may be processed after the program closing date. If funds are exhausted before all applications are processed, notice of non-payment will be sent to the remaining unprocessed applications.

R195-2-4. Local Residence.

1. A household's completed HEAT application must be maintained in the office in the area where they reside.
2. Native American Residents of Daggett, Duchesne, and Uintah Counties who are enrolled in any federally recognized Indian Tribe have a choice of applying for utility assistance through the state HEAT program or through the Ute Tribal LIHEAP Program. Clients cannot receive assistance from both programs in the same program year.
3. Native American Residents of Washington, Iron, Millard, and Sevier Counties have a choice of receiving utility assistance through the state HEAT program or through the Paiute

Tribal LIHEAP Program. Clients cannot receive assistance from both programs in the same program year.

4. Residents living on the Navajo Indian Reservation in San Juan county ~~[must]~~ may apply for utility assistance through the Navajo Tribe or through the State HEAT Program. They cannot receive assistance through both programs in the same program year ~~[the state HEAT program except through special provision of the State HEAT Office].~~

R195-2-5. Vulnerability.

1. An eligible household must be vulnerable to home heating costs.

a. The following households are considered responsible for home heating costs:

- i. Households who are presently paying heating costs directly to energy suppliers on currently active accounts.
- ii. Households who are currently paying energy costs indirectly through rent.

2. Residents in the following households are not considered responsible for home heating costs and are not eligible for HEAT assistance:

- a. Nursing homes;
- b. Hospitals;
- c. Prisons and jails;
- d. Institutions;
- e. Alcoholism and drug treatment centers;
- f. Group homes administered under a contract with a government agency or administered by a government agency;
- g. Households not connected to a heat source;
- h. Households whose utility bills are paid regularly by an outside party;
- ~~[i. Residents of hotels or trailer courts who have lived there less than 30 days and who do not pay a reasonable or customary rate.]~~

R195-2-7. Social Security Numbers.

1. Adults who apply for HEAT assistance must provide verification of their Social Security Numbers (SSN) or apply for SSN cards. Verification of Social Security Numbers [may be] are required for all household members ~~[-if there is a question of household size and composition.]~~

a. There are four ways to provide a correct SSN. The client can submit one of these three documents.

- i. An official SSN card
- ii. Official documents from Social Security Administration including award letters, benefit checks or a Medicare card
- iii. An SSA receipt form 5028 or 2880.
- iv. Official document from another government agency, ~~[-or from an employer.]~~

R195-2-11. Energy Crisis Intervention.

1. A crisis is any weather-related emergency, any supply shortage emergency, or any other household energy-related emergency as approved by the region or state office.

a. Examples of household energy-related emergencies may include energy costs above 25% of the client's gross income,

arrearrages when the client has demonstrated a good faith attempt to resolve the problem or repairs to prevent loss of energy from a dwelling.

b. Examples of household energy-related non-emergencies may include payments that will create a credit balance on a utility account, payments on utility accounts previously sent to a collection agency or capital improvements to rental property.

2. To be eligible for energy crisis intervention, a household must be eligible for HEAT during the same HEAT program year.

a. If the local office determines that a household is eligible to receive energy crisis intervention benefits and is in a life threatening situation, energy crisis intervention benefits will be provided within 18 hours. Regular energy crisis intervention benefits will be provided within 48 hours of eligibility determination.

b. The director or HEAT supervisor must approve all crisis intervention expenditures.

c. HEAT payments are issued to the vendor. In emergencies a check may be issued to the client.

d. ~~[When an energy crisis requires work from an outside vendor, the client must obtain at least two bids before work may begin. The job order will go to the lowest bidder unless the reasons for accepting a higher bid is documented and approved by the supervisor or the state office.]~~

~~—————e.]~~ Energy crisis intervention payments are limited to a maximum of \$500 per household per utility (e.g. gas and electric) per HEAT program year unless prior approval for an amount larger than \$500 per utility is obtained from the supervisor or state office.

R195-2-15. Credit Balances on Utility Accounts.

1. If the household discontinues service with their utility supplier, and the household so elects, the disconnecting supplier will forward any HEAT credit balance remaining on the account to the household's new utility company. The new utility company must operate in Utah. The household must furnish, to the disconnecting utility supplier, the name and address of the new utility company within 30 days after termination of service.

2. If the household elects to have the HEAT credit balance refunded directly to them, the disconnecting utility supplier will do so if the household still resides in Utah. The household must furnish, to the disconnecting utility supplier, their new address within 30 days after termination of service. Otherwise, the credit balance shall be refunded to the HEAT Program.

3. In no case shall HEAT credit balances be forwarded to utility companies not operating in Utah or to clients no longer residing in Utah.

4. If the client fails to give the disconnecting utility company the information for either option one or option two listed above, the utility company can hold the credit balance for an additional 30 days. If reconnection with the same utility has not occurred, any remaining credit balance must be refunded to the HEAT program.

5. Once credit balances are refunded to the HEAT program they become part of the general HEAT budget and are redistributed in the form of benefits to additional eligible households.

KEY: energy assistance, residency requirements, opening and closing dates, HEAT

Date of Enactment or Last Substantive Amendment: [January 12, 2005]2011

Notice of Continuation: June 22, 2007

Authorizing, and Implemented or Interpreted Law: 9-12-10

Community and Culture, Home Energy Assistance Target (HEAT)

R195-8

Energy Assistance: Special State Programs

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35004

FILED: 06/30/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to delete Section R195-8-2, Conservation Education Demonstration Project.

SUMMARY OF THE RULE OR CHANGE: The Conservation Education Demonstration Project was a two-year project which ended in 1993 and has been unavailable since then; therefore this section is being deleted.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 9-12-101 through 9-12-105

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no costs or savings for the state associated with this project or program. The program is 100% federally funded.

♦ **LOCAL GOVERNMENTS:** As above, there are no costs or savings to local governments.

♦ **SMALL BUSINESSES:** As above, there are no costs or cost savings to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No person or other entity is required to pay any costs to comply with this rule or to participate in the HEAT Program. All costs are borne by the HEAT Program and as explained above, it is 100% federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As noted above, no person or other entity is required to pay any costs to comply with this rule or to participate in the HEAT Program and therefore there are no compliance costs for affected persons. All costs are borne by the HEAT Program and as noted above, it is 100% federally funded.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no fiscal impacts on businesses.

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

COMMUNITY AND CULTURE
HOME ENERGY ASSISTANCE TARGET (HEAT)
ROOM 500
324 S STATE ST
SALT LAKE CITY, UT 84111-2388
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Sherm Roquero by phone at 801-538-8644, by FAX at 801-538-8888, or by Internet E-mail at shermr@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Michael Hansen, Acting Executive Director

R195. Community and Culture, Home Energy Assistance Target (HEAT).

R195-8. Energy Assistance: Special State Programs.

R195-8-1. Moratorium.

The department shall require compliance with Section 9-12-201.

1. The moratorium program protects eligible persons from winter utility shut offs.

2. A household can apply for moratorium protection only one time per utility per program year.

3. The protection of the Moratorium lasts from November 15 through the following March 15.

The Department has the option of beginning The Moratorium program earlier or extending it later when severe weather conditions warrant such action.

4. The moratorium applicant must:

a. Be the adult residential account holder, or the adult resident applying for service. A residential utility customer is any adult person who has an account with a utility or any adult who is applying for residential utility service;

b. Be living at the address where Moratorium protection is needed;

c. Have a termination notice from the utility company or have been refused service if the utility is not active;

d. Have a written statement from the utility company stating that all methods of working out satisfactory payment arrangements have failed. A deferred payment agreement must have been offered to the utility customer. If the customer signs a deferred payment agreement, but does not have the money to activate it, the agreement is in immediate default. The written statement must include:

i. account name or the name of the customer applying for service;

ii. the residential address;

iii. account number, if there is one;

iv. indicate if the account is active or inactive;

v. the total amount owed on the account;

vi. indication that the client has applied for HEAT;

vii. indication that the client has applied for utility assistance through the Red Cross;

viii. and must indicate that the client meets at least one of the following criteria:

A. Gross household income in the month of or the month prior to the month of the moratorium application must be less than 125% of the federal poverty limit.

B. have suffered a medical or other emergency in either the month of application or the month prior to the month of application.

C. loss of employment in either the month of application or the month prior to the month of application.

D. 50% drop in income in either the month of application or the month prior to the month of application.

ix. make a good faith effort to pay their utility bill on a consistent basis as specified below.

5. Required Verification

a. All factors of eligibility must be verified.

b. It is the applicant's responsibility to obtain acceptable verification.

c. If the household refuses to obtain the required verification and refuses to assist the local HEAT office in obtaining the verification, the moratorium application will be denied.

6. Good Faith Payment Effort

a. Each month during the moratorium the household must pay the utility company at least 5% of the gross income received in the month prior to the month of the moratorium application, unless the home is heated by electricity.

b. If the home is heated by electricity the household must pay the utility company at least 10% of the gross income received in the month prior to the month of application.

c. The minimum allowed monthly payment is \$5.00 even if the client has no income in the month prior to the month of application.

7. In order to activate the moratorium, including the restoration of service to those households which are shut off, the first good faith payment is due at the time of application. Payments for subsequent months are due on or before the last day of each month.

8. For clients who defaulted during a previous Moratorium season the default payment is due before the client is eligible for protection under the current moratorium.

a. When a client defaults on a moratorium application, the client is not eligible for moratorium protection on that particular utility for the remainder of that moratorium season.

b. The client must pay the amount of any previous defaulted payment before they are eligible for the moratorium.

c. When a utility company notifies the HEAT office of a client default, the HEAT office will notify the client that of the default.

9. Regulated companies operating in Utah are subject to the Moratorium with the exception of the Mexican Hat Association.

[R195-8-2. Conservation Education Demonstration Project.

~~Participants in the HEAT program served under the Mountainlands Community Action Project contract will be required, as a part of eligibility, to attend energy conservation education classes.~~

]KEY: energy assistance, energy industries

Date of Enactment or Last Substantive Amendment:

[1994]2011

Notice of Continuation: June 25, 2007

Authorizing, and Implemented or Interpreted Law: 9-12-10

Corrections, Administration

R251-705

Inmate Mail Procedures

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34962

FILED: 06/22/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes in this rule update the rule authorization statutory reference. Additionally, it has been many years since this rule was substantially changed. As it refers to specific types of items received and sent via mail by the inmate population, an update was necessary. Other changes clarify processes to expand mail availability for inmates and assist in identifying privileged mail.

SUMMARY OF THE RULE OR CHANGE: The amendment updates the rule authorization statutory references to include Section 63G-3-201 and updates reference from Subsection 64-13-17(3) to 64-13-17(4). The amendment also updates outdated technologies and types of mail. For example, it includes computer disks, maps, and calendars. It refers to "audio media" rather than "cassette tapes." It also updates terminology such as cashier's check rather than certified checks. The amendment also makes clarifications for legal purposes. For example, the rule now allows certain catalog purchases, if sent first or second class, if it is religious material, legal material, or educational material. Finally, in order to better legally protect staff, the rule clarifies that incoming privileged mail must be marked as such.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 64-13-17(4)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no costs or savings to the state budget. The changes primarily update and clarify the types of items inmates can receive through the mail. Over

time, as technology has changed and types of items mailed to inmates have changed, the department has needed clarify what is covered by this rule. The amendment clarifies the current status of inmate mail, but it does not require additional staff or time in order to implement the changes. Due to recent case law, the department does allow certain types of catalogs (religious or legal). Accepting these items will not and has not increased or decreased workload - therefore there are no costs or savings associated with this change. Finally, clearly marking privileged mail as privileged simply protects staff from inadvertently opening such items. This avoids frustration for the inmates, but it does not lead to cost savings or increased costs.

♦ **LOCAL GOVERNMENTS:** There is no cost impact on local government. In reviewing the amendments associated with the inmate mail rule, there is no involvement in this process from local government. As such, there is no cost impact.

♦ **SMALL BUSINESSES:** There is no cost impact on small business. In reviewing the proposed amendments, the primary changes are related to clarifications of types of mail inmates can and cannot receive or to updated legal standards surrounding inmate mail. Areas where small businesses are involved in providing mail or materials to inmates via mail are not changed. As such, there are no cost impacts.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** To an extent, inmates may be impacted by the proposed amendments. In some cases, the modifications expand their access to certain items. In other cases, the amendments clarify current standards related to what can and cannot be obtained by inmates. In either case, there is no cost impact on the inmates receiving mail.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Inmates are the only individuals impacted by the proposed amendments. However, the impacts relate to what they either can or cannot receive through inmate mail. This may expand or retract what they can receive through mail, but it does not create a compliance cost for the inmates - or affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendments will not have a fiscal impact on small business. The changes proposed are not financial in nature. Rather, they reflect changes that have occurred over time in terms of what can and cannot be received by an inmate through the mail. Other changes simply reflect current case law which allows inmate access to certain legal and religious materials. Finally, the changes protect staff from inadvertently opening an inmate's privileged mail by requiring such mail to be identified as privileged.

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

CORRECTIONS
ADMINISTRATION
14717 S MINUTEMAN DR
DRAPER, UT 84020-9549

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Michael Haddon by phone at 801-545-5913, by FAX at 801-545-5726, or by Internet E-mail at mhaddon@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/01/2011

AUTHORIZED BY: Thomas Patterson, Executive Director

R251. Corrections, Administration.

R251-705. Inmate Mail Procedures.

R251-705-1. Authority and Purpose.

(1) This rule is authorized by ~~Subs~~ Sections 63G-3-201, 64-13-10 and 64-13-17 ~~(3)~~ (4), of the Utah Code, which allows the Department to adopt standards and rules in accordance with its responsibilities.

(2) The purpose of this section is to establish the UDC's policies and procedures for processing mail received in the DIO Mail Unit.

R251-705-2. Definitions.

(1) "Catalog" means a systematized list whose sole purpose is to feature descriptions of items for sale.

(2) "Department" means the Department of Corrections.

(3) "DIO" means Division of Institutional Operations.

(4) "Inspect" means open and examine a letter, correspondence or other material with the primary objective to detect false labeling, contraband, currency, or negotiable instruments.

(5) "~~Intra~~Inter-department mail" means mail sent between departments within the state.

(6) "Inter-department mail" mean mail sent from office to office within a department.

~~(6)~~ (7) "Mail" means written material sent or received by inmates through the United States Postal Service.

~~(7)~~ (8) "Money instruments" means currency, coin, personal checks, money orders and ~~certified~~ cashier's or non-personal checks.

~~(8)~~ (9) "Nuisance contraband" means items that may include, but are not limited to, paper fasteners, hair, ribbons, pins, rubber bands, pressed leaves and/or flowers, promotional gimmicks, gum, stickers, computer disks, maps, calendars, balloons, and other such items having no intrinsic value or not approved by the ~~D~~department ~~A~~administration to be in the possession of the inmates.

~~(9)~~ (10) "Privileged mail" means correspondence with a person identified by this chapter relating to the official capacity of that person, which has been properly labeled to claim privileged status.

~~(10)~~ (11) "Publisher-only rule" means a rule limiting books, ~~cassette tapes~~ audio media, magazines, newspapers, etc. to those sent directly from the publisher, a book or tape club or a licensed book store.

~~(a) Publications and tapes]. All media~~ shall be new and ~~[tapes]audio~~ shall be factory sealed ~~[with]and~~ the return address ~~should be~~ commercially printed or stamped.

~~[(11)](12)~~ "Reasonable cause" means information ~~[which]that~~ could prompt a reasonable person to believe or suspect that there is or might be a threat to the safety, security or management of the UDC facility or ~~[which]that~~ could be harmful to persons.

~~[(12)](13)~~ "UDC" means Utah Department of Corrections.

(14) "USP" means Utah State Prison.

R251-705-3. Standards and Procedures.

It is the policy of the Department that:

(1) inmate mail shall comply with the Constitution and Laws of the United States, the Constitution and Laws of the State of Utah, and the authorized written policies and procedures of the UDC.

(2) inmates shall be permitted to send and receive mail while in custody of the UDC in the manner defined by this rule.

(3) nothing in this rule should be interpreted as creating a greater entitlement for inmates or those with whom they correspond than that currently required by law.

(4) inmate mail regulations shall:

(a) further the legitimate interests of the UDC; while

(b) balancing the UDC's interests with those of the general public and inmates.

(5) mail received for inmates at the ~~[DIO]USP~~ shall be delivered to the ~~[DIO]USP~~ Mail Unit for processing and:

(a) shall be opened and inspected;

(b) may be read at the discretion of the Department;

(c) may be photocopied when such copying is reasonably related to the furtherance of a legitimate Department interest;

(d) may be refused, denied or confiscated where reasonable cause exists to believe the contents may adversely impact the safety, security, order or treatment goals of the Department;

(e) may be used as evidence in criminal, civil or administrative trials or hearings;

(f) is entitled to no expectation of privacy;

(g) all forms of nuisance contraband shall be confiscated and disposed of without notice or opportunity for appeal; and

(h) shall be delivered to inmates without unreasonable delay;

(6) catalog purchases other than through the DIO Commissary catalog are not authorized and catalogs shall not be accepted through the mail, except when sent 1st or 2nd class or from a legal, school, religious or government printing office.

(7) staff-to-inmate mail shall not be sent in "Inter/Intra-department Delivery" envelopes, but in regular mailing envelopes;

(8) outgoing inmate mail and inmate inter/intra-department mail shall be deposited in the housing units' outgoing mail depository, picked up by ~~[DIO]USP~~ Mail Unit staff, and delivered to the ~~[DIO]USP~~ Mail Unit for processing;

(9) an inmate shall not direct nor establish a new business through the mail unless authorized by the Warden of the facility;

(10) an inmate who corresponds concerning a ~~[legitimate]legitimately~~ held business, shall correspond through his attorney or a party holding a power of attorney;

(11) an inmate is not authorized to establish credit transactions through the mail while confined unless authorized by the Warden of the facility;

(12) fund raising by inmates for personal gain is prohibited;

(13) envelopes received by the ~~[DIO]USP~~ Mail Unit displaying threatening, negative gestures or comments, extraneous materials, or grossly offensive sexual comments, shall be confiscated, declared contraband, placed into evidence, and the inmate shall receive disciplinary action;

(14) the publisher-only rule shall govern the receipt of all incoming books, ~~[cassette tapes]audio media~~, magazines, and newspapers;

(15) certain types of mail are entitled to constitutionally protected confidentiality (or privilege); accordingly, this privilege prohibits qualifying correspondence material from being read without cause by staff;

(16) incoming privileged mail:

(a) shall be inspected, but only in the presence of the inmate addressee;

(b) shall not be perused;

(c) shall not be photocopied; and

(d) may be denied only for reasonable cause and upon instruction of the DIO Director/designee;

(17) outgoing privileged mail:

(a) ~~[may]shall~~ be inspected only ~~[upon]when~~ there is reasonable cause to believe that the correspondence:

(i) contains material which would significantly endanger the security or safety of the Institution; or

(ii) is misrepresented as legal material;

(b) ~~[may]shall~~ only be inspected in the presence of the inmate sender;

(c) shall not be perused;

(d) shall not be photocopied;

(e) may only be denied for a reasonable cause, and upon instruction of the DIO Director/designee; and

(f) from an inmate that cannot be identified, shall be forwarded to the ~~[Lieutenant]deputy warden~~ who supervises the mail ~~[room/designee]unit, or his or her designee~~, who will make a determination of the disposition.

(18) all inmate inter/intra-departmental mail shall be processed through the ~~[DIO]USP~~ Mail Unit;

(19) inmate-to-inmate correspondence shall not be permitted, unless:

(a) there is a compelling justification for an exception;

(b) there is no alternate means of accomplishing that compelling need; and

(c) the inmates present[s] a minimal risk, according to UDC standards, to security, order and/or safety;

(20) inmates have no entitlement to inmate-to-inmate correspondence created by the constitutions of the United States or the State of Utah;

(21) personal mail written in a language other than English may be delayed for purposes of translation;

(22) the ~~[DIO]USP~~ Mail Unit shall not accept postage-due mail unless payment is waived by the deliverer;

(23) the ~~[DIO]USP~~ Mail Unit shall not accept letters, cards, money instruments, or property items for which there is

reasonable cause to believe the items are contaminated, defaced or handled in such a way as to be offensive.

(24) items received that cannot be searched without destruction or alteration (e.g., electronic greeting cards, ~~padding cards, double faced~~ multilayered cards, polaroid photographs, etc.) shall be denied and returned to the sender;

(25) inmates are prohibited from receiving currency or personal checks; and

(26) to be identified as incoming privileged mail, the correspondence shall be from an attorney or other sender qualified for privileged correspondence, be properly labeled as claiming privileged status, and have a return address clearly indicating a judicial agency, law firm, individual attorney, or other approved agency or person.

KEY: corrections, prisons

Date of Enactment or Last Substantive Amendment: ~~October 15, 1997~~ 2011

Notice of Continuation: September 19, 2006

Authorizing, and Implemented or Interpreted Law: 64-13-10; 64-13-17(3)

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-1-5** Incorporations by Reference

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 34938

FILED: 06/16/2011

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). This change, therefore, incorporates the most current Medicaid State Plan by reference. It also implements by rule ongoing Medicaid policy for services described in the Utah Medicaid Provider Manual, Medical Supplies Manual and List, and policy described in the hospital services provider manual. It further incorporates these manuals by reference.

SUMMARY OF THE RULE OR CHANGE: Section R414-1-5 is changed to update the incorporation of the State Plan by reference to 07/01/2011. It also incorporates by reference State Plan Amendments (SPAs) that become effective no later than 07/01/2011. Two SPAs that became effective since the last incorporation of the State Plan include SPA 10-010-

UT Cost Sharing Exemption and SPA 10-011 Tribal Consultation Requirements. SPA 10-010-UT includes American Indians as a copayment exempt group to implement Section 5006 of the American Recovery and Reinvestment Act of 2009, and SPA 10-011-UT specifies the tribal consultation process between the Department of Health and Utah Tribal Leaders. This amendment also incorporates by reference the Medical Supplies Manual and List and the hospital services provider manual, effective 07/01/2011.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Hospital Services Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2011
- ◆ Updates Utah Medicaid Provider Manual, Medical Supplies Manual and List, published by Division of Medicaid and Health Financing, 07/01/2011
- ◆ Updates Utah Medicaid State Plan, published by Division of Medicaid and Health Financing, 07/01/2011

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the Medical Supplies Manual and List and in the hospital services provider manual does not create costs or savings to the Department or other state agencies.

◆ **LOCAL GOVERNMENTS:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the Medical Supplies Manual and List and in the hospital services provider manual does not create costs or savings to local governments.

◆ **SMALL BUSINESSES:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the Medical Supplies Manual and List and in the hospital services provider manual does not create costs or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the Medical Supplies Manual and List and in the hospital services provider manual does not create costs or savings to other persons or entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the Medical Supplies Manual and List and in the hospital services provider manual does not create costs or savings to a single Medicaid client or provider.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should not have a direct fiscal impact on business. Incorporation of the State Plan by this rule assures that the Medicaid program is implemented through administrative rule.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

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.

(1) The Department incorporates by reference the Utah State Plan Under Title XIX of the Social Security Act Medical Assistance Program effective [~~April~~July 1, 2011. It also incorporates by reference State Plan Amendments that become effective no later than [~~April~~July 1, 2011.

(2) The Department incorporates by reference the Medical Supplies Manual and List described in the Utah Medicaid Provider Manual, Section 2, Medical Supplies, with its referenced attachment, Medical Supplies List, [~~April~~July 1, 2011, as applied in Rule R414-70.

(3) The Department incorporates by reference the Hospital Services Provider Manual, with its attachments, effective [~~April~~July 1, 2011.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [~~May 25;~~ 2011

Notice of Continuation: April 16, 2007

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-34-2

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-1-29
Provider-Preventable Conditions**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34993

FILED: 06/30/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to implement Section 2702 of the Patient Protection and Affordable Care Act, which issues final regulations on the prohibition of payments for provider-preventable conditions. These final regulations become effective on 07/01/2011.

SUMMARY OF THE RULE OR CHANGE: This change implements final regulations on the prohibition of payments for provider-preventable conditions that become effective on 07/01/2011. (DAR NOTE: A corresponding 120-day (emergency) rule that is effective as of 07/01/2011 is under DAR No. 34992 in this issue, July 15, 2011, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 76 FR 32837 and Section 26-1-5 and Section 26-18-3

MATERIALS INCORPORATED BY REFERENCES:

◆ Adds Federal Register, published by Government Printing Office, 06/06/2011

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Department does not anticipate any impact to the state budget because this rule, through its implementation of federal law, only incorporates existing state practices that prohibit payments for provider-preventable conditions.

◆ **LOCAL GOVERNMENTS:** The Department does not anticipate any impact to local governments because they do not fund or provide Medicaid services.

♦ **SMALL BUSINESSES:** The Department does not anticipate any impact to small businesses because this rule, through its implementation of federal law, only incorporates existing state practices that prohibit payments for provider-preventable conditions.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate any impact to Medicaid providers because this rule, through its implementation of federal law, only incorporates existing state practices that prohibit payments for provider-preventable conditions. Further, there are no out-of-pocket expenses to Medicaid clients who cannot be billed for these payments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not anticipate any impact to a single Medicaid provider because this rule, through its implementation of federal law, only incorporates existing state practices that prohibit payments for provider-preventable conditions. Further, there are no out-of-pocket expenses to a single Medicaid client who cannot be billed for these payments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Current practice prohibits billing for services where actions by the provider created the need for the care. Any impact on business is justified. Taxpayers should not pay for the preventable mistakes of providers.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-1. Utah Medicaid Program.

R414-1-29. Provider-Preventable Conditions.

The following applies to inpatient hospital services provided to Medicaid recipients and dual eligible beneficiaries:

(1) In accordance with 76 FR 32837, which is incorporated by reference, Medicaid will not reimburse providers or contractors for provider-preventable conditions as defined in this CMS rule. Providers and contractors are prohibited from submitting claims for payment of these conditions except as permitted in 76 FR 32837 when the provider-preventable condition existed prior to the initiation of treatment by the provider.

(2) Medicaid providers who treat Medicaid eligible patients must report all provider- preventable conditions whether or not reimbursement for the services is sought. Medicaid providers must complete the Provider-Preventable Conditions Report as found at <http://health.utah.gov/medicaid/index.html>. Completed reports must be mailed to one of the following addresses within 30 calendar days of the event, as appropriate:

(a) Via U.S. Post Office: Utah Department of Health; DHCF, BCRP; Attn: Provider-Preventable Conditions Reporting; PO Box 143102; Salt Lake City, UT 84114-3102; or

(b) Via UPS or FedEx: Utah Department of Health; DHCF, BCRP; Attn: Provider-Preventable Conditions Reporting; 288 North 1460 West; Salt Lake City, UT 84116-3231.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [~~May 25,~~ 2011

Notice of Continuation: April 16, 2007

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-34-2

**Health, Health Care Financing,
Coverage and Reimbursement Policy**

R414-14

Home Health Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34994

FILED: 06/30/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to incorporate by reference the definitions from the home health agency provider manual to 07/01/2011.

SUMMARY OF THE RULE OR CHANGE: This amendment incorporates by reference the definitions from the home health agency provider manual to 07/01/2011.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Home Health Agency Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2011

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because this change only updates the incorporation of definitions in the home health agency provider manual.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide home health services for Medicaid clients.
- ◆ **SMALL BUSINESSES:** There is no impact to small businesses because this change only updates the incorporation of definitions in the home health agency provider manual.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid clients and to Medicaid providers because this change only updates the incorporation of definitions in the home health agency provider manual.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid client or to a Medicaid provider because this change only updates the incorporation of definitions in the home health agency provider manual.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This update assures that providers and recipients know what current requirements are applicable. Clarity should have a positive fiscal impact.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-14. Home Health Services.

R414-14-1. Introduction and Authority.

(1) Home health services are part-time intermittent health care services that are based on medical necessity and provided to eligible persons in their places of residence when the home is the most appropriate and cost effective setting that is consistent with the client's medical need. The goals of home health care are to minimize the effects of disability or pain; promote, maintain, or protect health; and prevent premature or inappropriate institutionalization.

(2)[-] This rule is authorized under Section 26-18-3 and governs the services allowed under 42 CFR 440.70 and 42 CFR, Part 484. 42 U.S.C. Secs. 1395u, 1395x, and 1395y also authorize home health services.

R414-14-2. Definitions.

The following definition applies to home health services. In addition, the Department incorporates by reference the definitions in the Home Health Agency Provider Manual, effective [April]July 1, 2011.

(1) "Plan of Care" means a written plan developed cooperatively by home health agency staff and the attending physician. The plan is designed to meet specific needs of an individual, is based on orders written by the attending physician, and is approved and periodically reviewed and updated by the attending physician.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [~~May 25,~~ 2011

Notice of Continuation: September 23, 2009

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-22**

**Administrative Sanction Procedures
and Regulations**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34995

FILED: 06/30/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to implement by rule the Department policy to exclude providers from the Medicaid program who act inappropriately or violate certain aspects of the law.

SUMMARY OF THE RULE OR CHANGE: This change implements the Department policy to exclude providers from the Medicaid program who act inappropriately or violate certain aspects of the law. It also makes other minor corrections.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no measurable impact to the state budget because instances of provider misconduct are rare. In most cases, other providers can fill in for providers who are excluded or terminated from the Medicaid program.

♦ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide Medicaid services for Medicaid clients.

♦ **SMALL BUSINESSES:** There is no measurable impact to small businesses because instances of provider misconduct are rare. In most cases, other providers can fill in for providers who are excluded or terminated from the Medicaid program. Providers who are excluded from the Medicaid program will see a loss of revenue, but it is impossible to estimate how many clients they may lose and for which services.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no measurable impact to Medicaid providers because instances of provider misconduct are rare. In most cases, other providers can fill in for providers who are excluded or terminated from the Medicaid program. Providers who are excluded from the Medicaid program will see a loss of revenue, but it is impossible to estimate how many clients they may lose and for which services. The Department does not anticipate any out-of-pocket expenses to Medicaid clients due to a lack of access to services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A provider who is excluded or terminated from the Medicaid program will see a loss of revenue, but it is impossible to estimate how many clients the provider may lose and for which services. The Department does not anticipate any out-of-pocket expenses to a single Medicaid client due to a lack of access to services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Protecting Medicaid recipients from providers who have violated their charge as professionals is good public policy and will only have an impact on providers that commit these acts.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
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288 N 1460 W
SALT LAKE CITY, UT 84116-3231
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DIRECT QUESTIONS REGARDING THIS RULE TO:

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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-22. Administrative Sanction Procedures and Regulations.

R414-22-1. Introduction and Authority.

(1) In order to effectively and efficiently operate the Medicaid program, the Department may implement administrative sanctions against providers who abuse or improperly apply the benefit program.

(2) This rule is authorized by Sections 26-1-5[;] and Subsection 26-18-3[(2) and (4)](7).

R414-22-2. Definitions.

The definitions in Rule R414-1 apply to this rule. In addition:

(1) "Abuse" means provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in reimbursement for services that are either not medically necessary or that fail to meet professionally recognized standards for health care.

(2) "Conviction" or "Convicted" means a criminal conviction entered by a federal or state court for fraud involving Medicare or Medicaid regardless of whether an appeal from that judgment is pending.

(3) "Fiscal agent" means an organization that processes and pays provider claims on behalf of the Department.

(4) "Fraud" means intentional deception or misrepresentation made by a person that results in some unauthorized Medicaid benefit to himself or some other person. It includes any act that constitutes fraud under applicable state law.

(5) "Offense" means any of the grounds for sanctioning set forth in Section R414-22-3[4] ~~below~~.

(6) "Person" means any natural person, company, firm, association, corporation or other legal entity.

(7) "Practitioner" means a physician or other individual licensed under state law to practice his profession.

(8) "Provider" means an individual or other entity who has been approved by the Department to provide services to Medicaid clients, and who has signed a provider ~~contract~~ agreement with the Department.

(9) "Provider Sanction Committee" means the committee within the Department of Health that determines whether a Medicaid provider with a conviction or other sanction identified in Subsection R414-22-3 (3), (4), or (5) may enroll or remain in the Medicaid program. This committee consists of a designee of the Executive Director of the Department of Health, a designee of the Office of Inspector General of Medicaid Services, and the bureau director over provider enrollment.

(10) "Suspension" means that Medicaid items or services provided by a provider under suspension shall not be reimbursed by the Department.

(11) "Termination from participation" means termination of the existing provider ~~contract~~ agreement.

R414-22-3. Grounds for Excluding Providers.

(1) Upon learning of the crime, misdemeanor or misconduct, the Department shall exclude a prospective Medicaid provider who:

(a) has a current restriction, suspension, or probation from the Division of Professional and Occupational Licensing (DOPL) for sexual misconduct with a child, minor, or non-consenting adult under Title 76 of the Criminal Code; or

(b) is serving any term, completing any associated probation or parole, or still making complete court imposed restitution for a felony conviction involving:

(i) a sexual crime;

(ii) a controlled substance; or

(iii) health care fraud

(c) has a current restriction on their license from DOPL to treat only a certain age group or gender or DOPL requires another medical professional to supervise and restrict the provider's activity; or

(d) is serving any term, completing any associated probation or parole, or still making complete court imposed restitution for a misdemeanor conviction that involves a controlled substance.

(2) Upon learning of the crime, misdemeanor or misconduct, the Department shall terminate a current Medicaid provider for any violation stated in Subsection R414-22-3(1).

(3) Subject to approval of the Provider Sanction Committee, the Department may enroll a provider who has served any term, completed any associated probation or parole, or made complete court-imposed restitution for a prior felony conviction involving:

(a) a sexual crime;

(b) a controlled substance; or

(c) health care fraud.

(4) Subject to approval of the Provider Sanction Committee, the Department may enroll a provider or allow a provider to remain in the Medicaid program if the provider has a previous restriction, suspension, or probation from DOPL for sexual misconduct with a child, minor, or non-consenting adult under Title 76 of the Criminal Code

(5) Subject to approval of the Provider Sanction Committee, the Department may allow a provider to remain in the

Medicaid program when the Office of Inspector General of Medicaid Services has recommended the program consider termination of the provider.

(6) The Provider Sanction Committee may consider the need to maintain client access to services when making a determination related to convictions or sanctions described in Subsection R414-22(3), (4), or (5).

R414-22-3.4. Grounds for Sanctioning Providers.

The Department may impose sanctions against a provider[s] who:

(1) knowingly present, or cause to be presented, to Medicaid any false or fraudulent claim, other than simple billing errors, for services or merchandise; or

(2) knowingly submit[s], or cause to be submitted, false information for the purpose of obtaining greater Medicaid reimbursement than the provider is legally entitled to; or

(3) knowingly submit[s], or cause to be submitted, for Medicaid reimbursement any claims on behalf of a provider who has been terminated or suspended from the Medicaid program, unless the claims for that provider were included for services or supplies provided prior to his suspension or termination from the Medicaid program; or

(4) knowingly submit[s], or cause to be submitted, false information for the purpose of meeting Medicaid prior authorization requirements; or

(5) fail[s] to keep records that are necessary to substantiate services provided to Medicaid recipients; or

(6) fail[s] to disclose or make available to the Department, its authorized agents, or the State Fraud Control Unit, records or services provided to Medicaid recipients or records of payments made for those services; or

(7) fail[s] to provide services to Medicaid recipients in accordance with accepted medical community standards as adjudged by either a body of peers or appropriate state regulatory agencies; or

(8) breaches the terms of the Medicaid provider agreement; or

(9) fail to comply with the terms of the provider certification on the Medicaid claim form; or

(10) over[-]utilizes the Medicaid program by inducing, providing, or otherwise causing a Medicaid recipient to receive services[~~(s)~~] or merchandise that is not medically necessary; or

(11) rebates or accepts a fee or portion of a fee or charge for a Medicaid recipient referral; or

(12) violates ~~[the Utah State Medical Assistance Act, Section 26-18-2 UCA,]~~ the provisions of the Medical Assistance Act under Title 26, Chapter 18, or any other applicable rule or regulation; or

(13) knowingly submit[s] a false or fraudulent application for Medicaid provider status; or

(14) violates any laws or regulations governing the conduct of health care occupations, professions, or regulated industries; or

(15) ~~[are]~~is convicted of a criminal offense relating to performance as a Medicaid provider; or

(16) conduct[s] a negligent practice resulting in death or injury to a patient[s] as determined in a judicial proceeding; or

(17) fails to comply with standards required by state or federal laws and regulations for continued participation in the Medicaid program; or

(18) conducts a documented practice of charging Medicaid recipients for Medicaid covered services over and above amounts paid by the Department unless there is a written agreement signed by the recipient that such charges will be paid by the recipient; or

(19) refuses to execute a new Medicaid provider agreement when doing so is necessary to ensure compliance with state or federal law or regulations; or

(20) fails to correct any deficiencies listed in a Statement of Deficiencies and Plan of Correction, [~~HCFPA~~]CMS [f]Form 2567, in provider operations within a specific time frame agreed to by the Department and the provider[~~(s)~~], or pursuant to a court or formal administrative hearing decision; or

(21) [~~are~~]is suspended or terminated from participation in Medicare for failure to comply with the laws and regulation governing that program; or

(22) fails to obtain or maintain all licenses required by state or federal law to legally provide Medicaid services; or

(23) fails to repay or make arrangements for repayment of any identified Medicaid overpayments, or otherwise erroneous payments, as required by the State Plan, court order, or formal administrative hearing decision.

R414-22-[4]5. Sanctions.

Sanctions for violating any subsection of Section R414-22-[3]4 are:

(1) Termination from participation in the Medicaid program; or

(2) Suspension of participation in the Medicaid program.

R414-22-[5]6. Imposition of Sanction.

(1) Before the Department decides to impose a sanction, it shall notify the provider, in writing, of:

(a) the findings of any investigation by the Department, its agents, or the Bureau of Medicaid Fraud; and

(b) any possible sanctions the Department may impose.

(2) Providers shall have 30 days after the notice date to respond in writing to the findings of any investigation. A written request for additional time of less than 30 days may be granted by the Department for good cause shown.

(3) The Department has the discretion to impose sanctions after receiving the provider's input.

(4) The Department may consider the following factors when determining which sanction to impose:

(a) seriousness of offense[~~(s)~~];

(b) extent of offense[~~(s)~~];

(c) history of prior violations of Medicaid or Medicare law;

(d) prior imposition of sanctions by the Department;

(e) extent of prior notice, education, or warning given to the provider by the Department pertaining to the offense[~~(s)~~] for which the provider is being considered for sanction;

(f) adequacy of assurances by the provider that the provider will comply prospectively with Medicaid requirements related to the offense[~~(s)~~];

(g) whether a lesser sanction will be sufficient to remedy the problem;

(h) sanctions imposed by [~~E~~]licensing [~~B~~]boards or peer review groups and professional health care associations pertaining to the offense[~~s~~]; and

(i) suspension or termination from participation in another governmental medical program for failure to comply with the laws and regulations governing these programs.

(5) When the Department decides to impose a sanction, it shall notify the provider at least ten calendar days before the sanction's effective date.

R414-22-[6]7. Scope of Sanction.

(1) Once a provider is suspended or terminated, the Department shall only pay claims for services provided prior to the suspension or termination.

(2) The Department may suspend or terminate any individual, clinic, group, corporation, or other similar organization, who allows a sanctioned provider to bill Medicaid under the clinic, group, corporation or organization provider number.

R414-22-[7]8. Notice of Sanction.

(1) When a provider has been sanctioned for a period exceeding 15 days, the Department may notify the applicable professional society, board of registration or licenser, and federal or state agencies.

(2) Notice includes:

(a) the findings made; and

(b) the sanctions imposed.

(3) The Department shall timely notify any appropriate Medicaid recipient[~~s~~] of the provider's suspension or termination from the Medicaid program.

R414-22-9. Monitoring.

(1) If the Department is aware that an applicant or provider has had an action against them related to the following issues, the applicant will be subject to additional monitoring. The issues include:

(a) claims for excessive charges;

(b) providing unnecessary services;

(c) failing to disclose required information; or

(d) a misdemeanor conviction that involves health care fraud.

(2) The Department will refer applicants or providers described in Subsection R414-22-9(1) to the Office of Inspector General of Medicaid Services to be monitored for at least six months.

R414-22-[8]10. Provider Application.

The Department shall review any Medicaid provider agreement application for previous sanctions before approving the provider agreement.

KEY: [~~m~~]Medicaid

Date of Enactment or Last Substantive Amendment: [~~March 19, 1998~~]2011

Notice of Continuation: December 12, 2007

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3(7)

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-54
Speech-Language Pathology Services**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34939

FILED: 06/16/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to incorporate by reference the Speech-Language Services Provider Manual, effective 07/01/2011.

SUMMARY OF THE RULE OR CHANGE: This change incorporates by reference the Speech-Language Services Provider Manual, effective 07/01/2011.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Speech-Language Services Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2011

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no budget impact because the incorporation of ongoing Medicaid policy described in the Speech-Language Services Provider Manual does not create costs or savings to the Department or other state agencies.
- ◆ **LOCAL GOVERNMENTS:** This change does not impact local governments because they do not fund or provide speech-language services to Medicaid clients.
- ◆ **SMALL BUSINESSES:** There is no budget impact because the incorporation of ongoing Medicaid policy described in the Speech-Language Services Provider Manual does not create costs or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no budget impact because the incorporation of ongoing Medicaid policy described in the Speech-Language Services Provider Manual does not create costs or savings to other persons or entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because the incorporation of ongoing Medicaid policy described in the Speech-Language Services Provider Manual does not create additional costs to a Medicaid client or a loss of revenue to a Medicaid provider.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should not have a direct fiscal impact on business. Incorporation of this section of the provider manual by this rule assures that the Medicaid program is implemented through administrative rule.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-54. Speech-Language Pathology Services.

R414-54-3. Services.

- (1) Speech-language pathology services are optional.
- (2) Speech-language pathology services are limited to services described in the Speech-Language Services Provider Manual, effective ~~April~~ July 1, 2011, which is incorporated by reference.
- (3) The Speech-Language Services Provider Manual specifies the reasonable and appropriate amount, duration, and scope of the service sufficient to reasonably achieve its purpose.
- (4) Speech-language pathology services may be provided by licensed speech-language pathologists, or speech-language pathology aides under the supervision of speech-language pathologists.

KEY: Medicaid, speech-language pathology services

Date of Enactment or Last Substantive Amendment: [May-25,] 2011

Notice of Continuation: March 9, 2009

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-59**

Audiology-Hearing Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34940

FILED: 06/16/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to incorporate by reference the Audiology Services Provider Manual, effective 07/01/2011.

SUMMARY OF THE RULE OR CHANGE: This change incorporates by reference the Audiology Services Provider Manual, effective 07/01/2011.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Audiology Services Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2011

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no budget impact because the incorporation of ongoing Medicaid policy described in the Audiology Services Provider Manual does not create costs or savings to the Department or other state agencies.
- ◆ **LOCAL GOVERNMENTS:** This change does not impact local governments because they do not fund or provide audiology services to Medicaid clients.
- ◆ **SMALL BUSINESSES:** There is no budget impact because the incorporation of ongoing Medicaid policy described in the Audiology Services Provider Manual does not create costs or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no budget impact because the incorporation of ongoing Medicaid policy described in the Audiology Services Provider Manual does not create costs or savings to other persons or entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because the incorporation of ongoing Medicaid policy described in the Audiology Services Provider Manual does not create additional costs to a Medicaid client or a loss of revenue to a Medicaid provider.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should not have a direct fiscal impact on business. Incorporation of this section of the provider manual by this rule assures that the Medicaid program is implemented through administrative rule.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-59. Audiology-Hearing Services.

R414-59-4. Client Eligibility Requirements.

(1) Audiology-hearing services are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

(2) An individual receiving audiology-hearing services may receive audiology services as described in the Audiology Services Provider Manual, effective [April]July 1, 2011, which is incorporated by reference.

(3) An individual receiving audiology-hearing services must meet the criteria established in the Audiology Services Provider Manual and obtain prior approval if required.

KEY: Medicaid, audiology

Date of Enactment or Last Substantive Amendment: [May 25,] 2011

Notice of Continuation: October 13, 2010

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

**Human Resource Management,
Administration
R477-7
Leave**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34996

FILED: 06/30/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These amendments change holiday and personal preference day leave.

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-7-2(1)(h), Columbus Day is reestablished as a paid holiday. In Subsection R477-7-2(2), the maximum holiday paid hours are changed from nine to eight. In Subsection R477-7-3(4), personal preference day is changed from nine to eight hours.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34-43-103 and Section 63G-1-301 and Section 67-19-12.9 and Section 67-19-14 and Section 67-19-14.2 and Section 67-19-14.4 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These amendments are administrative and may impact agencies' implementation of work schedules and payroll considerations, but no change is made to appropriated funds and no direct budgetary impact is expected.

◆ **LOCAL GOVERNMENTS:** These changes are administratively specific to state executive branch and no direct financial impact to local government is expected.

◆ **SMALL BUSINESSES:** These changes are administrative and no direct financial impact to small businesses is expected.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** State employees in executive branch will be paid for eight hours instead of nine for each holiday and one additional holiday is added.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No significant compliance costs are expected.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to

write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.

R477-7. Leave.

R477-7-2. Holiday Leave.

(1) The following dates are paid holidays for eligible employees:

(a) New Years Day -- January 1

(b) Dr. Martin Luther King Jr. Day -- third Monday of

January

(c) Washington and Lincoln Day -- third Monday of

February

(d) Memorial Day -- last Monday of May

(e) Independence Day -- July 4

(f) Pioneer Day -- July 24

(g) Labor Day -- first Monday of September

(h) Columbus Day -- second Monday of October

(i) Veterans' Day -- November 11

([i]) Thanksgiving Day -- fourth Thursday of November

([j]k) Christmas Day -- December 25

([k]) Any other day designated as a paid holiday by the

Governor.

(2) If a holiday falls or is observed on a regularly scheduled day off, an eligible employee shall receive equivalent time off, not to exceed ~~nine~~eight hours, or shall accrue excess hours.

(a) If a holiday falls on a Sunday, the following Monday shall be observed as a holiday.

(b) If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.

(3) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall accrue excess hours.

(4) A new hire shall be in a paid status on or before the holiday in order to receive holiday leave.

(5) A separating employee shall be in a paid status on or after the holiday in order to receive holiday leave.

R477-7-3. Annual Leave.

(1) An eligible employee shall accrue leave based on the following years of state service:

(a) less than 5 years -- four hours per pay period;

(b) at least 5 and less than 10 years -- five hours per pay period;

(c) at least 10 and less than 20 years -- six hours per pay period;

(d) 20 years or more -- seven hours per pay period.

(2) The maximum annual leave accrual rate shall be granted to an employee under the following conditions:

(a) an employee in schedule AB, and agency deputy directors and division directors appointed to career service exempt positions.

(b) an employee who is schedule A, FLSA exempt and who has a direct reporting relationship to an elected official, executive director, deputy director, commissioner or board.

(c) The maximum accrual rate shall be effective from the day the employee is appointed through the duration of the appointment. Employees in these positions on July 1, 2003, shall have the leave accrual rate adjusted prospectively.

(3) The accrual rate for an employee rehired to a position which receives leave benefits shall be based on all eligible employment in which the employee accrued leave.

(4) The first ~~ten~~ eight hours of annual leave used by an employee in the calendar leave year shall be the employee's personal preference day.

(5) Agency management shall allow every employee the option to use annual leave each year for at least the amount accrued in the year.

(6) Unused accrued annual leave time in excess of 320 hours shall be forfeited during year end processing for each calendar year.

KEY: holidays, leave benefits, vacations

Date of Enactment or Last Substantive Amendment: ~~[July 1, 2010]~~ **2011**

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

Authorizing, and Implemented or Interpreted Law: **34-43-103; 63G-1-301; 67-19-6; 67-19-12.9; 67-19-14; 67-19-14.2; 67-19-14.4**

**Human Resource Management,
Administration
R477-8
Working Conditions**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34997

FILED: 06/30/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments modify state standard work schedule to Monday through Friday 8 a.m. - 5 p.m., add requirements for telecommuting and exclusions for commute time during telecommuting for greater control and accountability. Lunch periods are more clearly defined. Exercise release time is introduced and given defined parameters. Break periods for nursing mothers are articulated in compliance with federal law.

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-8-1(2), the standard work week is amended to Monday through Friday, 8 a.m. - 5 p.m. In Subsection R477-8-2(1)(b), requirements and exclusions governing telecommuting are outlined. Amendments are made to Section R477-8-3 concerning provisions for lunch periods, break periods, exercise release time, and breaks for nursing mothers. Other word choice changes are made.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 20A-3-103 and Section 67-19-6 and Section 67-19-6.7

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These changes may impact state budgets by increasing energy usage rates as well as overtime payroll expenditures.

◆ **LOCAL GOVERNMENTS:** This rule may have direct or indirect impact on local government by increasing accessible days each week and reducing available hours each day during exchange with state government offices.

◆ **SMALL BUSINESSES:** This rule may have direct or indirect impact on small businesses by increasing accessible days each week and reducing available hours each day during exchange with state government offices.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Amendments to standard work week may have direct or indirect financial impact on state employees. New rules for

exercise release time may provide cost savings to participating employees or may restrict 30 minutes of compensated exercise time each week for employees participating in programs currently offered by some agencies. Changes to lunch and break periods may present incidental costs to state employees relative to schedule adjustments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Amendments to standard work week may have direct or indirect compliance cost to state employees. New rules for exercise release time may restrict 30 minutes of compensated exercise time each week for employees participating in programs currently offered by some agencies. Changes to lunch and break periods may present incidental costs to state employees relative to schedule adjustments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.

R477-8. Working Conditions.

R477-8-1. Work Period.

(1) The state's standard work week begins Saturday and ends the following Friday. Agencies may implement alternative

work schedules from among those approved by the Executive Director, DHRM.

(2) State offices are typically open Monday through ~~Thursday~~Friday from [7]8 a.m. to [6]5 p.m. Agencies may adopt extended business hours to enhance service to the public.

(3) Agency management shall establish work schedules and may approve a flexible starting and ending time for an employee as long as scheduling is consistent with overtime provisions of Section R477-8-4.

(4) An employee is required to be at work on time. An employee who is late, regardless of the reason including inclement weather, shall, with management approval, make up the lost time by using accrued leave, leave without pay or adjusting their work schedule.

(5) An employee's time worked shall be calculated in increments of 15 minutes. This rule incorporates by reference 29 CFR 785.48 for rounding practices when calculating time worked.

R477-8-3. Lunch, Break and Exercise Release Periods.

(1) Each full time work day shall include a minimum of 30 minutes noncompensated lunch period, unless otherwise authorized by management.

(a) Lunch periods may not be used to shorten a work day.

(2) An employee may take a 15 minute compensated break period for every four hours worked.

(a) Break periods may not be accumulated to accommodate a shorter work day or longer lunch period.

(3) Compensated exercise release time may be allowed at agency discretion for up to ~~two~~three days per week for 30 minutes.

(a) ~~Exercise~~Participating agencies shall have a written policy regarding exercise release time ~~shall be in conjunction with the lunch period~~.

(b) Work time exercise that is a bona fide job requirement is not subject to this section.

(4) Authorization for exercise time and regular scheduled lunch breaks less than 30 minutes shall be documented in the Utah Performance Management system.

(5) daily noncompensated break periods, as requested by the employee, shall be granted for the first year following the birth of a child so that the employee may express breast milk for her child. A private location, other than a restroom, shall be provided.

KEY: breaks, telecommuting, overtime, dual employment

Date of Enactment or Last Substantive Amendment: ~~July 1, 2010~~2011

Notice of Continuation: June 9, 2007

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-6.7; 20A-3-103

Insurance, Administration
R590-142
Continuing Education Rule

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
 DAR FILE NO.: 34953
 FILED: 06/20/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being updated for the first time in 15 years to comply with Continuing Education (CE) changes in the law and to be consistent with updated processing methods used by the department. The 2005 Legislature passed H.B. 60 which changed CE requirements. Standards and requirement in this rule regulate CE providers, of which there are around 430, and Utah insurance resident insurance producers and adjusters, of which there are around 22,000. It should be noted that half of the CE course credits can be provided by an insurer. The department does not know what, if anything, insurers charge for these courses.

SUMMARY OF THE RULE OR CHANGE: Procedures and requirements being dropped: The requirement for 12 hours of CE has been eliminated. Most of the Definitions have been replaced. Nonprofit Provider is the only definition remaining the same. The 14-day course filing requirement has been changed to 30. Examples of subject areas that qualify for course credit and those that do not qualify have been changed. Course providers are no longer required to submit to the department a paper list of licensees that have completed their courses. It is no longer necessary for the department to manually input this information on the computer. The reporting requirement to the department and proof submitted to the student of their CE course completion was changed from 60 to 14 days. New procedures and requirements: An Authority section has been added to the rule. The authority has been expanded to include Chapters 2 (general rulemaking authority) and 35 (Bail Bond) of Title 31A. The rule no longer refers to a specific number of CE hours required. Instead it refers to code requirements in Sections 31A-23a-202, 31A-26-206 and 31A-35-401.5. The Definition section has new definitions for: Classroom Course; Credit Hour; Designated Internet Site; Home-Study Course; Insurance Related Instruction; Monitoring of a Student; and Provider. Course providers are now required to report course completion credits on-line to a designated internet site on each student completing a course. Course filing requirement has been changed from 14 to 30 days. The reporting requirement to the department and proof submitted to the student of their CE course completion was changed from 60 to 14 days. Providers are to report to the department administrative action or criminal prosecution taken against them. More detail included on process of reinstating an inactivated provider registration. Enforcement and Severability sections have been added. As per Subsection 31A-23a-202(3)(e), department published a list of professional designations whose CE requirements can be used to meet the required number of CE hours.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 31A-23a-202 and Section 31A-26-206 and Section 31A-35-401.5

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The department is updating the rule to comply with changes in the law made in 2005 along with changes in the processing methods since then. This will have no fiscal impact on the department or the state's budget now.
- ◆ **LOCAL GOVERNMENTS:** This rule deals solely with the relationship between the department and its licensees and CE providers. It will have no effect on local governments.
- ◆ **SMALL BUSINESSES:** The rule focuses on CE course providers and insurance producers and adjusters. When the law changed requiring all but bail bond producers to double their CE requirements every two years, CE course providers would have seen a significant increase in their business from individual Utah insurance licensees. Providers charge anything from \$10 to \$15 per credit hour and some providers based in all states charge around \$40 for 24 credit hours.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The rule focuses on CE course providers and insurance producers and adjusters. When the law changed requiring all but bail bond producers to double their CE requirements every two years, individual licensees, or the agencies for which they are designated, would have seen an increase in their cost to maintain the individual licensees' CE requirements. Providers charge anything from \$10 to \$15 per credit hour and some providers based in all states charge around \$40 for 24 credit hours.

COMPLIANCE COSTS FOR AFFECTED PERSONS: CE providers would have likely seen an increase in their income as a result of the CE requirement being increased from 12 to 24 hours for most individual licensees. Filing for class approval and course completion credits is now done electronically. As a result nationwide standard for submitting this information has decreased to approximately 14 days from the date the course is completed. The impact of the increased number of CE hours is felt by either the individual licensee or the agency for which he/she works, if the agency is paying the fee. It should be noted that licensing and continuing education credit hour guidelines are established through the National Association of Insurance Commissioners. Most states have adopted these guidelines.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: CE providers would have likely seen an increase in their income as a result of the CE requirement being increased from 12 to 24 hours for most individual licensees. Filing for class approval and course completion credits is now done electronically. As a result nationwide standard for submitting this information has decreased to approximately 14 days from the date the course is completed. The impact of the

increased number of CE hours is felt by either the individual licensee or the agency for which he/she works, if the agency is paying the fee. It should be noted that licensing and continuing education credit hour guidelines are established through the National Association of Insurance Commissioners. Most states have adopted these guidelines.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

[R590-142. Continuing Education Rule.

R590-142-1. Purpose.

The purpose of this rule is to implement the requirements of Sections 31A-23a-202 and 31A-26-206.

R590-142-2. Scope.

This rule applies to all licensees under Subsection 31A-23a-106. This rule also applies to all adjusters under Subsection 31A-26-204.

R590-142-3. Definitions.

A. ~~Actual Class Attendance~~ – Actual class attendance, consisting of two or more students with a live instructor. The instructor must be able to present the class material and respond to questions from the attendees.

B. ~~Applicant~~ – Anyone who seeks to renew an insurance license who is subject to this rule.

C. ~~Classroom Hours~~ – One classroom hour is at least 50 minutes of instruction. A classroom hour shall consist of actual class attendance.

D. ~~Designated Course~~ – A course of instruction which is approved for continuing education credit by the Insurance Department.

E. ~~Equivalent of Classroom Hours~~ – That amount of time which is assigned to a course by the Insurance Department to satisfy the requirements of this rule. Assignment of value shall be made on the basis of content, presentation, and format.

F. ~~Exempt Applicant~~ – A licensee or applicant for renewal of a license who, as of April 1, 1990, had completed 20 years of continuous licensure in good standing.

G. ~~Home Study~~ – An approved course of study offered to satisfy the requirements of this rule which can be completed without actual class attendance. Evidence of satisfactory completion must be verified in writing by the provider. For the purposes of this rule, satellite television broadcast and similar presentations are deemed to be home study courses.

H. ~~Insurance Related Instruction~~ – Those subjects designated in Subsection 4(A) through (E) of this rule and others which may, from time to time, be designated by the Insurance Department.

I. ~~Nonprofit Provider~~ – An organization which fits the definition of nonprofit corporation as defined in Title 16, Chapter 6.

J. ~~Provider~~ – Any person who offers a course, program or class for credit to an applicant to satisfy the requirements of this rule.

K. ~~Video Tapes~~ – Approved video tapes offered to satisfy the requirements of this rule. Video tapes may not satisfy the requirements for actual class attendance.

R590-142-4. Rule.

A. The number of hours of continuing education required to be presented biennially as a prerequisite to license renewal or reissuance shall be 12 hours. Not more than 6 hours of this requirement shall be satisfied by courses provided by insurers for whom the licensee is associated.

B. Upon renewal of a license, no continuing education hours in excess of the number required to renew the license may be carried over or applied to any subsequent licensing period, nor may a licensee repeat for credit any course of study that has been taken and credit allowed for a previous license period.

C. If the home state of a nonresident licensee is determined to have a continuing education requirement substantially similar to that of Utah, compliance with the home state's continuing education requirement may be accepted as meeting Utah's requirement.

R590-142-5. Program Requirements.

A. The Insurance Department shall:

1. approve or disapprove programs according to the standards of this rule;

2. consider applications for approval as designated courses under this section;

3. assign the number of continuing education hours to be awarded to programs that are approved; and

4. consider other related matters as the commissioner may assign.

B. Materials submitted by providers to the Insurance Department to satisfy this rule shall be deemed confidential.

C. All courses and programs must be submitted to and approved by the Insurance Department at least 14 days prior to being offered except that post approval of a course may be granted by the Insurance Department upon the licensee's submission of a written request and supporting documentation of the course attended, in accordance with Subsection E.

~~D. The provider seeking course and credit hours approval shall have the responsibility for providing:~~

~~1. sufficient supporting materials regarding course content and hours to permit the Insurance Department to make a determination; and~~

~~2. a Certification to the Insurance Department of Completion of Course, Exhibit D, signed by the authorized representative in charge of the course certifying licensee attendance at, and completion of, the course.~~

~~E. The following general subjects are acceptable as long as they contribute to the knowledge and professional competence of an individual licensee as a producer, broker and adjuster, and demonstrate a direct and specific application to insurance:~~

~~1. insurance, annuities, investments associated with insurance products and risk management;~~

~~2. insurance laws and rules;~~

~~3. mathematics, statistics, and probability;~~

~~4. economics;~~

~~5. law;~~

~~6. finance;~~

~~7. taxes;~~

~~8. business environment, management, or organization; and~~

~~9. ethical considerations in insurance marketing.~~

~~Areas other than those listed above may be acceptable if the licensee can demonstrate that they contribute to professional competence and otherwise meet the standards set forth in this rule. The responsibility for substantiating that a particular program meets the requirements of this rule rests solely upon the licensee.~~

~~F. Programs which do not qualify:~~

~~1. committee service or professional organizations;~~

~~2. computer training and software presentations;~~

~~3. motivation, psychology, or sales training courses;~~

~~4. securities, other than variable annuities; and~~

~~5. any program not in accordance with this rule.~~

~~G. Standards for Continuing Education Programs. In order to qualify for credit, the following standards must be met by all continuing education programs:~~

~~1. Program Development. The program must have significant intellectual or practical content to enhance and improve the insurance knowledge and professional competence of participants, and the program must be developed by persons who are qualified in the subject matter and instructional design. The program content must be up to date.~~

~~2. Program Presentations. Instructors must be qualified, both with respect to program content and teaching methods. Instructors will be considered qualified if, through formal training or experience, they have obtained sufficient knowledge to instruct the course competently. The number of participants and physical facilities must be consistent with the teaching method specified. All programs must include some means for evaluating quality.~~

~~3. Statutory Requirements. Continuing education programs must be in compliance with the Americans With Disabilities Act to enable licensees with a physical or mental disability to complete continuing education requirements.~~

R590-142-6. Approved Programs of Study.

~~A. An annual administrative assessment paid by the providers shall be used to fund the expenses for processing applications and auditing approved programs.~~

~~B. A waiver of assessment for a nonprofit provider may be considered by the Insurance Department for good cause shown. A request for a waiver of assessment by a nonprofit provider may be submitted with the application for course approval.~~

~~C. A Provider Application, Exhibit A, and Course Description form, Exhibit B, must be submitted for each individual course being submitted for credit.~~

~~D. Upon receipt of the material, the Insurance Department will approve or deny the course or program as qualifying for credit and indicate the number of hours that will be awarded for approved subjects. In cases of denial, the Insurance Department will furnish a written explanation of the reason for the action.~~

~~E. Certification of a program may be effective until substantial changes are made in the program, after which it must be resubmitted to the Insurance Department for its review and approval.~~

R590-142-7. Controls and Reporting.

~~A. Within 60 days of completion of a class, program or course of study, the provider shall furnish Certification to the Insurance Department of Completion of Course, Exhibit D, and shall furnish to all attendees successfully completing the course Certificate of Completion, Exhibit C. The provider is required to keep a copy of attendance rosters on file for a period of at least two years.~~

~~B. Biennially, on even numbered years, the licensee shall submit the original of Exhibit C to the Insurance Department along with a license renewal card and renewal fees and continuing education certification fees.~~

~~C. An exempt applicant shall submit the original of the Certificate of Exemption to the Insurance Department with a license renewal card and renewal fees. Proof supporting a request for exemption shall be attached to the Certificate of Exemption. Once an exemption has been approved by the Insurance Department no additional continuing education filing or continuing education fees are required to be made by the licensee for subsequent renewals.~~

~~D. Biennially, on even numbered years, a nonresident licensee who has complied with the continuing education requirements in the individual's home state shall provide to the Insurance Department a current letter of certification, not dated over 90 days, along with a license renewal card and renewal fees. If the nonresident licensee's home state does not have a continuing education requirement, the nonresident licensee must comply with Utah's requirement.~~

R590-142-8. Provider Loss of Certification.

~~A. The certification of a program may be suspended by the Insurance Department if it determines that:~~

~~1. the program teaching method or program content no longer meet the standards of this rule, or has been significantly~~

~~changed without notice to the Insurance Department for its recertification; or~~

~~2. an individual had completed the program in accordance with the standards furnished for certification or completion of the program, when in fact the individual has not done so; or~~

~~3. individuals who have satisfactorily completed the program of study in accordance with the standards furnished for certification or completion were not so certified by the program or instructor; or~~

~~4. the instructor or provider is not qualified as per the standards of this rule, has had an insurance license revoked, or lacks education or experience in the subject matter of the proposed course; or~~

~~5. there is other good cause why certification should be suspended.~~

~~B. Reinstatement of a suspended certification will be made upon the furnishing of proof satisfactory to the Insurance Department that the conditions responsible for the suspension have been corrected.~~

~~R590-142-9. Credit for Service as Lecturer, Discussion Leader, or Speaker.~~

~~Approved instructors of continuing education courses will receive twice the number of credit hours allocated by the Insurance Department for courses they instruct. Credit for instruction of a course will be granted once for each course instructed and not for successive presentations.~~

~~R590-142-10. Penalties.~~

~~A. A licensee who fails to complete the requirements of this rule shall be subject to the penalties provided in Section 31A-23a-111.~~

~~B. A provider who offers any education program or material for credit that does not comport with the requirements of this rule, or otherwise violates any provision of this rule, shall be subject to the penalties provided in Section 31A-2-308.~~

R590-142. Continuing Education Rule.

R590-142-1. Authority.

This rule is promulgated pursuant to:

(1) Subsection 31A-2-201(3) that authorizes the commissioner to adopt rules to implement the provisions of the Utah Insurance Code;

(2) Subsection 31A-23a-202(1) that authorizes the commissioner to adopt a rule to prescribe the continuation requirements for a producer and a consultant;

(3) Subsection 31A-23a-202(5) that authorizes the commissioner to adopt a rule to prescribe the processes and procedures for continuing education provider registration and course approval;

(4) Subsection 31A-26-206(1) that authorizes the commissioner to adopt a rule to prescribe the continuing education requirements for an adjuster; and

(5) Subsection 31A-35-401.5 that authorizes the commissioner to adopt a rule to implement the continuing education requirement for renewal of a bail bond producer license.

R590-142-2. Purpose and Scope.

(1) The purpose of this rule is to implement the continuing education requirements of Sections 31A-23a-202, 31A-26-206, and 31A-35-401.5.

(2) This rule applies to all continuing education providers and individual producer, consultant, and adjuster licensees under Sections 31A-23a-202, 31A-26-206, and 31A-35-401.5.

R590-142-3. Definitions.

For the purpose of this rule the Commissioner adopts the definitions as set forth in Sections 31A-1-301, 31A-23a-102, 31A-26-102, 31A-35-102, and the following:

(1) "Classroom course" means:

(a) a course of study that:

(i) is taught on-site by a live instructor at the same location;

(ii) requires monitoring of a student; and

(iii) may require examination of course content to be performed by a student; or

(b) an interactive course of study that:

(i) is taught by a live instructor from a separate location;

(A) is delivered to a student via:

(I) computer;

(II) teleconference;

(III) webinar; or

(IV) some other method acceptable to the commissioner;

or

(ii) is not taught by a live instructor;

(A) is delivered to a student via computer; or

(B) some other method acceptable to the commissioner;

(iii) requires two-way interaction between a student and the instrument of instruction;

(iv) requires monitoring of a student; and

(v) requires examination of course content to be performed by a student.

(2) "Credit hour" means one 50-minute period of insurance related instruction consisting of:

(a) a classroom course;

(b) a home study course; or

(c) some other method acceptable to the commissioner;

(3) "Designated internet site" means an internet site that is designated by the commissioner for a provider to submit a student's course completion information.

(4) "Home-study course" means a non-interactive course of study that:

(a) is not taught by a live instructor;

(b) is completed by a student via:

(i) computer;

(ii) video recording, if the video is professionally produced;

(iii) text book; or

(iv) some other method acceptable to the commissioner;

(c) does not require two-way interaction between a student and the instrument of instruction;

(d) does not require monitoring of a student; and

(e) requires examination of course content to be performed by the student.

(5) "Insurance related instruction" means that amount of time that is assigned by the commissioner to a course of study to satisfy the requirements of continuing education credit hours under this rule, in which assignment of value shall be made on the basis of:

- (a) content;
- (b) presentation; and
- (c) format.

(6) "Monitoring of a student" means a person or system in place who verifies participation in and completion of a course.

(7) "Nonprofit provider" means an organization that fits the definition of nonprofit corporation as defined in Title 16, Chapter 6.

(8) "Provider" means a person who offers a course of study or program for credit to an applicant to satisfy the continuing education requirements of this rule.

R590-142-4. Continuing Education Requirements.

A producer, consultant, and adjuster licensee shall comply with, and a continuing education provider shall be familiar with, the following continuing education requirements:

(1) the number of credit hours of continuing education insurance related instruction required to be completed biennially as a prerequisite to license renewal shall be in accordance with Sections 31A-23a-202, 31A-26-206, and 31A-35-401.5;

(2) a licensee may obtain continuing education credit hours at any time during the two-year licensing period;

(3) not more than half of the total credit hours required shall be satisfied by courses provided by insurers;

(4) upon renewal of a license, no continuing education credit hours in excess of the number required to renew the license may be carried over or applied to any subsequent licensing period;

(5) a licensee shall attend a course in its entirety in order to receive credit for the course;

(6) a licensee may repeat a course for credit but will not be permitted to take a course for credit more than once in a license continuation period;

(7) a nonresident licensee who satisfies the licensee's home state's continuing education requirement is considered to have satisfied Utah's continuing education requirement; and

(8) a licensee with a professional designation may use the continuing education credit hours required to maintain the designation to satisfy the requirement of the commissioner if:

(a) the hours are sufficient to meet the current continuing education requirement described in Sections 31A-23a-202 and 31A-26-206; and

(b) the professional designation consists of one or more of the following:

- (i) Accredited Customer Service Representative (ACSR);
- (ii) Accredited Financial Examiner (AFE) or Certified Financial Examiner (CFE);
- (iii) Accredited Insurance Examiner (AIE) or Certified Insurance Examiner (CIE);
- (iv) Certified Financial Planner (CFP);
- (v) Certified Insurance Counselor (CIC);
- (vi) Certified Risk Manager (CRM);
- (vii) Registered Employee Benefits Consultant (REBC);

(viii) Chartered Property Casualty Underwriter (CPCU) with completion of the Continuing Professional Development (CPD) program; or

(ix) Certified Life Underwriter (CLU), Chartered Financial Consultant (ChFC) or Registered Health Underwriter (RHU) with completion of the Professional Achievement in Continuing Education (PACE) recertification program.

R590-142-5. Experience Credit.

(1) Continuing education credit hours may be granted to a licensee for experience credit at the discretion of the commissioner, including credit for experience such as the authoring of an insurance book, course or article.

(2) Membership by a producer or consultant in a state or national professional producer or consultant association is considered to be a substitute for two credit hours for each year during which the producer or consultant is a member of the association, except as provided in (3) below.

(3) No more than two hours of continuing education credit shall be granted per year during the two-year license continuation period, regardless of the number of professional associations of which the producer or consultant is a member.

(4) An approved continuing education course taught by an approved instructor holding a Utah producer, consultant, or adjuster license shall receive twice the number of credit hours allocated by the commissioner for the course, except as provided in (5) below.

(5) Credit for instruction of a course shall be granted no more than once per license renewal period for each course taught.

(6) Continuing education experience credit shall not be granted for committee service.

R590-142-6. Controls and Reporting of Credit Hours.

(1) Within 14 days of completion of a course of study, the provider shall:

(a) furnish to each student successfully completing the course a certificate of completion; and

(b) electronically submit a course completion record to a designated Internet site identifying the student and course information for each student that completed the course.

(2) In the event the provider fails to notify the commissioner of a student's course completion, the licensee may use the certificate of completion as proof of having successfully completed the course.

(3) The provider shall keep proof of successful electronic attendance submission on file for a period of at least the current calendar year plus two years.

R590-142-7. Course Requirements.

(1) Prior to offering a course for credit in Utah, a person must register as a provider and submit a completed continuing education course filing form and course outline for review by the commissioner.

(2) Upon receipt of a completed continuing education course filing form and course outline, the commissioner shall:

(a) approve a course as qualifying for credit in accordance with the standards of this rule;

_____ (b) issue a course number; and
_____ (c) assign the number of hours to be awarded to the approved course; or
_____ (d) disapprove a course as not qualifying for credit; and
_____ (e) furnish an explanation of the reason for disapproval of the course.

_____ (3) A course must be submitted to and approved by the commissioner at least 30 days prior to being offered, except that post approval of a course may be granted by the commissioner upon submission of a written request and supporting documentation of a course attended.

_____ (4) A course advertisement shall not state or imply that a course has been approved by the commissioner unless written confirmation of the approval has been received by the provider.

_____ (5) A department employee may attend a course at no cost for the purpose of auditing the course for compliance.

_____ (6) The following course topics are examples of subject areas that qualify for approval if they contribute to the knowledge and professional competence of an individual licensee as a producer, consultant, or adjuster, and demonstrate a direct and specific application to insurance:

_____ (a) a particular line of insurance;
_____ (b) investments or securities in connection with variable contracts;
_____ (c) principles of risk management;
_____ (d) insurance laws and administrative rules;
_____ (e) tax laws related to insurance;
_____ (f) accounting/actuarial considerations in insurance;
_____ (g) business or legal ethics; and
_____ (h) other course subject areas may be acceptable if the provider can demonstrate that they contribute to professional competence and otherwise meet the standards set forth in this rule.

_____ (7) The following course topics are examples of subject areas that do not qualify for approval:

_____ (a) computer training and software presentations;
_____ (b) motivation;
_____ (c) psychology;
_____ (d) sales training;
_____ (e) communication skills;
_____ (f) recruiting;
_____ (g) prospecting;
_____ (h) personnel management;
_____ (i) time management; and
_____ (j) any course not in accordance with this rule.

_____ (8) The following continuing education standards must be met for a course to qualify for continuing education credit:

_____ (a) the course must have significant intellectual or practical content to enhance and improve the insurance knowledge and professional competence of participants;
_____ (b) the course must be developed by persons who are qualified in the subject matter and instructional design;
_____ (c) the course content must be up to date;
_____ (d) the instructor must be qualified with respect to course content and teaching methods;
_____ (e) the instructor may be considered qualified if through formal training or experience, the instructor has obtained sufficient knowledge to competently instruct the course;

_____ (f) the number of participants and physical facilities for a course must be consistent with the teaching method specified;

_____ (g) the course must include some means for evaluating the quality of the course content;

_____ (h) the course must provide for a method to authenticate each student's identity; and

_____ (i) the course must be taught in a manner compliant with the Americans With Disabilities Act to enable licensees with a physical or mental disability to complete the continuing education requirements.

_____ (9) The following are additional requirements for an interactive computer course of study that is not taught by a live instructor:

_____ (a) provide during each hour of the course at least four interactive inquiry periods that include one or more of the following type of exam questions:

_____ (i) multiple choice
_____ (ii) matching; or
_____ (iii) true false;

_____ (b) the inquiry periods shall occur at regular and relatively evenly-spaced intervals between each period;

_____ (c) the inquiry periods shall cover material from the applicable section of the course that was presented to the student;

_____ (d) one of the inquiry periods must be administered at the end of the course;

_____ (e) identify all incorrect responses and inform the student of the correct response with an explanation of the correct answer;

_____ (f) require answering 70% of the inquiries for each period correctly to demonstrate mastery of the current section, including the final section, before the student is allowed by the program to proceed to the next section or complete the course;

_____ (g) in the event a student does not achieve the 70% correct response rate necessary to advance to the next section, generate a different set of inquiries for the section, which may be repeated as necessary on a random or rotating basis;

_____ (h) provide a method to reasonably authenticate the student's identity on a periodic hourly basis, including upon entering, during, and exiting the course; and

_____ (i) provide for a method to directly transmit the final course completion results to the provider or a printed course completion receipt to be sent to the provider for issuance of a completion certificate.

_____ (10) A continuing education course shall not be offered or taught by a person who has:

_____ (a) a lapsed, surrendered, suspended, or revoked provider registration;

_____ (b) a suspended or revoked insurance license; or

_____ (c) been prohibited from teaching a course.

_____ (11) Continuing education credit may not be granted for a course that is:

_____ (a) not approved by the commissioner; or

_____ (b) offered or taught by a person who has:

_____ (i) a lapsed, surrendered, suspended, or revoked provider registration; or

_____ (ii) been prohibited from teaching a course.

R590-142-8. Provider Requirements.

_____ (1) A provider or a state or national professional producer or consultant association may:

_____ (a) offer a qualified course for a license type or line of authority on a geographically accessible basis; and

(b) collect a reasonable fee for funding and administration of a continuing education program, subject to the review and approval of the commissioner.

(2) A person must register with the commissioner as a provider prior to acting as a provider in Utah.

(3) To initially register as a provider, a person must:

(a) electronically submit a completed provider registration form;

(b) submit a course outline that includes information regarding the course content and the number of credit hours requested for the course; and

(c) pay an initial registration fee, as identified in Rule R590-102, except as provided in (4) below.

(4) A nonprofit provider is not required to pay a registration fee.

(5) To renew a provider registration, a provider, other than a non-profit provider, must pay an annual renewal fee, as identified in Rule R590-102, prior to the annual renewal date.

(6) To renew a non-profit provider registration, electronic notification must be submitted to the commissioner prior to the annual renewal date, of the intent to renew the registration.

(7) Prior to a course being taught, a provider shall:

(a) post the course offering to a designated internet site;

(b) provide the commissioner with the name and resume of the instructor or instructors who will be teaching the course; and

(c) include identifying information as to any insurance license previously or currently held by the instructor or instructors who will be teaching the course.

(8) A provider shall report to the commissioner:

(a) an administrative action taken against the provider in any jurisdiction; and

(b) a criminal prosecution taken against the provider in any jurisdiction.

(9) The report required by Subsection (8) shall:

(a) be filed;

(i) at the time of submitting the initial provider registration; and

(ii) within 30 days of the:

(A) final disposition of the administrative action; or

(B) initial appearance before a court; and

(b) include a copy of the complaint or other relevant legal documents related to the action or prosecution described in Subsection (8).

(10) The commissioner may prohibit any person from acting as a provider or instructor in Utah if the commissioner determines that:

(a) the person is not competent and trustworthy; or

(b) the person or course of study fails to meet the qualifying standards.

R590-142-9. Loss of Provider Registration and Course Disapproval.

(1) A provider registration, other than a non-profit provider registration, shall lapse if a provider fails to pay an annual renewal fee prior to the annual renewal date.

(2) A non-profit provider registration shall lapse if electronic notification of the intent to renew the registration is not submitted to the commissioner prior to the annual renewal date.

(3) To reinstate a lapsed or surrendered provider registration, other than a non-profit provider registration, a provider must:

(a) submit a completed provider registration form; and

(b) pay a reinstatement fee, as identified in Rule R590-102.

(4) To reinstate a lapsed or surrendered non-profit provider registration, a non-profit provider must submit a completed provider registration form.

(5) A provider registration may be suspended or revoked, an instructor prohibited from teaching a course, or a course disapproved, if the commissioner determines that:

(a) a course teaching method or course content no longer meets the standards of this rule;

(b) a provider reported that an individual had completed a course in accordance with the standards furnished for course credit, when in fact the individual has not done so;

(c) a provider or instructor conducting a course instructs for less than the number of credit hours approved by the commissioner, but reports the full credits for the individual attending the course;

(d) credit for a course was not electronically reported to a designated internet site in a timely manner for an individual who satisfactorily completed a course in accordance with the standards furnished for course credit;

(e) a provider or instructor:

(i) lacks sufficient education or experience in the subject matter of the course;

(ii) has had a provider registration suspended or revoked in another jurisdiction;

(iii) has had an insurance license suspended or revoked;

or

(iv) is otherwise no longer qualified in accordance with the standards of this rule; or

(f) there is other good cause evidencing that:

(i) a provider registration should be suspended or revoked;

(ii) an instructor should be disallowed from teaching a course; or

(iii) a course should be disapproved.

(6) The commissioner may disapprove any course, whether or not it had been previously approved, if:

(a) the commissioner determines that the course of study fails to meet the qualifying standards; or

(b) a change of 50% or more has been made in the course content since the initial approval of the course, subject to resubmission of the course for review and subsequent approval of the course by the commissioner.

(7) A provider may re-apply for a course that has been disapproved upon providing satisfactory proof to the commissioner that the conditions responsible for the disapproval have been corrected.

(8) To reinstate a suspended or revoked provider registration, a provider must:

(a) submit a completed provider registration form;

(b) submit a course outline that includes information regarding the course content and the number of credit hours requested for the course;

(c) pay a reinstatement fee, as identified in Rule R590-102, except as provided in Section 8(4) of this Rule; and

(d) provide satisfactory proof to the commissioner that the conditions responsible for the suspension or revocation have been corrected.

(9) A person with a revoked provider registration may not apply for a new registration for five years from the date the registration was revoked without the express approval by the commissioner, unless otherwise specified in the revocation order.

R590-142-10. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-142-11. Enforcement Date.

The commissioner will begin enforcing this rule on the effective date of the rule.

R590-142-12. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance [law]continuing education

Date of Enactment or Last Substantive Amendment: [~~October 1, 1996~~2011]

Notice of Continuation: January 26, 2007

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-202; 31A-26-206; 31A-35-401.5

Labor Commission, Boiler and Elevator
Safety
R616-2-3
Safety Codes and Rules for Boilers and
Pressure Vessels

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 34958
FILED: 06/22/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule amendment is to adopt the most current American Society of Mechanical Engineers (ASME) standards from 2010 for the construction of power boilers, heating boilers and pressure vessels. This rule amendment also adopts the addenda to the National Board Inspection Code (NBIC) standards for boilers and pressure vessels issued in 2008, 2009, and 2010 applying to the

design and installation of boilers and pressure vessels in Utah. The Labor Commission's intent is to maintain uniformity between state standards and national standards.

SUMMARY OF THE RULE OR CHANGE: The 2010 ASME code Section I contains new standards regarding: the technology of materials used in the construction of power boilers; the materials' properties in regard to temperature (heat, welding and cold); new examination techniques used to determine the thickness and/or corrosion of the materials; and 19 errata changes. The 2010 ASME code Section IV contains changes affecting heating boilers with respect to: comparing cast aluminum and cast iron; explaining the use of electronic pressure gauges; and removing temperature limits on non-ferrous metals. The Section IV changes also add a new welding diagram and make 7 errata changes. The 2010 ASME code Section VIII contains changes regarding: metrification; relief valve and rupture disc manufacturing requirements; requirements for new technology in materials used in fabrication; and clarification in variables used in several calculations regarding heat exchangers. The Section VIII changes also make 61 errata changes and add several tables for reference. The 2008, 2009, and 2010 addenda to the NBIC standards correct errata and make minor technical and editorial changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-7-101 et seq.

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Boiler and Pressure Vessel Code, Section I Rules for Construction of Power Boilers, 2010 edition, published by American Society of Mechanical Engineers, July 1, 2010
- ◆ Updates National Board Inspection Code, 2010 Addenda, published by National Board of Boiler and Pressure Vessel Inspectors, 2010
- ◆ Updates National Board Inspection Code, 2008 addenda, published by National Board of Boiler and Pressure Vessel Inspectors, 2008
- ◆ Updates Boiler and Pressure Vessel Code, Section VIII, 2010 edition, published by American Society of Mechanical Engineers, July 1, 2010
- ◆ Updates Boiler and Pressure Vessel Code, Section IV Rules for Construction of Heating Boilers, 2010 edition, published by American Society of Mechanical Engineers, July 1, 2010

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There will be no cost or savings to the state budget associated with the adoption of this code from an administrative and enforcement standpoint. The adoption of the codes is necessary to address changes in the methods and materials used to construct, maintain and examine power boilers, heating boilers and pressure vessels and associated gauges, as well as correcting errata from previous versions of the code. Owners and operators of power boilers, heating boilers and pressure vessels, including the state, may incur a de minimis cost increase when

purchasing a new boiler or pressure vessel compliant with the 2010 ASME Standards as compared to boilers and pressure vessels subject to previous standards due to the new technology of the materials used to construct them; however, such a cost increase, if any, cannot be determined at this time.

♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings associated with the adoption of these codes. The adoption of the codes is necessary to address changes in the methods and materials used to construct, maintain and examine power boilers, heating boilers and pressure vessels and associated gauges, as well as correcting errata from previous versions of the code. Owners and operators of power boilers, heating boilers and pressure vessels may incur a de minimis cost increase when purchasing a new boiler or pressure vessel compliant with the 2010 ASME Standards as compared to boilers and pressure vessels subject to previous standards due to the new technology of the materials used to construct them; however, such a cost increase, if any, cannot be determined at this time.

♦ SMALL BUSINESSES: There is no anticipated cost or savings associated with the adoption of these codes. The adoption of the codes is necessary to address changes in the methods and materials used to construct, maintain and examine power boilers, heating boilers and pressure vessels and associated gauges, as well as correcting errata from previous versions of the code. Owners and operators of power boilers, heating boilers and pressure vessels may incur a de minimis cost increase when purchasing a new boiler or pressure vessel compliant with the 2010 ASME Standards as compared to boilers and pressure vessels subject to previous standards due to the new technology of the materials used to construct them; however, such a cost increase, if any, cannot be determined at this time.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings associated with the adoption of these codes. The adoption of the codes is necessary to address changes in the methods and materials used to construct, maintain and examine power boilers, heating boilers and pressure vessels and associated gauges, as well as correcting errata from previous versions of the code. Owners and operators of power boilers, heating boilers and pressure vessels may incur a de minimis cost increase when purchasing a new boiler or pressure vessel compliant with the 2010 ASME Standards as compared to boilers and pressure vessels subject to previous standards due to the new technology of the materials used to construct them; however, such a cost increase, if any, cannot be determined at this time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no cost or savings associated with the adoption of these codes. Their adoption is necessary to address new technology in equipment to be installed in Utah. The method by which the Safety Division conducts its inspections, and the costs associated with such inspections will not change. Owners and operators of power boilers, heating boilers and pressure vessels may incur a de minimis cost increase when

purchasing a new boiler or pressure vessel compliant with the 2010 ASME Standards as compared to boilers and pressure vessels subject to previous standards due to the new technology of the materials used to construct them; however, such a cost increase, if any, cannot be determined at this time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes required by this proposed rule amendment will have no net fiscal impact on business; however, businesses enjoy competitive benefits by maintaining conformity between Utah and national standards. Such benefits include competitive costs when purchasing or manufacturing boilers or pressure vessels in Utah compared to other states implementing the national standard.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 LABOR COMMISSION
 BOILER AND ELEVATOR SAFETY
 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:
 ♦ Ami Windham by phone at 801-530-6850, by FAX at 801-530-6871, or by Internet E-mail at ajohnston@utah.gov
 ♦ Pete Hackford by phone at 801-530-7605, by FAX at 801-530-6871, or by Internet E-mail at phackford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R616. Labor Commission, Boiler and Elevator Safety.
R616-2. Boiler and Pressure Vessel Rules.
R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels.

The following safety codes and rules shall apply to all boilers and pressure vessels in Utah, except those exempted pursuant to Section 34A-7-101, and are incorporated herein by this reference in this rule.

- A. ASME Boiler and Pressure Vessel Code (~~2007~~2010).
 - 1. Section I Rules for Construction of Power Boilers published July 1, 2010~~[2007, the 2008 addenda published July 1, 2008, and the 2009b addenda published July 1, 2009].~~
 - 2. Section IV Rules for Construction of Heating Boilers published July 1, 2010~~[2007, the 2008 addenda published July 1, 2008, and the 2009b addenda published July 1, 2009].~~
 - 3. Section VIII Rules for Construction of Pressure Vessels published July 1, 2010~~[2007, the 2008 addenda published July 1, 2008, and the 2009b addenda published July 1, 2009].~~

B. Power Piping ASME B31.1 (2004), issued August 16, 2004.

C. Controls and Safety Devices for Automatically Fired Boilers ASME CSD-1-1998; the ASME CSD-1a-1999 addenda, issued March 10, 2000; and the ASME CSD-1b (2001) addenda, issued November 30, 2001.

D. National Board Inspection Code ANSI/NB-23 (2007) issued December 31, 2007 and the 2008, 2009, and 2010 addenda.

E. NFPA 85 Boiler and Combustion Systems Hazard Code 2007 Edition.

F. Recommended Administrative Boiler and Pressure Vessel Safety Rules and Regulations NB-132 Rev. 4.

G. Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair and Alteration API 510 Ninth Edition, June 2006. Except:

1. Section-8, and
2. Appendix-A.

KEY: boilers, certification, safety

Date of Enactment or Last Substantive Amendment: [~~October 22, 2010~~2011]

Notice of Continuation: November 30, 2006

Authorizing, and Implemented or Interpreted Law: 34A-7-101 et seq.

Natural Resources, Water Rights

R655-10

Dam Safety Classifications, Approval Procedures and Independent Reviews

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34961

FILED: 06/22/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The current rule requires clarification and update to current industry practice.

SUMMARY OF THE RULE OR CHANGE: In Subsection R655-10-6B(B)(1), makes a clarification and updates to current industry practice. In Subsection R655-10-6B(3)(9), makes a clarification. In Subsection R655-10-7A(1), makes a clarification and updates to current industry practice. In Section R655-10-7B, makes clarification.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 73, Chapter 5a

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** No cost involved, clarification of processing does not require a dollar figure.

♦ **LOCAL GOVERNMENTS:** No cost involved, clarification of processing does not require a dollar figure.

♦ **SMALL BUSINESSES:** No cost involved, clarification of processing does not require a dollar figure.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No cost involved, clarification of processing does not require a dollar figure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No cost involved, clarification of processing does not require a dollar figure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:

No physical impact, clarification of process procedures does not require a dollar figure.

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

NATURAL RESOURCES

WATER RIGHTS

ROOM 220

1594 W NORTH TEMPLE

SALT LAKE CITY, UT 84116-3154

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Marianne Burbidge by phone at 801-538-7370, by FAX at 801-538-7467, or by Internet E-mail at marianneburbidge@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/12/2011

AUTHORIZED BY: Michael Styler, Executive Director

R655. Natural Resources, Water Rights.

R655-10. Dam Safety Classifications, Approval Procedures and Independent Reviews.

R655-10-6B. Submission of Plans.

A. All projects requiring submission of plans should include a package including the drawings, specifications, design reports, and any other information which will assist in reviewing the project. The amount of information generated becomes more involved as the size and hazard rating of the structure increases. The following guidelines are included to alert the designer to the basic information required.

B. All drawings submitted should comply with the following:

1. The size of all drawings submitted for review, shall not be larger than 24 inches by 36 inches or smaller than 11 inches by 17 inches. All details on the drawings shall be clear and legible. Drawing sets with 10 sheets or less may be submitted electronically. Following approval of the project by the State Engineer, two sets of 11 inch by 17 inch drawings, reflecting all final approval conditions, shall be submitted, prior to the initiation of construction.

2. All drawings should include a bar scale to allow for accurate scaling of reductions.

3. All drawings shall have a title block in the lower right corner showing the project name, the owner's name, the sheet number, and the date of preparation of the plans.

4. All drawings shall have provisions for noting the dates of any modifications.

5. Each drawing shall include the signature and seal of the responsible engineer. Geological drawings should also be signed by the responsible geologist.

C. Drawings to be included in plans are:

1. Title sheet, including:

- a. General location map including access roads.
- b. Signature block for owner's acceptance.
- c. Index of drawings.
- d. Reference to the water rights for the reservoir.
- e. Reservoir stage/storage curve.
- f. Rating curves for outlets and spillways.

2. Plan view of reservoir, including:

- a. Existing topography.
- b. Borrow areas.
- c. Supply canals and pipelines.
- d. Suitable contour lines.
- e. Clearing limits.
- f. Waste areas.

3. Plan view of dam, including:

- a. Location of all pertinent features.
- b. A survey tie, to an outside section corner, where the longitudinal axis of the dam intersects the axis of the original stream channel or the low level outlet.

c. Clearing limits.

4. Longitudinal profile, showing:

- a. Original ground line.
 - b. Location of core trench or other cutoff features.
 - c. Location of outlets and spillways.
 - d. Camber and anticipated settlement.
5. Typical cross-sections of dam, showing:
- a. Embankment geometrics including internal zones.
 - b. Slope protection.
 - c. Cutoff.
 - d. Delineation of embankment on natural ground surface.
 - e. Freeboard.
 - f. Internal drainage.
 - g. Limits of foundation excavation.

6. Plan, profile, cross sections and details of all outlets, spillways, and other structures.

7. Structural details for reinforcing steel, metal fabrication, or waterstops.

8. Site geology map of the damsite and reservoir basin including locations of all borings and test pits.

9. Longitudinal geologic profile of both the dam and reservoir, showing:

a. Original ground line.

b. Location and orientation of borings.

c. Geological profile showing pertinent lithologic, hydrologic, and structural information.

10. Logs of borings with classifications of soil and rock, results of water pressure tests and other downhole material property tests, soil classification, standard penetration tests, core recovery, rock quality designations, and strength tests.

11. Any additional drawings such as instrumentation details necessary to construct the project.

D. Specification Requirements.

The State Engineer must review and approve all technical specifications for a proposed project. A partial list of specifications directly related to dam safety follows:

1. Site Preparation.

- a. Clearing and Grubbing.
 - b. Soil Stripping.
 - c. Structure Removal.
 - d. Diversion and Care of Stream.
2. Foundation Preparation.
- a. Foundation Dewatering.
 - b. Relief Wells.
 - c. Grouting.
 - d. Cutoffs.
 - e. Abutment Contacts.
 - f. Exploration.
 - g. Dental Concrete.

3. Earthwork.

- a. Excavation.
 - b. Earth Fill.
 - c. Drain Fill.
 - d. Rock Fill.
 - e. Material Handling.
 - f. Testing Procedures.
4. Concrete and Reinforcement.
- a. Concrete Mixing and Placement.
 - b. Steel Reinforcement.
 - c. Admixtures.
 - d. Curing and Curing Compounds.
 - e. Joint Fillers and Waterstops.

5. Outlets.

- a. Water Control Gates and Valves.
 - b. Air Vent.
 - c. Operating Equipment.
 - d. Bedding Requirements.
6. Aggregates and Rock.
- a. Drain Fill and Filters.
 - b. Concrete Aggregates.

c. Riprap.

7. Erosion Control.

8. Miscellaneous Structural Work.

- a. Metal Fabrication and Installation.
- b. Instrumentation.

9. All technical specifications should also include testing intervals to assure compliance with the specifications.

E. Design Report Requirements. The design report should include all information used to design the dam, including assumptions made and methodology used with sufficient documentation. Any building codes or design manuals used in the

design should be referenced, including the year of publication of the source. If the design report is a product of a team effort, the names of all persons producing the report should be included along with the sections they prepared. Examples of items to be included in the design report are as follows:

1. Hydrology calculations for determining the spillway requirements.
2. Hydraulic characteristics of the outlets and spillways.
3. Subsurface investigation including logs of test borings and geologic cross-sections.
4. Material testing results and the location and logs of test pits.
5. Foundation treatment and abutment contact design.
6. Calculations for the reinforced concrete design and the loading conditions utilized.
7. Stability analysis of the dam, abutments, and reservoir rim, including appropriate seismic loading, safety factors and embankment zone characteristics.
8. Geological investigations including:
 - a. Regional perspective of the site's geologic and seismic setting at a scale appropriate to the geologic complexity of the area.
 - b. Seismic evaluation establishing the relationship of the site to all seismic features of concern and the potential for reservoir induced seismicity.
 - c. Site geology of areas affected by construction activities and appropriate adjacent areas.
 - d. Plans to compensate for any geological weakness in the dam foundation, abutment areas, and reservoir rim.
9. Subsurface s[S]eepage considerations including the cutoff trench design and internal drainage design and filtering.
10. Post-construction monitoring or alarm systems.

R655-10-7A. Review of Design.

The following situations will require an independent consultant review of the design of a new dam or significant enlargement of an existing dam.

1. ~~[All high hazard dams, which have a structural height over 50 feet and an active storage over 1,000 acre-feet, will require an independent review unless exempted in writing by the State Engineer.]~~ Any dam that in the opinion of the State Engineer warrants additional review due to the large size or complexity of the dam and/or reservoir.
2. Any high or moderate hazard dam which, in the opinion of the State Engineer, has a unique problem requiring additional review.
3. Any high or moderate hazard dam whose design is not typical of dams normally built in the state and is thus beyond the technical abilities of the State Engineer's dam safety staff.
4. If the owner's engineer and the State Engineer cannot reach an agreement on the design of a dam.
5. If the owner specifically requests an independent consultant review.

R655-10-7B. Review of Construction.

The State Engineer may require an independent consultant review when ~~[peculiar]~~ unusual problems are noted during construction ~~[of a dam], [or] the dam is not being constructed as per approved plans and specifications, or to supplement the technical expertise of the project engineer.~~

KEY: dam safety, dams, reservoirs

Date of Enactment or Last Substantive Amendment:
~~[December 10, 2003]~~ **2011**

Notice of Continuation: April 14, 2011

Authorizing, and Implemented or Interpreted Law: 73-5a

Natural Resources, Water Rights **R655-11** Requirement for the Design, Construction and Abandonment of Dams

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 34960
FILED: 06/22/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The current rule requires clarification and update to current industry practice.

SUMMARY OF THE RULE OR CHANGE: In Subsection R655-11-6A(B), makes a clarification. In Subsection R655-11-6E(G), updates to current industry practice. In Subsection R655-11-6E(I), makes a clarification. In Subsection R655-11-7A(A), updates to current industry practice. In Subsection R655-11-7C(J), makes a clarification and updates to current industry practice. In Section R655-11-10D, makes a clarification and updates to current industry practice. In Section R655-11-12B, makes a clarification. In Subsection R655-11-12E, makes a clarification and updates to current industry practice.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 73, Chapter 5a

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No cost involved, clarification of processing does not require a dollar figure.
- ◆ **LOCAL GOVERNMENTS:** No cost involved, clarification of processing does not require a dollar figure.
- ◆ **SMALL BUSINESSES:** No cost involved, clarification of processing does not require a dollar figure.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No cost involved, clarification of processing does not require a dollar figure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No cost involved, clarification of processing does not require a dollar figure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No physical impact, clarification of process procedures does not require a dollar figure.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 NATURAL RESOURCES
 WATER RIGHTS
 ROOM 220
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Marianne Burbidge by phone at 801-538-7370, by FAX at 801-538-7467, or by Internet E-mail at marianneburbidge@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/12/2011

AUTHORIZED BY: Michael Styler, Executive Director

R655. Natural Resources, Water Rights.
R655-11. Requirements for the Design, Construction and Abandonment of Dams.
R655-11-6A. Factors of Safety.

A. All dams should meet the following criteria for factors of safety under normal loading conditions.

TABLE

Condition	Minimum Factor of Safety
End of Construction Case--upstream and downstream slopes	1.3
Steady State Seepage--upstream and downstream slopes (full pool)	1.5
Instantaneous Drawdown--upstream slope	1.2
OR	
Actual Drawdown--upstream slope	1.5

B. All factors of safety should be generated by methodology acceptable to the State Engineer. In undertaking the analysis, the effects of anisotropy should be considered and a ratio of horizontal to vertical permeability of at least nine should be used in the seepage analysis, unless otherwise justified to the satisfaction of the State Engineer. Ratios of up to 100 should be considered if the material types and construction techniques will cause excessive stratification.

C. The strengths used in the stability analysis should be obtained from tests which best model the situation being analyzed.

D. The analysis of the upstream slope stability for actual drawdown should consider drawdown rates which the low level outlets are capable of generating. Actual residual pore pressures should be used.

E. For low hazard dams the State Engineer may waive the requirements of a stability analysis, including a seismic analysis, if it can be demonstrated that conservative slopes and competent materials are used in the dam, and seismic problems (i.e., liquefiable materials, active faults close to the dam) are not present.

F. Stability evaluations where residual strengths are used must have a minimum factor of safety of 1.3.

R655-11-6E. Internal Drainage.

A. All underdrains and collection pipes shall be constructed using non-corrodible materials capable of withstanding the anticipated loads.

B. Underdrains and collection pipes should be designed to conduct flows several times larger than anticipated. All pipes within the dam which are not easily accessible shall have a minimum diameter of six inches.

C. All internal drain pipes should be enveloped with free draining material, meeting filter requirements with adjacent zones.

D. Where multiple pipes are used to conduct drainage from internal portions of the dam, they should be carried to the downstream toe or gallery separately without intervening connections or manifold systems. If the drain pipes are connected at their termination points, manholes should be provided to facilitate observation and measurement of the separate drain lines.

E. All underdrains and collection pipes should have provisions for measuring discharges in manholes or at their discharge points. If the anticipated discharge is in excess of 10 gallons per minute (gpm), a weir or other suitable measuring device should be provided. If the anticipated flows are less than 10 gpm, provisions should be made so the water can be discharged freely into a vessel 1.5 feet high and one foot in diameter.

F. All exposed underdrain and collection pipes shall have an appropriate rodent screen attached.

G. All underdrains and collection pipes ~~should~~ **shall** be cleaned out and inspected by camera prior to the first filling of the reservoir.

H. All seepage collection systems must include a collection pipe to discharge flows.

I. All internal drains must have a sufficient ~~minimum~~ cover ~~of 3 feet~~ of impermeable material to eliminate the collection of surface waters.

R655-11-7. Outlet Requirements.

All outlet designs should meet the following criteria.

R655-11-7A. Outlet Sizing.

A. All dams shall have a low level outlet capable of draining the reservoir ~~to the sediment pool~~. Exemptions to this requirement may be granted at the discretion of the State Engineer. Normally, exemptions will only be considered for low head, low hazard dams. Any dead storage must be approved by the State Engineer and must be sufficiently low to eliminate any storage hazard. The outlet should be sized to meet the project demands as well as the following criteria.

1. All outlets shall be 24 inches in diameter or larger unless exempted in writing by the State Engineer. Outlets should have valves or capped flanges which can facilitate entry into the pipe by personnel or video equipment.

2. All outlets shall have the capacity to evacuate 90% of the active storage capacity of the reservoir within 30 days neglecting reservoir inflows. The State Engineer may adjust this requirement on large reservoirs if it can be demonstrated that compliance would result in an unreasonably sized outlet or potential releases would exceed the downstream channel carrying capacity.

3. All outlets shall have the capacity to satisfy prior downstream water rights and the owners' release requirements.

R655-11-7C. Outlet Details.

A. All outlets shall have a trash rack to prevent clogging.

B. All outlets connected directly to a downstream pipeline shall have an emergency bypass valve.

C. All outlets shall have a suitable energy dissipator at the discharge end to prevent erosion of the downstream channel.

D. All outlets will be placed on a concrete cradle or encased in concrete unless specifically exempted by the State Engineer in writing.

E. All outlets, with the exception of ungated outlets, shall have an operating gate or a guard gate on the upstream end.

F. All outlets shall have seepage control measures to reduce the potential for piping along the conduit. Common methods may include locating the outlet conduit in bedrock and installing a conduit filter drain to intercept seepage.

G. Outlets encased in concrete should have battered sides to facilitate compaction against the encasement.

H. Every attempt should be made to locate the outlet on bedrock or consolidated materials. In the event this is not possible, consideration should be given to articulating the outlet to allow for settlement.

I. Outlet gates and valves can be either mechanically or hydraulically operated. In either case the hydraulic lines or mechanical stems must be adequately protected from debris, wave action, settlement, and ice damage. Buried stems should be encased in an oil-filled pipe supported on pedestals. No catwalks or similar access structures will be allowed on reservoirs where freezing occurs or significant floating debris is present. All outlets which are operated with electrical equipment must have back-up generating capability or a manual bypass system capable of being operated in a reasonable amount of time.

J. All outlets shall be properly vented.~~[to avoid cavitation, surging, and reservoir vortices. On low head dams adequate ventilation may naturally occur through the conduit if a free water surface is maintained. In most cases a]~~ A vent pipe and air manifold around the perimeter of the conduit immediately downstream of the gate will be required unless waived by the State Engineer. The air supply lines should be conservatively sized for the anticipated flows and protected in the same manner as the outlet control lines or stems.

K. All operators and supporting equipment for outlet controls should be properly protected and secured. Particular attention needs to be given to protection from vandals and unauthorized operation. All outlet controls should be clearly marked as to which way the gates and valves operate so that overloading of a closed gate or valve should not occur.

L. Outlet controls should be accessible when the spillways are in use.

R655-11-10D. Seepage Measurements.

Seepage measurements for all drains and collection pipes should be provided, as outlined in R655-11-6E, for all high and moderate hazard dams. Any significant seepage areas which develop ~~[following the initial filling should]~~ must be [also be] provided with measuring devices and at the discretion of the State Engineer, must be collected in a filtered drainage system.

R655-11-12B. Formal Construction Inspections.

In approving plans the State Engineer may require his approval of certain construction operations before the next phase of construction can commence. The owner's engineer or inspector must notify the State Engineer and determine a mutually acceptable time to observe and approve the work prior to continuation of the construction. ~~[Written acceptance of work inspected during formal inspections will be sent to the owner and his engineer.]~~

R655-11-12E. Final Inspection.

Before any dam can be placed in operation a final inspection of the project must be undertaken by the State Engineer and his written acceptance of the project received. The Emergency Action Plan, Standard Operating Plan, and Initial Filling Plan, if required, must be completed and approved before final acceptance and authorization for filling can be given. During rehabilitation of existing dams, at the discretion of the State Engineer, some reservoir storage may be allowed provided sufficient safety criteria are adopted. Record drawings ~~[As constructed plans]~~ of the project must be submitted within 60 days of the date of the final inspection. All record drawings ~~[as constructed plans]~~ submitted must be on a high quality reproducible medium or electronic format acceptable to the State Engineer. Record drawings shall ~~[As constructed plans should]~~ reflect design changes made during construction, geological logs of the foundation excavation, and piezometer borings.

KEY: dams, earthquakes, floods, reservoirs

Date of Enactment or Last Substantive Amendment:
~~[December 10, 2003]~~ 2011

Notice of Continuation: April 14, 2011

Authorizing, and Implemented or Interpreted Law: 73-5a

Natural Resources, Water Rights **R655-12** Requirements for Operational Dams

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34959

FILED: 06/22/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The current rule requires clarification and update to current industry practice.

SUMMARY OF THE RULE OR CHANGE: In Section R655-12-3, makes a clarification. In Section R655-12-4, makes a clarification and aligns with statute. In Section R655-12-4A, makes a clarification. In Section R655-12-4B, makes a clarification. In Section R655-12-6, makes a clarification and aligns with statute.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 73, Chapter 5a

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No cost involved, clarification of processing does not require a dollar figure.
- ◆ **LOCAL GOVERNMENTS:** No cost involved, clarification of processing does not require a dollar figure.
- ◆ **SMALL BUSINESSES:** No cost involved, clarification of processing does not require a dollar figure.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No cost involved, clarification of processing does not require a dollar figure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No cost involved, clarification of processing does not require a dollar figure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No physical impact, clarification of process procedures does not require a dollar figure.

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

NATURAL RESOURCES
WATER RIGHTS
ROOM 220
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Marianne Burbidge by phone at 801-538-7370, by FAX at 801-538-7467, or by Internet E-mail at marianneburbidge@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/12/2011

AUTHORIZED BY: Michael Styler, Executive Director

R655. Natural Resources, Water Rights.

R655-12. Requirements for Operational Dams.

R655-12-3. Initial Filling[Plans].

All high and moderate hazard dams will require initial filling plans for their first cycle of complete filling and draining following construction, enlargement, or repairs which involve substantial excavation of the dam. The initial filling plan must be approved by the State Engineer prior to filling.

R655-12-4. Operation and Maintenance.[Standard Operating Plans.]

All dams that ~~have a hazard designation of high or moderate~~ require[ing] submission of plans pursuant to Section 73-5a-202 must have a standard operating plan approved by the State Engineer. The owners of all dams shall operate and perform maintenance necessary to keep the dam and appurtenant structures in satisfactory condition. Operation and maintenance shall be performed in accordance with a Standard Operating Plan approved by the State Engineer, reports provided to the owner following safety inspections by the State Engineer, and accepted standards of the industry.

R655-12-4A. Standard Operating Plan Content.

The standard operating plan must include the following:

1. General information on the dam and reservoir including the history, a description of the project, persons responsible, agreements with other entities, and the purpose of the project.
2. Inspection list detailing what items should be inspected routinely by the owner or his agent.
3. Routine maintenance schedule and procedures such as rodent removal, vegetation control, floating debris removal, lubrication, painting, grading, riprap repair, and erosion repair.
4. Outlet and spillway operation including operation and maintenance of any mechanical, hydraulic, or electrical systems used. Emergency or back-up procedures should be included.
5. Instrumentation operation including threshold values, reading schedules, reporting procedures, and maintenance.
6. Reservoir operation including descriptions of controlling floatable debris, monitoring unstable soils, control of sediment, public access, and inundation areas.
7. Safety and health hazards and procedures to mitigate the hazards.
8. Recordkeeping and reporting procedures including necessary forms and examples.
9. A copy of the record or as-constructed drawings shall be included.

R655-12-4B. Reporting Requirement.

Dam owners shall maintain records of all operation and maintenance of the dam and appurtenant structures. [All operating reports produced by the owner or his agents]Copies of these records must be submitted to the State Engineer, upon his request, within 30 days.

R655-12-6. Emergency Action Plans.

All owners of high hazard and moderate hazard dams that require submission of plans pursuant to section 73-5a-202 shall prepare, maintain, and exercise an emergency action plan.

KEY: dam safety, dams, reservoirs

Date of Enactment or Last Substantive Amendment:
[December 10, 2003]2011

Notice of Continuation: April 14, 2011

Authorizing, and Implemented or Interpreted Law: 73-5a

Natural Resources, Wildlife Resources
R657-12
Hunting and Fishing Accommodations
for People with Disabilities

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34981

FILED: 06/28/2011

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 divisions' administrative rules.

SUMMARY OF THE RULE OR CHANGE: Provisions are being amended to this rule to allow a veteran with disabilities to receive a season fishing license at a reduced price. These amendments set the criteria for issuing such licenses.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-19-1 and Section 23-19-36 and Section 23-20-12 and Section 63G-3-201

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This amendment allows opportunity for disabled veterans to receive a season fishing license at a discounted price. The Division of Wildlife Resources (DWR) has determined that this amendment may create a cost or savings impact to the division's budget or the state budget depending on the number of qualifying veterans.

♦ **LOCAL GOVERNMENTS:** This amendment allows opportunity for disabled veterans to obtain a season fishing license at a discounted price. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the amendment. Nor are local governments indirectly impacted because the

amendment does not create a situation requiring services from local governments.

♦ **SMALL BUSINESSES:** This amendment allows opportunity for qualifying disabled veterans to purchase a season fishing license at a discounted price. The amendment does not impose any additional requirements on small businesses but will generate a cost or savings impact to qualifying disabled veterans.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment allows opportunity for qualifying disabled veterans to purchase a season fishing license at a discounted price. The amendment does not impose any additional requirements on other persons but will generate a cost or savings impact to qualifying disabled veterans.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment allows opportunity for disabled veterans to obtain a season fishing license at a discounted price, and sets the qualifying criteria. There are not any additional compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-12. Hunting and Fishing Accommodations for People With Disabilities.

R657-12-10. Fishing Licenses for Veterans with Disabilities.

(1) A resident who has a service-connected disability of 40% or more and is not eligible to fish without a license under Section 23-19-14 or to receive a free fishing license under Section 23-19-36 may purchase a discounted 365-day fishing license upon furnishing verification of a service-connected disability and paying the fee established in the approved fee schedule.

(a) "Armed Forces" means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components thereof and the Army and Air National Guard of the United States.

(b) "Service-connected disability" means injury or illness incurred or aggravated:

(i) while in Armed Forces service; and

(ii) that is recognized by the United States Department of Veterans Affairs or by a branch of the Armed Forces.

(c) "Verification of Service-Connected Disability" means an official written letter, statement, or card issued by the Department of Veterans Affairs or by a branch of the Armed Forces certifying that the person has a service-connected disability with a disability rating of 40% or higher.

(2) The discount provided in this section on the purchase of a fishing license does not apply to combination licenses.

(3) Veteran fishing licenses shall be issued at division offices and may be issued online or at license agents. The purchaser may be required to complete an affidavit of the service-connected disability at the time of purchase.

R657-12-11. Administrative and Judicial Review.

(1) A person may request administrative review of the division's partial or complete denial of a certificate of registration under this chapter by delivering a written request for administrative review to the division director or designee within 30 days of the date of denial.

(2) The request for administrative review shall include:

(a) the name, address, and phone number of the petitioner;

(b) a specific description of the disability involved and the physical limitations imposed by that disability;

(c) a specific description of the accommodations requested to mitigate the physical limitations caused by the disability; and

(d) verifiable medical or other information describing the disability and the medical need for the requested accommodation.

(3) A person may appeal the division director's or designee's decision under Subsection (1) by filing a request for agency action pursuant to R657-2.

KEY: wildlife, wildlife law, disabled persons

Date of Enactment or last Substantive Amendment: [~~August 9, 2010~~2011]

Notice of Continuation: September 10, 2007

Authorizing, and Implemented or Interpreted Law: 23-20-12; 63G-3-201

**Administration
R746-360-4
Application of Fund Surcharges to
Customer Billings**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 34979

FILED: 06/27/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment will increase the Universal Public Telecommunications Service Support Fund surcharge from 0.25 percent to 1 percent. This will more closely match future anticipated funds and fund balance to future anticipated expenditures.

SUMMARY OF THE RULE OR CHANGE: The intrastate retail surcharge will be increased from 0.25 to 1 percent.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-8b-15

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There will be an increase in costs. The surcharge is assessed on all retail intrastate telecommunications services. An increase in the surcharge will result in an increase in the amount paid by state government for retail intrastate telecommunications services. While the Commission has information concerning the periodic surcharge amounts collected by telecommunications carriers, it does not have the ability to disaggregate those amounts to determine the amounts paid by specific customers of the telecommunications carriers. A secondary affect are the additional collections for the universal service fund itself, which will amount to approximately \$6,000,000 annually.

◆ **LOCAL GOVERNMENTS:** There will be an increase in costs. The surcharge is assessed on all retail intrastate telecommunications services. An increase in the surcharge will result in an increase in the amount paid by local governments for retail intrastate telecommunications services. While the Commission has information concerning the periodic surcharge amounts collected by telecommunications carriers, it does not have the ability to disaggregate those amounts to determine the amounts paid by specific customers of the telecommunications carriers.

Public Service Commission,

♦ **SMALL BUSINESSES:** There will be an increase in costs. The surcharge is assessed on all retail intrastate telecommunications services. An increase in the surcharge will result in an increase in the amount paid by all businesses for retail intrastate telecommunications services. While the Commission has information concerning the periodic surcharge amounts collected by telecommunications carriers, it does not have the ability to disaggregate those amounts to determine the amounts paid by specific customers of the telecommunications carriers.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be an increase in costs. The surcharge is assessed on all retail intrastate telecommunications services. An increase in the surcharge will result in an increase in the amount paid by all customers for retail intrastate telecommunications services. While the Commission has information concerning the periodic surcharge amounts collected by telecommunications carriers, it does not have the ability to disaggregate those amounts to determine the amounts paid by specific customers of the telecommunications carriers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Commission will make the rule effective at a future date which will allow telecommunications carriers collecting the surcharge adequate time to become aware of the increase and change their billing systems to accommodate the change. This date is anticipated to be 09/01/2011. Costs for telecommunications carriers to collect the increased surcharge are expected to remain the same as before the proposed amendment. However, there could be an increase in telecommunications costs. The surcharge is assessed on all retail intrastate telecommunications services. An increase in the surcharge will result in an increase in the amount paid by for retail intrastate telecommunications services purchased from telecommunications carriers which are not self-provided by a carrier. While the Commission has information concerning the periodic surcharge amounts collected by telecommunications carriers, it does not have the ability to disaggregate those amounts to determine the amounts paid by specific customers of the telecommunications carriers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Although there will be an increase in the amount of the surcharge, the exact impact upon businesses is difficult to project beyond the absolute percentage increase, from 0.25 to 1 percent. The dollar amount of the increase for any individual entity will depend upon the amount of retail intrastate telecommunications services used by the customer.

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

PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S

SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ David Clark by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at drexclark@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: David Clark, Legal Counsel

R746. Public Service Commission, Administration.

R746-360. Universal Public Telecommunications Service Support Fund.

R746-360-4. Application of Fund Surcharges to Customer Billings.

A. Commencement of Surcharge Assessments -- Commencing June 1, 1998, end-user surcharges shall be the source of revenues to support the fund. Surcharges will be applied to intrastate retail rates, and shall not apply to wholesale services.

B. Surcharge Based on a Uniform Percentage of Retail Rates -- The retail surcharge shall be a uniform percentage rate, determined and reviewed annually by the Commission and billed and collected by all retail providers.

C. Surcharge -- The surcharge to be assessed shall equal [0-25] percent of billed intrastate retail rates.

KEY: public utilities, telecommunications, universal service fund

Date of Enactment or Last Substantive Amendment: [January 19,] 2011

Notice of Continuation: November 25, 2008

Authorizing, and Implemented or Interpreted Law: 54-3-1; 54-4-1; 54-7-25; 54-7-26; 54-8b-12; 54-8b-15

Tax Commission, Auditing
R865-4D-19
Refund of Special Fuel Taxes Paid by
Government Entities Pursuant to Utah
Code Ann. Section 59-13-301

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34964

FILED: 06/23/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment updates filing requirements.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment updates the forms a government entity entitled to a refund for special fuel taxes paid must file with the commission, and makes technical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-13-301

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--The amendments update the rule to match current processes.
- ◆ LOCAL GOVERNMENTS: None--The amendments update the rule to match current processes.
- ◆ SMALL BUSINESSES: None--The amendments update the rule to match current processes.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--The amendments update the rule to match current processes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The amendments update the rule to match current processes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These updates should yield no fiscal impact on business.

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

TAX COMMISSION
 AUDITING
 210 N 1950 W
 SALT LAKE CITY, UT 84134
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R865. Tax Commission, Auditing.

R865-4D. Special Fuel Tax.

R865-4D-19. Refund of Special Fuel Taxes Paid by Government Entities Pursuant to Utah Code Ann. Section 59-13-301.

[A-](1) Governmental entities entitled to a refund for special fuel taxes paid shall submit a completed Utah Application

for [~~Government Motor Fuel and Special~~]Fuel Tax Refund, form TC-~~114~~116, to the commission.

[B-](2) A governmental entity shall retain the following records for each purchase of special fuel for which a refund of taxes paid is claimed:

[1-](a) name of the government entity making the purchase;

[2-](b) license plate number of the government vehicle for which the special fuel is purchased;

[3-](c) invoice date;

[4-](d) invoice number;

[5-](e) vendor;

[6-](f) vendor location;

[7-](g) product description;

[8-](h) number of gallons purchased; and

[9-](i) amount of state special fuel tax paid.

[C-](3) Original records supporting the refund claim must be maintained by the government entity for three years following the year of refund.

KEY: taxation, fuel, special fuel

Date of Enactment or Last Substantive Amendment: [~~September 21, 2009~~]**2011**

Notice of Continuation: February 26, 2007

Authorizing, Implemented, or Interpreted Law: 59-13-102; 59-13-301; 59-13-302; 59-13-303; 59-13-304; 59-13-305; 59-13-307; 59-13-312; 59-13-313; 59-13-501

Tax Commission, Auditing
R865-7H-1
Environmental Assurance Fee for
Retailers or Consumers Not
Participating in the Environmental
Assurance Program Pursuant to Utah
Code Ann. Section 19-6-410.5

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34967

FILED: 06/23/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment updates filing requirements.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment removes an incorrect form number and makes technical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-410.5

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** None--The proposed amendment removes an incorrect form number and makes technical changes.
- ◆ **LOCAL GOVERNMENTS:** None--The proposed amendment removes an incorrect form number and makes technical changes.
- ◆ **SMALL BUSINESSES:** None--The proposed amendment removes an incorrect form number and makes technical changes.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--The proposed amendment removes an incorrect form number and makes technical changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment removes an incorrect form number and makes technical changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The deleted form number and technical corrections should yield no fiscal impact on business.

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

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R865. Tax Commission, Auditing.

R865-7H. Environmental Assurance Fee.

R865-7H-1. Environmental Assurance Fee for Retailers or Consumers Not Participating in the Environmental Assurance Program Pursuant to Utah Code Ann. Section 19-6-410.5.

[A-](1) Retailers or consumers who are owners or operators of tanks, including owners or operators of above-ground storage tanks, who do not participate in the Environmental Assurance Program, may receive an exemption from the environmental assurance fee if:

[1-](a) none of the owner's or operator's tanks are covered under the Environmental Assurance Program; and

[2-](b) the owner or operator purchases the petroleum product for the tank directly from the refinery, or purchases a direct import of a petroleum product for which the environmental assurance fee has not previously been imposed.

[B-](2) Retailers or consumers who are owners or operators of tanks and who do not participate in the Environmental Assurance Program, but who fail to meet the conditions provided under this rule to purchase petroleum products exempt from the environmental assurance fee may apply to the [~~Tax Commission~~]commission for a refund of those fees paid, no more often than on a monthly basis[~~-on form TC-113ES~~].

[C-](3) For purposes of the exemption and refund provisions of this rule, owners or operators of above-ground storage tanks include owners of fuel stored in tanks owned by a third party where the owner of the fuel pays a fee for use of the tank.

[D-](4) On a monthly basis, the Department of Environmental Quality shall provide the [~~Tax Commission~~]commission with a list of current participants in the Environmental Assurance Program.

KEY: taxation, environment

Date of Enactment or Last Substantive Amendment: [~~March 16, 1999~~]2011

Notice of Continuation: February 19, 2009

Authorizing, and Implemented or Interpreted Law: 19-6-410.5

Tax Commission, Auditing
R865-7H-2
Environmental Assurance Fee on
Packaged Petroleum Products
Pursuant to Utah Code Ann. Section
19-6-410.5

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34968

FILED: 06/23/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment updates filing requirements.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment removes an incorrect form number and makes technical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-410.5

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--The proposed amendment removes an incorrect form number and makes technical changes.
- ◆ LOCAL GOVERNMENTS: None--The proposed amendment removes an incorrect form number and makes technical changes.
- ◆ SMALL BUSINESSES: None--The proposed amendment removes an incorrect form number and makes technical changes.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--The proposed amendment removes an incorrect form number and makes technical changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment removes an incorrect form number and makes technical changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The deleted form number and technical corrections should yield no fiscal impact on business.

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

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R865. Tax Commission, Auditing.

R865-7H. Environmental Assurance Fee.

R865-7H-2. Environmental Assurance Fee on Packaged Petroleum Products Pursuant to Utah Code Ann. Section 19-6-410.5.

[A-](1) Petroleum products that are brought into this state packaged in barrels, drums, and cans are exempt from the environmental assurance fee.

[B-](2) Individuals who purchase petroleum products in bulk quantities and subsequently repackage those petroleum

products in barrels, drums, or cans may receive a refund of environmental assurance fees paid on the repackaged petroleum products if, prior to the repackaging, the products were not stored in a tank covered by the Environmental Assurance Program.

[C-](3) Individuals who qualify for a refund of environmental assurance fees under [B-]Subsection (2) may apply to the [Tax Commission]commission for a refund of those fees paid, no more often than on a monthly basis[; on form TC-113ES].

KEY: taxation, environment

Date of Enactment or Last Substantive Amendment: [~~March 16, 1999~~]**2011**

Notice of Continuation: February 19, 2009

Authorizing, and Implemented or Interpreted Law: 19-6-410.5

Tax Commission, Auditing
R865-7H-3
Environmental Assurance Fee on
Exports of Petroleum Products
Pursuant to Utah Code Ann. Section
19-6-410.5

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34969

FILED: 06/23/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment updates filing requirements.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment removes an incorrect form number and makes technical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-410.5

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--The proposed amendment removes an incorrect form number and makes technical changes.
- ◆ LOCAL GOVERNMENTS: None--The proposed amendment removes an incorrect form number and makes technical changes.
- ◆ SMALL BUSINESSES: None--The proposed amendment removes an incorrect form number and makes technical changes.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--The proposed amendment removes an incorrect form number and makes technical changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment removes an incorrect form number and makes technical changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The deleted form number and technical corrections should yield no fiscal impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R865. Tax Commission, Auditing.

R865-7H. Environmental Assurance Fee.

R865-7H-3. Environmental Assurance Fee on Exports of Petroleum Products Pursuant to Utah Code Ann. Section 19-6-410.5.

[A-](1) Petroleum products exported from a refinery directly out of state by the refiner or the first purchaser are exempt from the environmental assurance fee.

[B-](2) Individuals who store petroleum products in the state and subsequently export those petroleum products from the state may receive a refund of environmental assurance fees paid on the exported petroleum products if, prior to the export of the petroleum products, the petroleum products were not stored in a tank covered by the Environmental Assurance Program.

[C-](3) Individuals who qualify for a refund of environmental assurance fees under [B-]Subsection (2) may apply to the [Tax Commission]commission for a refund of those fees paid, no more often than on a monthly basis[~~on form TC-113ES~~].

KEY: taxation, environment

Date of Enactment or Last Substantive Amendment: [March 16, 1999]2011

Notice of Continuation: February 19, 2009

Authorizing, and Implemented or Interpreted Law: 19-6-410.5

Tax Commission, Auditing
R865-13G-13
Refund of Motor Fuel Taxes Paid
Pursuant to Utah Code Ann. Section
59-13-201

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 34965
FILED: 06/23/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment updates filing requirements.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment updates the forms a government entity entitled to a refund for motor fuel taxes paid must file with the commission, and makes technical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-13-201

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--The amendments update the rule to match current processes.
- ◆ LOCAL GOVERNMENTS: None--The amendments update the rule to match current processes.
- ◆ SMALL BUSINESSES: None--The amendments update the rule to match current processes.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--The amendments update the rule to match current processes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The amendments update the rule to match current processes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These updates should yield no fiscal impact on businesses.

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

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R865. Tax Commission, Auditing.**R865-13G. Motor Fuel Tax.****R865-13G-13. Refund of Motor Fuel Taxes Paid Pursuant to Utah Code Ann. Section 59-13-201.**

[A.](1) Governmental entities entitled to a refund for motor fuel taxes paid shall submit a completed Utah Application for ~~[Government Motor Fuel and Special]~~Fuel Tax Refund, form TC-~~[44]~~116, to the commission.

[B.](2) A government entity shall retain the following records for each purchase of motor fuel for which a refund of taxes paid is claimed:

[1.](a) name of the government entity making the purchase;

[2.](b) license plate number of vehicle for which the motor fuel is purchased;

[3.](c) invoice date;

[4.](d) invoice number;

[5.](e) supplier;

[6.](f) ~~[Vendor]~~vendor location;

[7.](g) fuel type purchased;

[8.](h) number of gallons purchased; and

[9.](i) amount of state motor fuel tax paid.

[C.](3) Original records supporting the refund claim must be maintained by the governmental entity for three years following the year of refund.

KEY: taxation, motor fuel, gasoline, environment

Date of Enactment or Last Substantive Amendment: ~~[September 14, 2004]~~2011

Notice of Continuation: March 9, 2007

Authorizing, Implemented, or Interpreted Law: 59-13-201; 59-13-202; 59-13-203.1; 59-13-204; 59-13-208; 59-13-210; 59-13-404

Tax Commission, Auditing

R865-13G-15

Reduction in Motor Fuel Tax for
Distributors Subject to Navajo Nation
Fuel Tax Pursuant to Utah Code Ann.
Section 59-13-201

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34966

FILED: 06/23/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment updates filing requirements.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment updates the forms a distributor subject to the Navajo Nation fuel tax and seeking a refund of state motor fuel tax must file with the commission and must retain in the distributor's records, and makes technical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-13-201

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** None--The amendments update the rule to match current processes.

♦ **LOCAL GOVERNMENTS:** None--The amendments update the rule to match current processes.

♦ **SMALL BUSINESSES:** None--The amendments update the rule to match current processes.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--The amendments update the rule to match current processes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The amendments update the rule to match current processes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These updates should yield no fiscal impact on businesses.

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

TAX COMMISSION

AUDITING

210 N 1950 W

SALT LAKE CITY, UT 84134

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R865. Tax Commission, Auditing.**R865-13G. Motor Fuel Tax.****R865-13G-15. Reduction in Motor Fuel Tax for Distributors Subject to Navajo Nation Fuel Tax Pursuant to Utah Code Ann. Section 59-13-201.**

~~[A-](1)~~ The purpose of this rule is to provide procedures for administering the reduction of motor fuel tax authorized under Section 59-13-201.

~~[B-](2)~~ The reduction shall be in the form of a refund.

~~[C-](3)~~ The refund shall be available only for motor fuel:

~~[1-](a)~~ delivered to a retailer or consumer on the Utah portion of the Navajo Nation; and

~~[2-](b)~~ for which Utah motor fuel tax has been paid.

~~[D-](4)~~ The refund shall be available to a motor fuel distributor that is licensed as a distributor with the Office of the Navajo Tax Commission.

~~[E-](5)~~ The refund application may be filed on a monthly basis on the Utah Application for Fuel Tax Refund, form TC-116.

~~[F-]~~ A completed copy of the Navajo Tax Commission Monthly Fuel Distributor Tax Return, form 900, along with schedules and manifests, must be included with the Utah State Tax Commission Application for Navajo Nation Fuel Tax Refund, form TC-126.

~~[G-](6)~~ Original records supporting the refund claim must be maintained by the distributor for three years following the year of refund. These records include:

~~[1-](a)~~ proof of payment of Utah motor fuel tax;

~~[2-](b)~~ proof of payment of Navajo Nation fuel tax; ~~[and]~~

~~[3-](c)~~ documentation that the motor fuel was delivered to a retailer or consumer on the Utah portion of the Navajo Nation; and

(d) a completed copy of the Navajo Tax Commission Monthly Fuel Distributor Tax Return, form 900, along with the required schedules and manifests.

KEY: taxation, motor fuel, gasoline, environment

Date of Enactment or Last Substantive Amendment: ~~[September 14, 2004]~~ **2011**

Notice of Continuation: March 9, 2007

Authorizing, and Implemented or Interpreted Law: 59-13-201; 59-13-202; 59-13-203.1; 59-13-204; 59-13-208; 59-13-210; 59-13-404

Tax Commission, Auditing

R865-14W-1

Mineral Production Tax Withholding Pursuant to Utah Code Ann. Sections 59-6-101 through 59-6-104

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34970

FILED: 06/23/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment updates filing requirements.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment removes incorrect form numbers, removes requirements to attach forms to the Utah individual income tax return, and makes technical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-6-104

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** None--The amendments update the rule to match current processes.

◆ **LOCAL GOVERNMENTS:** None--The amendments update the rule to match current processes.

◆ **SMALL BUSINESSES:** None--The amendments update the rule to match current processes.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--The amendments update the rule to match current processes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The amendments update the rule to match current processes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The deleted form number and technical corrections should yield no fiscal impact on business.

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

TAX COMMISSION

AUDITING

210 N 1950 W

SALT LAKE CITY, UT 84134

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R865. Tax Commission, Auditing.**R865-14W. Mineral Producers' Withholding Tax.****R865-14W-1. Mineral Production Tax Withholding Pursuant to Utah Code Ann. Sections 59-6-101 through 59-6-104.**

(1) Definitions.

(a) "Working interest owner" means any person who is the owner of an interest in oil, gas, other hydrocarbon substances, or all other metalliferous and nonmetalliferous minerals who is burdened with a share of the expense of developing and operating the property.

(b) "First purchaser" means the first person to pay for production after it is extracted from deposits in this state.

(c) "Person" means any natural person, company, corporation, association, partnership, joint venture, cooperative, estate, trust, receiver, or any other party or entity that has a working interest, royalty interest, overriding royalty interest, production payment, production payment including in-kind exchanges, or any other ownership interest entitled to production proceeds from deposits in this state.

(d) "Producer" as defined in Section 59-6-101 includes any non-operating working interest owner that makes payments to persons having an interest in minerals produced or extracted from deposits in this state.

(2) Advance mineral production payments that relate to, refer to, or concern production are subject to the mineral production tax withholding requirements.

(3) Each producer who disburses funds that are owed to any person owning a working interest, a royalty interest, overriding royalty interest, production payment or any other interest in minerals produced in this state, is subject to the withholding requirement of Section 59-6-102.

(4) Withholding requirements on further distributions are as follows:

(a) Unless otherwise provided by statute, each producer who disburses funds to any producer, working interest owner or any other interest owner must withhold five percent of the gross payment due if that producer or any other interest owner does not make further distributions. For producers or any other interest owners making further distributions, the procedures outlined in Subsection (4)(b) must be followed.

(b) The working interest owner or producer who makes further distributions must be licensed to withhold on the disbursements and is responsible for remitting the tax withheld each quarter. Upon approval by the Auditing Division of the Tax Commission, a working interest owner or producer who makes further distributions of the mineral production proceeds may furnish an exemption certificate approved by the Tax Commission to the producer or first purchaser.

(c) If an exemption certificate approved by the Auditing Division of the Tax Commission is not received, withholding is required.

(5) If a mineral is taken in kind by an interest owner of a mineral production property, the initial withholding responsibility rests with the first purchaser who receives the mineral. A person taking a mineral under an exchange agreement with the interest owner is considered to be the first purchaser and is subject to the requirement of withholding and remitting the tax on any payments made to the interest owner.

(6) Claiming credit for the tax withheld shall be accomplished as follows:

(a) Credit must be claimed for the tax withheld on a Utah individual income tax return or a Utah corporation franchise tax return ~~with a copy of Form TC-675R attached to substantiate the amount claimed~~.

(b) Taxpayers who are shareholders in a corporation taxed under Subchapter S of the Internal Revenue Code and are Utah residents, members of a Utah limited liability company, or members of a partnership doing business in this state ~~must attach a copy of federal form K-1 to their Utah individual income tax return. They~~ may claim credit for the amount shown on the federal schedule K-1 or the Utah schedule K-1 as their percentage share of the tax withheld from Utah mineral production payments by the corporation, limited liability company, or partnership.

(c) An estate or trust is entitled to credit for the tax withheld in proportion to its share of federal distributable net income. The remaining credit must be passed through to the beneficiaries in proportion to their respective shares of federal distributable net income of the estate or trust. ~~To claim the credit, the~~ beneficiaries ~~must attach a copy of federal form K-1 to their Utah individual income tax return and~~ may claim credit for the amount shown by the fiduciary on the federal schedule K-1 or the Utah schedule K-1 as their percentage share of the tax withheld from Utah mineral production payments.

(d) A corporation or individual taxpayer filing on a fiscal year ending other than December 31, must claim a credit for the withholding tax shown on Form TC-675R on the corporation franchise or individual income tax return required to be filed during the year following the December closing period of the Form TC-675R.

(7) The return prescribed by the Tax Commission for reporting the information specified in Section 59-6-103 may be obtained from the Tax Commission. ~~These forms are to be completed and filed in accordance with instructions provided by the Tax Commission. They are as follows:~~

~~(a) Form TC-96Q, Utah Employer's Quarterly Income Withholding Return, must be filed quarterly. Negative payments may not be reported on Form TC-96Q. Utah Employer's Amended Income Withholding Return, TC-96A, must be filed in cases where tax was withheld in error and adjustments to the current period create negative amounts. Adjustments are not allowed between calendar years. All adjustments on quarterly returns must be for the current calendar year. Amended returns must be filed for prior years adjustments.~~

~~(b) Form TC-96R, Utah Employer's Mineral Production Withholding Reconciliation Return must be filed annually with a copy of each Form TC-675R attached.~~

~~(c) Form TC-96A, Utah Amended Mineral Production Withholding Return, must be filed when adjustments are not for the current calendar year or when adjustments in the current calendar year would create negative amounts.~~

~~(d) Form TC-675R, Statement of Utah Tax Withheld on Mineral Production shall be furnished to each person who is entitled to credit for taxes withheld each calendar year. If a working interest owner or royalty owner receives payments on more than one well or property from the same producer, the production payment amount and mineral production withholding tax amount may be grouped on~~

~~Form TC-675R. Negative payments will not be accepted on Form TC-675R.]~~

(8) If the producer, operator, or first purchaser fails to withhold the tax required under Section 59-6-102, and thereafter, the income subject to withholding is reported, and the resulting tax is paid by the recipient, any tax required to be withheld shall not be collected from the producer, operator, or first purchaser. However, the producer, operator, or first purchaser shall remain subject to penalties and interest on the total amount of taxes that should have been withheld.

KEY: taxation, mineral resources, withholding tax
Date of Enactment or Last Substantive Amendment:
[December 4, 2008]2011
Notice of Continuation: March 19, 2007
Authorizing, and Implemented or Interpreted Law: 59-6-101 through 59-6-104

Tax Commission, Property Tax
R884-24P-17
Reappraisal of Real Property by
County Assessors Pursuant to Utah
Constitution, Article XIII, Subsection 11,
and Utah Code Ann. Sections 59-2-
303, 59-2-302, and 59-2-704

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 34971
 FILED: 06/23/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The section is obsolete.

SUMMARY OF THE RULE OR CHANGE: The section is removed since it is obsolete. The section is obsolete due to new systems and processes in place in the counties. Reappraisals are currently adequately covered in statute.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article XIII, Subsection 11 and Section 59-2-302 and Section 59-2-303 and Section 59-2-704

ANTICIPATED COST OR SAVINGS TO:

- ♦ **THE STATE BUDGET:** None--Property tax revenues are local revenues.
- ♦ **LOCAL GOVERNMENTS:** None--The provisions of this section are obsolete.
- ♦ **SMALL BUSINESSES:** None--The provisions of this section are obsolete.

- ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--The provisions of this section are obsolete.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The provisions of this section are obsolete.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These updates should yield no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 TAX COMMISSION
 PROPERTY TAX
 210 N 1950 W
 SALT LAKE CITY, UT 84134
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
~~[R884-24P-17. Reappraisal of Real Property by County Assessors Pursuant to Utah Constitution, Article XIII, Subsection 11, and Utah Code Ann. Sections 59-2-303, 59-2-302, and 59-2-704.~~
~~_____A. The following standards shall be followed in sequence when performing a reappraisal of all classes of locally-assessed real property within a county:~~
~~_____1. Conduct a preliminary survey and plan.~~
~~_____a) Compile a list of properties to be appraised by property class.~~
~~_____b) Assemble a complete current set of ownership plats.~~
~~_____c) Estimate personnel and resource requirements.~~
~~_____d) Construct a control chart to outline the process.~~
~~_____2. Select a computer-assisted appraisal system and have the system approved by the Property Tax Division.~~
~~_____3. Obtain a copy of all probable transactions from the recorder's office for the three-year period ending on the effective date of reappraisal.~~
~~_____4. Perform a use valuation on agricultural parcels using the most recent set of aerial photographs covering the jurisdiction.~~
~~_____a) Perform a field review of all agricultural land, dividing up the land by agricultural land class.~~
~~_____b) Transfer data from the aerial photographs to the current ownership plats, and compute acreage by class on a per-parcel basis.~~

- ~~e) Enter land class information and the calculated agricultural land use value on the appraisal form.~~
- ~~5. Develop a land valuation guideline.~~
- ~~6. Perform an appraisal on improved sold properties considering the three approaches to value.~~
- ~~7. Develop depreciation schedules and time-location modifiers by comparing the appraised value with the sale price of sold properties.~~
- ~~8. Organize appraisal forms by proximity to each other and by geographical area. Insert sold property information into the appropriate batches.~~
- ~~9. Collect data on all nonsold properties.~~
- ~~10. Develop capitalization rates and gross rent multipliers.~~
- ~~11. Estimate the value of income producing properties using the appropriate capitalization method.~~
- ~~12. Input the data into the automated system and generate preliminary values.~~
- ~~13. Review the preliminary figures and refine the estimate based on the applicable approaches to value.~~
- ~~14. Develop an outlier analysis program to identify and correct clerical or judgment errors.~~
- ~~15. Perform an assessment/sales ratio study. Include any new sale information.~~
- ~~16. Make a final review based on the ratio study including an analysis of variations in ratios. Make appropriate adjustments.~~
- ~~17. Calculate the final values and place them on the assessment role.~~
- ~~18. Develop and publish a sold properties catalog.~~
- ~~19. Establish the local Board of Equalization procedure.~~
- ~~20. Prepare and file documentation of the reappraisal program with the local Board of Equalization and Property Tax Division.~~
- ~~B. The Tax Commission shall provide procedural guidelines for implementing the above requirements.~~

]KEY: taxation, personal property, property tax, appraisals
Date of Enactment or Last Substantive Amendment:
~~[December 15, 2010]2011~~
Notice of Continuation: March 12, 2007
Authorizing, and Implemented or Interpreted Law: Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365

Tax Commission, Property Tax
R884-24P-34
Use of Sales or Appraisal Information
Gathered in Conjunction With
Assessment/Sales Ratio Studies
Pursuant to Utah Code Ann. Section
59-2-704

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 34972
 FILED: 06/23/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The section is obsolete.

SUMMARY OF THE RULE OR CHANGE: The section is removed since it is obsolete. Use of sales or appraisal information gathered in conjunction with assessment and sales ratio studies is now adequately covered in statute.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-2-704

ANTICIPATED COST OR SAVINGS TO:

- ♦ **THE STATE BUDGET:** None--Property tax revenues are local revenues.
- ♦ **LOCAL GOVERNMENTS:** None--The provisions of this section are obsolete.
- ♦ **SMALL BUSINESSES:** None--The provisions of this section are obsolete.
- ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--The provisions of this section are obsolete.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The provisions of this section are obsolete.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
 This repeal should yield no fiscal impact on businesses.

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

TAX COMMISSION
 PROPERTY TAX
 210 N 1950 W
 SALT LAKE CITY, UT 84134
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R884. Tax Commission, Property Tax.**R884-24P. Property Tax.****~~[R884-24P-34. Use of Sales or Appraisal Information Gathered in Conjunction With Assessment/Sales Ratio Studies Pursuant to Utah Code Ann. Section 59-2-704.~~**

~~A. Market data gathered for purposes of an assessment/sales ratio study may be used for valuation purposes only as part of a systematic reappraisal program whereby all similar properties are given equitable and uniform treatment.~~

~~B. Sales or appraisal data gathered in conjunction with a ratio study shall not be used for an isolated reappraisal of the sold or appraised properties.~~

~~C. Information derived from ratio studies regarding the values assigned to real property and personal property shall not be used to establish the apportionment between real and personal property in future assessments.~~

]KEY: taxation, personal property, property tax, appraisals

Date of Enactment or Last Substantive Amendment:

~~[December 15, 2010]~~2011

Notice of Continuation: March 12, 2007

Authorizing, and Implemented or Interpreted Law: Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365

Tax Commission, Property Tax**R884-24P-72**

**State Farmland Evaluation Advisory
Committee Procedures Pursuant to
Utah Code Ann. Section 59-2-514**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34973

FILED: 06/23/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment provides procedures for the State Farmland Evaluation Advisory Committee ("Committee").

SUMMARY OF THE RULE OR CHANGE: The proposed amendment indicates that the Committee is subject to the Open and Public Meetings Act, and indicates the conditions necessary for that committee to convene and conduct an electronic meeting.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-2-514

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: None--Property tax revenues are local revenues.

♦ LOCAL GOVERNMENTS: None--The proposed amendment provides procedures for Committee meetings.

♦ SMALL BUSINESSES: None--The proposed amendment provides procedures for Committee meetings.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--The proposed amendment provides procedures for Committee meetings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment provides procedures for Committee meetings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These Committee Meeting procedures should have no fiscal impact on business.

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

TAX COMMISSION

PROPERTY TAX

210 N 1950 W

SALT LAKE CITY, UT 84134

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

**R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-72. State Farmland Evaluation Advisory Committee
Procedures Pursuant to Utah Code Ann. Section 59-2-514.**

(1) "Committee" means the State Farmland Evaluation Advisory Committee established in Section 59-2-514.

(2) The committee is subject to Title 52, Chapter 4, Open and Public Meetings Act.

(3) A committee member may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) the agenda posted for the meeting establishes one or more anchor locations for the meeting where the public may attend;

(b) at least one committee member is at an anchor location; and

(c) all of the committee members may be heard by any person attending an anchor location.

**KEY: taxation, personal property, property tax, appraisals
Date of Enactment or Last Substantive Amendment:
[December 15, 2010]2011**

Notice of Continuation: March 12, 2007

Authorizing, and Implemented or Interpreted Law: Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365

**Transportation, Motor Carrier
R909-3
Standards for Utah School Buses**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
DAR FILE NO.: 34956
FILED: 06/20/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to update existing rule language governing the design and operation of school buses and eliminate duplicative regulations by incorporating the 2010 Standards for Utah School Buses and Operations with the 2010 Standards Appendix, and to enact

regulations governing the placement of advertisements on school buses.

SUMMARY OF THE RULE OR CHANGE: This change incorporates portions of the 2010 edition of the Standards for Utah School Buses and Operations and Appendix, repeals duplicative regulations, and adds provisions required by Section 41-6a-1309 regulating the placement and size of advertisements on school buses. There are no substantive differences between the repealed rule and the incorporated portion of the Standards for Utah School Buses and Operations and Appendix which are incorporated into the reenacted rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-6a-1304 and Section 41-6a-1309

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Standards for Utah School Buses and Operations and Appendix, published by Utah State Office of Education, 11/15/2010
- ◆ Adds Standards for Utah School Buses and Operations, 2010 Edition, Appendix, Utah Specific - Glossary, published by Utah State Office of Education, 11/15/2010

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget because the rule incorporates existing standards, eliminates duplicative regulations, and adds regulations for advertising on school buses.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government because the rule incorporates existing standards, eliminates duplicative regulations, and adds regulations for advertising on school buses.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small business because the rule incorporates existing standards, eliminates duplicative regulations, and adds regulations for advertising on school buses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government because the rule incorporates existing standards, eliminates duplicative regulations, and adds regulations for advertising on school buses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons because the rule incorporates existing standards, eliminates duplicative regulations, and adds regulations for advertising on school buses.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts to businesses because the rule incorporates existing standards, eliminates duplicative regulations, and adds regulations for advertising on school buses.

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:

♦ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO
LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: John Njord, Executive Director

R909. Transportation, Motor Carrier.

R909-3. Standards for Utah School Buses.

[R909-3-1. Scope and Objectives.

(1) This document sets forth requirements for the design, construction, and operation of all school buses utilized, whether owned or leased by any school district, or privately owned and operated under contract with any school district. Local school districts and private schools have the responsibility for developing the specifications for and the procurement of school buses used in their pupil transportation programs and shall insure that their vehicles meet or exceed the standards contained herein. School districts are encouraged to specify requirements in excess of the standards whenever such action will enhance their transportation programs. Any additions of school bus equipment or alterations in the bus construction and operations not provided for in the Standards for Utah School Buses and Operations, 1994 Edition are prohibited without prior approval as outlined in Part II entitled "Exemption from or Modification of Requirements".

(2) Standards for Utah School Buses and Operations, 1994 Edition replaces the 1987 Standards for Utah School Buses and Operations. These standards will be effective August 31, 1994. All school buses ordered after the effective date and all school bus operators shall meet these standards. This document is intended to provide standards that meet or exceed Federal Motor Vehicle Safety Standards now in effect. Federal standards and Utah Motor Vehicle laws shall govern instances not specifically covered in these standards.

(3) Pupil transportation vehicles ordered before January 1, 1994 shall meet or exceed the Standards for Utah School Buses and Operations applicable at the time of order placement.

R909-3-2. Authority.

(1) These standards are issued under authority of Title 41 of the Utah Code Annotated which deals with the Utah State Department of Transportation. This statute, at 41-6a-1304, states "...The Department of Transportation by and with the advice of the

State Board of Education and the Department of Public Safety shall adopt and enforce regulations not inconsistent with this chapter to govern the design and operation of all school buses when owned and operated by any school district or privately owned and operated under contract with any school district in this state, and such regulations shall by reference be made a part of any such contract with a school district. Every school district, its officers and employees, and every person employed under contract by a school district shall be subject to said regulations."

(2) Regulations contained herein are applicable to public schools and all operations under the jurisdiction of the State Board of Education. For standards or regulations applicable to private schools, refer to the Utah Code or regulations adopted by the Department of Transportation through Utah's Rule Making Act and published as a separate document.

R909-3-3. Responsibilities of Suppliers.

(1) School bus chassis and/or body dealers, distributors, and manufacturers must comply with the Standards for Utah School Buses and Operations, 1994 Edition. The bidder agrees to certify that the vehicle meets or exceeds all federal and state standards upon delivery of the vehicle.

(2) Certification: All manufacturers of school bus chassis, bodies, or complete buses desiring to supply such equipment for use in the State of Utah, shall provide the Pupil Transportation Specialist, Utah State Office of Education, and the Division of Safety, Utah Department of Transportation, with a certification that their products, identified by specific model numbers, meet or exceed all requirements of the Federal Motor Vehicle Safety Standards and the Standards for Utah School Buses and Operations, 1994 Edition. This certification must be accomplished before any equipment is supplied in the state and not later than February 1 of each succeeding calendar year. Manufacturers shall also provide such test data or other information necessary to substantiate their claim of compliance. Required supporting data are listed below:

(a) Supporting data for certification of school bus chassis shall include at least the following information, but may be supplemented with additional information if offered by the supplier or if requested by the purchaser:

(i) Manufacturer's gross vehicle weight rating.

(ii) Chassis weight, overall dimensions, and location of the center of gravity.

(iii) Engine performance curves (horse power torque vs. speed in revolutions per minute).

(iv) Power and gradient curves (with representative bus bodies).

(v) Exhaust system noise level.

(vi) Engine emission levels.

(vii) Axle capacities.

(viii) Spring capacities.

(ix) Brake system parameters or stopping distance vs. speed (with representative bus bodies).

(x) Horn noise level.

(xi) Temperature and quantity of hot water available for use in heating system.

(xii) Alternator output at the normal operating speed of the engine and at the engine manufacturer's recommended idle speed.

~~(xiii) Supporting data for certification of school bus bodies shall include, but not be limited to:~~

~~(A) Body dimensions, weights, and location of the center of gravity.~~

~~(B) Data from crash-worthiness tests conducted in accordance with Appendix 1. (Manufacturers will attach certification plate signifying vehicle compliance with Colorado Raek Test.)~~

~~(C) Data to verify compliance with the passenger seat cushion retention requirements as contained in FMVSS.~~

~~(D) Data to verify compliance with the passenger seat attachment strength requirements as contained in FMVSS.~~

~~(b) All certifications and supporting data shall be sent to the Pupil Transportation Specialist, Utah State Office of Education, 250 East 500 South, Salt Lake City, Utah 84111, and Safety Regulations Administrator, U.D.O.T., Office of Motor Carriers, 4501 South 2700 West, Salt Lake City, Utah 84119.~~

~~(c) A list of the certified bus manufacturers will be provided to the districts by March 1st each year.~~

~~(3) Delivery Requirements: The school bus manufacturer shall provide the following materials for the purchaser of a new school bus at the time the purchaser takes possession of the bus:~~

~~(a) Line set tickets for each individual unit of the bus, and a separate set of tickets for buses manufactured in two parts.~~

~~(b) A copy of the pre-delivery service performed and verified by a checkout form for each individual unit.~~

~~(c) Warranty book and statement of warranty for each individual unit. All warranties shall commence on the day that the purchaser takes possession of the completed bus.~~

~~(d) Service manual for each individual unit or group of identical units.~~

~~(e) Parts manual for each individual unit or group of identical units.~~

~~(4) Inspection and acceptance testing of new school buses: Not more than 30 days following delivery of any new school bus to a Utah school district, it shall be inspected by the Safety Inspection Office of the Utah Highway Patrol. Prior to any new school bus being placed into service, it shall be inspected and tested by a certified mechanic to verify conformance with these standards.~~

~~(a) Tests that will be conducted during the acceptance inspection of a school bus shall include, at a minimum:~~

~~(i) Inventory of required safety features including district specifications.~~

~~(ii) Functions tests of all lamps and signals, emergency braking system, horn, and other operating systems.~~

~~(b) Failure to satisfy all requirements of the standards shall result in either the bus being given a provisional approval until the manufacturer brings the vehicle up to standards, an exemption from the subject requirement requested (See Part H), or the vehicle will be deadlined pending compliance. A provisional approval shall not be for more than 90 consecutive days. Failure to bring the bus up to standards or apply for an exemption during the provisional period shall result in the bus being deadlined.~~

~~(5) Body-On-Chassis Type School Bus: In case a school district elects to contract with one of two or more manufacturers who then subcontracts with the other manufacturers, it shall be the responsibility of the end supplier, as prime contractor, to assure that the completed bus satisfies both the chassis and body requirements.~~

~~(6) Notice of Noncompliance: Dealers, distributors, or manufacturers who supply school transportation vehicles in the State of Utah that do not comply with the Standards for Utah School Buses and Operations, 1994 Edition shall be notified of noncompliance and a general notice will be sent to all school districts and school transportation supervisors within the state advising that equipment supplied by the specified dealer, distributor, or manufacturer is not in compliance with Utah standards.~~

~~(7) If a dealer, distributor, or manufacturer has been notified of noncompliance in accordance with paragraph 3.06 and replaces or modifies the equipment to make it comply with the Utah Standards, a notice of compliance will be issued within 30 days after proof of compliance.~~

~~(8) School bus manufacturers shall be given at least 90 days notification of any changes in the Standards for Utah School Buses and Operations, 1994 Edition.~~

R909-3-4. Definitions.

~~(1) School bus designations used in this document are taken from the Ninth National Minimum Standards Conference on School Transportation (1980). It should be noted vehicles with a capacity for less than ten passengers cannot be certified as school buses under federal regulations.~~

~~(2) School Bus means every motor vehicle designed to carry more than ten persons and is used to transport school children to or from school or in connection with related activities. This definition does not include vehicles that only carry school children along with other passengers as part of the operation of a common carrier under the jurisdiction of the Utah Department of Transportation or Public Service Commission or those vehicles in informal or intermittent arrangements such as sharing of actual gasoline expense or participation in a car pool for the transportation of children to or from school or other school activity. Nor does this definition include "tour" type buses, whether owned, leased, or chartered by a school district solely for the purpose of transporting school children to and from non-academic events.~~

~~(3) TYPE A - A Type "A" school bus is a conversion or body constructed upon a van-type compact truck or a front-section vehicle, with a gross weight rating of 10,000 pounds or less, designed for carrying more than ten persons.~~

~~(4) TYPE B - A Type "B" school bus is a conversion or body constructed and installed upon a van or front-section vehicle chassis, or stripped chassis, with a vehicle weight rating of more than 10,000 pounds, designed for carrying more than ten persons. Part of the engine is beneath and/or behind the windshield and beside the driver's seat. The entrance door is behind the front wheels.~~

~~(5) TYPE C - A Type "C" school bus is a body installed upon a flat back cowl chassis with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying more than ten persons. All of the engine is in front of the windshield and the entrance door is behind the front wheels.~~

~~(6) TYPE D - A Type "D" school bus is a body installed upon a chassis, with the engine mounted in the front, midships, or rear, with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying more than ten persons. The engine may be behind the windshield and beside the driver's seat; it may be at the rear of the bus, behind the rear wheels, or midships between the front and rear axles. The entrance door is ahead of the front wheels.~~

~~_____ (7) Multipurpose Passenger Vehicle (MP) means every motor vehicle with ten or less passenger positions (including the driver) and cannot be certified as a bus. (In determining passenger capacity, wheelchair positions are counted as passenger positions.) Although a school entity may use such a vehicle as station wagon, full-sized sedan, small van of non-school bus capacity, etc., to transport pupils to and from school or related events, the vehicle shall not be identified as a school bus (including color) and shall not stop or control traffic on the traveled portion of the roadway to load or unload passengers.~~

R909-3-5. Chassis Requirements.

~~_____ (1) Air Cleaner~~

~~_____ (a) The engine intake air system shall be furnished and properly installed by the chassis manufacturer to meet engine manufacturers' specifications.~~

~~_____ (b) The intake air system for diesel engines may have an air cleaner restriction indicator properly installed by the chassis manufacturer to meet engine specifications.~~

~~_____ (2) Axles~~

~~_____ (a) Weight distribution of fully loaded bus on level surface shall not exceed the manufacturer's front gross axle weight rating and rear gross axle weight rating.~~

~~_____ (b) The front and rear ends, including suspension assemblies, shall have a gross axle weight rating at ground, at least equal to that portion of the load as would be imposed by the chassis manufacturer's maximum gross vehicle weight rating.~~

~~_____ (c) Two-speed rear axles are permissible, but if used, provisions shall be made to assure that the parking and emergency brake systems operate directly upon the rear axles or wheels and not upon the driveshaft.~~

~~_____ (3) Block Heater~~

~~_____ (a) Buses furnished with diesel engines must have an engine block heater, 110 volt minimum 700 watt with 400 CID or less engine and minimum 1000 watt for engines over 400 CID. They shall also be furnished with an ether/propane quick starting aid that is thermostatically controlled and pre-shot measurement type. (Exception: Diesel engines that are equipped with glow plug or air intake starting systems.)~~

~~_____ (4) Brake Systems~~

~~_____ (a) All buses larger than 49 passenger capacity (including driver) or furnished with a two-speed axle must be equipped with air brakes. Automatic slack adjusters shall be required on all air-brake equipped buses following adoption of this edition of the Standards.~~

~~_____ (b) If the bus is equipped with a two-speed rear axle, the parking brake system shall operate directly upon the rear axle or wheels such that the parking brake system will not be disconnected from the wheels when the rear axle is in the neutral position. (Drive shaft brakes do not meet this requirement.)~~

~~_____ (c) Vacuum Assist Systems:~~

~~_____ (i) A gauge giving the value of the vacuum in the reservoir, in inches of mercury, shall be located in clear view of the driver.~~

~~_____ (ii) An audible and visual signal shall be provided to warn the driver in case the vacuum in the reservoir is eight inches of mercury or less.~~

~~_____ (d) Air Brake Systems:~~

~~_____ (i) The compressor used in an air brake system shall be a minimum of 12 cubic feet and be driven by the engine.~~

~~_____ (ii) Reservoir(s) shall be a minimum combined capacity of 3,750 cubic inches, except Type D buses for which the capacity shall be 4,500 cubic inches.~~

~~_____ (A) There shall be a manually operated or an automatic condensation drain valve in each reservoir. If an automatic valve(s) is used it must be heated to prevent freezing.~~

~~_____ (B) There shall be a safety valve installed in the first reservoir, which shall be set to release pressure should the reservoir pressure exceed 150 psi.~~

~~_____ (iii) All tubing and hoses used in the air brake systems shall conform to applicable SAE standards and shall be installed so as to be protected against excessive heat and to accommodate the normal vibrations and motions of the vehicle without damage.~~

~~_____ (iv) The low pressure warning signal shall be both audible and visual.~~

~~_____ (v) Buses using air or vacuum in the operation of the brake system shall be equipped with warning signals, readily audible and visible to the driver, that will give a continuous warning when the air pressure available in the system for braking is 60 pounds per square inch (psi) or less or the vacuum in the system available for braking is eight (8) inches of mercury or less. An illuminated gauge shall be provided that will indicate to the driver the air pressure in pounds per square inch or the vacuum available for the operation of the brakes as shown in inches of mercury. Type A buses: Manufacturers' standards.~~

~~_____ (A) Vacuum-assist brake systems shall have a reservoir used exclusively for brakes that shall be adequate to ensure against loss in vacuum at full stroke application if not more than 30 percent with the engine not running. Brake system on gas-powered buses shall include suitable and convenient connections for the installation of a separate vacuum reservoir.~~

~~_____ (B) Any brake system dry reservoir shall be so safeguarded by a check valve or equivalent device, that in the event of failure or leakage in its connection to the source of compressed air or vacuum, the stored dry air or vacuum shall not be depleted by the leakage or failure.~~

~~_____ (vi) Buses using a hydraulic-assist brake system shall be equipped with warning signals, readily audible and visible to the driver, that will provide continuous warning in the event of a loss of fluid flow from primary source or loss of electric source powering the back-up system. Type A buses: Manufacturers' standards.~~

~~_____ (vii) The brake lines and booster-assist lines shall be protected from excessive heat and vibration and shall be installed in a manner that prevents chafing.~~

~~_____ (viii) Air Dryer (optional): If required, shall be compatible with the air compressor. The expello valve of the air dryer shall be heated to prevent freezing.~~

~~_____ (iv) Anti-lock braking systems, meeting manufacturers' standards, are approved optional equipment.~~

~~_____ (c) Parking Brake System: The school bus shall at all times be equipped with a parking brake system adequate to hold the vehicle or combination on any grade on which it is operated under any condition of loading on a surface free from ice and snow.~~

~~_____ (f) All brake systems should be designed to permit visual inspection of brake lining wear without removal of any chassis components.~~

~~(5) Cooling System~~

~~(a) The engine cooling system radiator shall be of sufficient capacity to cool the engine at all speeds in all gears. It shall be of heavy duty type with increased capacity for high altitude operation. A coolant recovery or surge tank system is required on all type A, B, C, and D buses.~~

~~(b) The cooling system fan shall be of heavy duty design and shall include a fan clutch.~~

~~(c) The cooling system shall be equipped with a heavy-duty truck type water pump.~~

~~(d) Permanent ethylene glycol base antifreeze shall be provided by the chassis manufacturer to protect the cooling system to at least 40 degrees below zero Fahrenheit.~~

~~(e) When a chassis is equipped with an automatic transmission, a heavy duty cooling system with increased capacity in the radiator, fan, transmission cooler, and other necessary components to provide for the additional cooling required by the automatic transmission shall be furnished.~~

~~(f) Shutters (optional): Radiator shutters, when required, shall be air, hydraulic, or vacuum operated and shall be of the shutter-stat temperature control type. A petcock shall be furnished at the air or vacuum supply to shut off supply from air or vacuum source.~~

~~(6) Bumper, Front~~

~~(a) Energy-absorbing bumpers are not permitted.~~

~~(b) Front bumper shall be furnished by chassis manufacturer as part of the chassis on type A, B, and C buses. When type D chassis are supplied to a body company by a chassis manufacturer, the body company shall supply the front bumper as part of the body installation.~~

~~(c) The front bumper shall be heavy-duty channel steel of one-piece construction at least 3/16-inch thick and not less than an 8-inch face after forming. (Exception: Type A vehicle at least 1/8-inch thick.)~~

~~(d) The front bumper shall be of wrap-around design extended to offer maximum protection of fender lines without permitting snagging or hooking.~~

~~(e) The front bumper shall be attached to the frame and extend forward of grille, head lamps, fender, or hood.~~

~~(f) The front bumper shall permit the bus to be lifted by a vertical force applied to the bottom of the bumper without damaging either the bumper or its mountings.~~

~~(7) Clutch~~

~~(a) School bus chassis using manual transmission shall be equipped with a heavy-duty single-disc truck clutch with a diameter not less than the minimum dimensions given below, or a dual-disc unit of similar capacity:~~

TABLE

10 to 30 passenger bus	11-inch diameter
31 to 42 passenger bus	12-inch diameter
43 passenger or larger bus	13-inch diameter

~~(b) Clutch torque capacity shall be equal to or greater than the engine torque output.~~

~~(8) Color~~

~~(a) Chassis and front bumper shall be black. Hood, cowl, and fenders shall be in National School Bus Yellow. Wheels shall be the color used by manufacturers.~~

~~(9) Drive Shaft~~

~~(a) Drive shaft shall be protected by a metal guard or guards around circumference of the drive shaft to reduce the possibility of it whipping through the floor or dropping to the ground if broken.~~

~~(10) Electrical System~~

~~(a) All buses shall be equipped with at least a 12-volt electrical system.~~

~~(b) Battery: A storage battery shall be provided which is of sufficient capacity to take care of starting the engine, lighting, signal devices, heating, and other electrical equipment and shall be compatible with the size alternator supplied with the chassis. Minimum capacities are specified below:~~

TABLE I

Bus Type	Cold Cranking Amperes at 0 degrees F.
Types A and B - gas	515 Amperes.
Types C and D - gas	800 Amperes.
Types A, B, C, D - diesel	1,000 Amperes.

~~(c) Storage battery shall have minimum cold cranking capacity rating equal to the cranking current required for 30 seconds at 0 degrees Fahrenheit (-17.8c) and a minimum reserve capacity rating of 120 minutes at 25 amps. Higher capacities may be required depending upon optional equipment and local environmental conditions.~~

~~(d) Since all batteries in Type B, C, and D buses are to be located in a sliding tray, the battery shall be temporarily mounted on the chassis frame by the chassis manufacturer.~~

~~(e) Generator or Alternator~~

~~(i) Generating Unit: All school buses shall be equipped with an engine driven alternator with rectifier capable of producing the minimum current specified, and capable of producing 30 percent of its maximum rated output at the normal engine idle speed.~~

~~(ii) The generating or alternating unit shall be driven by a dual or serpentine belt system directly from the crankshaft or a positive-driven accessory shaft of the engine. (Exception: Type A and B buses rated 14,500 lb. GVW or less.)~~

~~(iii) Type A bus shall have a minimum 65 ampere-hour alternator; type B bus rated over 15,000 lb. GVW shall be equipped with a heavy-duty truck or bus type alternator meeting SAE J 180; having minimum output rating of 100 amperes; type B buses rated at 14,500 GVW or less shall have an alternator rated at 80 amperes; type C bus alternators shall have a rating of 120 amperes; type D bus alternators shall have a rating of 160 amperes.~~

~~(iv) Type B, C, and D buses rated at 15,000 lb GVW or more, shall have a generator or alternator with a minimum charging rate of 30 amperes at manufacturer's recommended engine idle speed (12 volt system), and shall be ventilated and voltage controlled and, if necessary, current controlled.~~

~~(v) Type A, B, C, and D buses equipped with an electrical power lift shall have a minimum 100 ampere-hour alternator.~~

~~(vi) A direct-drive generator or alternator is permissible in lieu of belt drive. Belt drive shall be capable of handling the rated capacity of the generator or alternator with no detrimental effect on other driven components.~~

~~(f) Regulator. The regulator(s) shall be of a fully solid-state design.~~

~~(g) Wiring:~~

~~(i) The engine and frame shall be electrically interconnected by a bonding strap of adequate size to assure proper functioning of the electrical system.~~

~~(ii) All wiring shall conform to current applicable recommended practices of the Society of Automotive Engineers.~~

~~(iii) All wiring shall use a standard color and number coding. Each chassis shall be delivered with a wiring diagram that coincides with the wiring of the chassis.~~

~~(iv) Chassis manufacturer shall install a readily accessible terminal strip or plug on the body side of the cowl, or at an accessible location in the engine compartment of vehicles designed without a cowl, that shall contain the following terminals for the body connections:~~

~~(A) Main 100 amp body circuit.~~

~~(B) Tail lamps.~~

~~(C) Right turn signal.~~

~~(D) Left turn signal.~~

~~(E) Stop lamps.~~

~~(F) Back up lamps.~~

~~(G) Instrument panel lights (rheostat controlled by headlamp switch).~~

~~(v) Circuits:~~

~~(A) An appropriate identifying diagram (color and number coded) for electrical circuits shall be provided to the body manufacturer for distribution to the end user.~~

~~(vi) Engine Fire Extinguishers:~~

~~(A) Manufacturer may provide an automatic fire extinguisher system in the engine compartment on gasoline-powered lift buses.~~

~~(11) Exhaust System~~

~~(a) Exhaust pipe, muffler, and tailpipe shall be outside bus body compartment and attached to chassis.~~

~~(b) Tailpipe shall be constructed of a corrosion-resistant tubing material at least equal in strength and durability to 16-gauge steel.~~

~~(c) Tailpipe may (a) extend beyond rear axle and extend beyond outer shell but not beyond the bumper, and be mounted outside of chassis frame rail at end point, or (b) extend to the left side of the bus, behind the driver's compartment outboard of chassis center line and extend to but not beyond the perimeter of the body. Type A bus is manufacturer's standard. On Type C and D buses, no exhaust pipe shall exit beneath an emergency door or fuel fill.~~

~~(d) Exhaust system on gasoline-powered chassis shall be properly insulated from fuel tank connections by a securely attached metal shield at any point where it is twelve inches or less from tank or tank connections.~~

~~(e) Muffler shall be constructed of corrosion-resistant material.~~

~~(12) Fenders, Front, Type C Vehicles~~

~~(a) Total spread of outer edges of front fenders, measured at fender line, shall exceed total spread of front tires when front wheels are in straight ahead position.~~

~~(b) Front fenders shall be properly braced and free from any body attachments. Front fenders and hood must be tilt-away type to allow maximum access to engine compartment.~~

~~(13) Frame and Passenger Load~~

~~(a) Gross vehicle weight (GVW) is the sum of the average chassis weight, the average body weight, the driver's-~~

~~weight, and total seated pupil weight. For purposes of calculation, the driver's weight is 150 pounds, and the pupil weight is 120 pounds per pupil.~~

~~(b) Gross Vehicle Weight (GVW) shall not exceed the chassis manufacturer's gross vehicle weight rating (GVWR) for the chassis.~~

~~(c) Gross Vehicle Weight (GVW) shall not exceed 185 pounds per published net horse power of the engine at the manufacturer's recommended maximum revolutions per minute.~~

~~(d) Manufacturers' gross vehicle weight ratings shall be furnished in duplicate (unless more are requested) by manufacturers to the state agency having pupil transportation jurisdiction. The State agency shall, in turn, transmit such ratings to other state agencies responsible for development or enforcement of state standards for school buses.~~

~~(e) Chassis GVW Rating: The GVW used in design of the chassis and its frame shall be the minimum GVW calculated in Subsection 16.01 above or the next larger standard GVW rating supplied by the manufacturer.~~

~~(f) Any secondary manufacturer that modifies the original chassis frame shall guarantee workmanship and materials used in such modification.~~

~~(g) Any frame modification shall not be for the purpose of extending the wheelbase.~~

~~(h) Holes in top or bottom flanges or side units of frame, and welding to frame shall not be permitted except as provided or accepted by chassis manufacturer.~~

~~(i) Frame Construction:~~

~~(i) Frame shall be designed to correspond with or exceed standard performance criteria for heavy-duty trucks of same general load specifications used for severe service.~~

~~(ii) When frame side members are used, they shall be of one-piece construction; provided that if there is a necessity to extend frame side members, such extension shall be designed and furnished by chassis or body manufacturer with a guarantee and installation shall be made by either body or chassis manufacturer and guaranteed by company making the installation. Extensions of frame lengths are permissible only when such alterations are behind rear hanger of rear springs and shall not be for purpose of extending wheelbase. All such extensions shall be of sufficient material, quality, and strength to provide the same support and durability of manufacturer's standard frame side members.~~

~~(iii) Chassis frame will extend to rear body cross member.~~

~~(iv) Welding to frame side rails which is necessary by design to strengthen, modify, or alter basic vehicle configuration shall be performed and guaranteed by the body or chassis manufacturer making the modification.~~

~~(14) Fuel Tank~~

~~(a) Fuel tank or tanks of minimum 30-gallon capacity with a 25-gallon actual draw shall be provided by the chassis manufacturer for Types A, B, and C buses. Type C buses with a passenger capacity of 36 or greater shall be supplied with a 60-gallon fuel tank. All Type D buses shall be provided with a minimum 60-gallon fuel tank. The tank(s) shall be filled and vented to the outside of the body, the location of which shall be so that accidental fuel spillage will not drip or drain on any part of the exhaust system.~~

~~(b) No portion of the fuel system that is located to the rear of the engine compartment, except the filler tube, shall extend above the top of the chassis frame rail. Fuel lines shall be mounted to obtain maximum possible protection by the chassis frame.~~

~~(c) Fuel filter with replaceable element shall be installed between fuel tank and engine.~~

~~(d) If a tank size other than 30-gallon is supplied, location of front of tank and filler spout must remain as specified by SBMI Design Objectives, and the draw capacity shall be 83% of the tank capacity. January 1985 edition.~~

~~(e) The fuel tank on vehicles constructed with a power lift unit may be mounted on left chassis rail or behind rear wheels.~~

~~(f) Auxiliary tank may be added. Installation of alternative fuel tanks shall comply with all applicable fire codes.~~

~~(g) Fuel tank(s) may be mounted on left or right sides of frame, either to the rear of the rear axle, front of the rear axle between the wheelbase, or between the frame rails. All installations must meet FMVSS 301.~~

~~(15) Governor~~

~~(a) An engine governor is permissible. When it is desired to limit road speed, a road speed governor should be installed.~~

~~(b) When engine is remotely located from driver, a governor shall be installed to limit engine speed to maximum revolutions per minute recommended by engine manufacturer, or a tachometer shall be installed so engine speed may be known to driver.~~

~~(16) Heating System~~

~~(a) The chassis engine shall have plugged openings for the purpose of supplying hot water for the bus heating system. The opening shall be suitable for attaching 3/4-inch pipe thread/hose connector.~~

~~(b) The engine shall be capable of supplying water having a temperature of at least 170 degrees Fahrenheit at a flow rate of 50 pounds per minute at the return end of 30 feet of one inch inside diameter automotive hot water heater hose.~~

~~(17) Horn~~

~~(a) Bus shall be equipped with dual horns of standard make with each horn capable of producing complex sound in bands of audio frequencies between 250 and 2,000 cycles per second and tested per Society of Automotive Engineers Standard J-377.~~

~~(b) Air Horn (Optional): Air horn, if required, shall be dual-horn type under the control of the driver. The control may be pull-cable type, hand-operated dash-mounted switch, or foot-operated. Air horn shall be mounted to the roof of the bus body or the chassis frame where it is protected from mud and other corrosives.~~

~~(18) Lamps and Signals~~

~~(a) The chassis manufacturer shall equip the front of a conventional, body-on-chassis bus with headlamps, turn signals, and side marker lamps (Types A and C).~~

~~(b) The bus shall be equipped with at least two dual beam headlamps of the sealed beam type, with at least one headlamp on each side of the bus. The headlamps shall be located at a height of not more than 54 inches or less than 24 inches when measured vertically from the center of the lamp to the level ground on which the unloaded bus stands.~~

~~(c) The bus shall be equipped with a manually-operated dimmer switch for use by the driver in selecting either the high or low beam of the headlights.~~

~~(d) Fog lights or driving lights are optional. If required, they shall have an operating switch that is independent of the headlight switch.~~

~~(19) Instruments and Instrument Panel~~

~~(a) Chassis shall be equipped with the following instruments and gauges. Lights in lieu of gauges are not acceptable except as noted. Optional instruments and gauges are identified as such:~~

~~(i) Speedometer.~~

~~(ii) Odometer which will give accrued mileage to seven digits including tenths of miles.~~

~~(iii) Voltmeter~~

~~(A) Voltmeter with graduated scale compatible with the electrical system (Type A, B, C, and D buses).~~

~~(B) Ammeter with graduated charge and discharge with ammeter and its wiring compatible with generating capacities is permitted in lieu of voltmeter.~~

~~(iv) Oil pressure gauge.~~

~~(v) Water temperature gauge.~~

~~(vi) Fuel gauge.~~

~~(vii) High beam headlight indicator.~~

~~(viii) Brake indicator gauge (vacuum or air) 2-inch diameter.~~

~~(ix) Light indicator in lieu of gauge permitted on vehicle equipped with hydraulic-over-hydraulic brake system.~~

~~(x) Glow-plug indicator light where appropriate.~~

~~(xi) Tachometer (optional).~~

~~(xii) A self-cancelling directional signal switch shall be provided by the chassis manufacturer. It shall have a hazard warning switch in combination with the directional signal switch.~~

~~(xiii) Turn signal indicator lights.~~

~~(xiv) Service-hour meter is optional on diesel engine-equipped buses.~~

~~(xv) Engine warning system for low oil pressure and/or high engine temperature is optional.~~

~~(xvi) Tachograph or on-board computer are optional.~~

~~(b) All instruments shall be easily accessible for maintenance and repair.~~

~~(c) Above instruments and gauges shall be full-faced and shall be mounted on the instrument panel in such a manner that each is clearly visible to the driver while in normal seated position. Instruments and gauges may be mounted individually or in "cluster" fashion. In addition, they may be independently removable or may be constructed as a solid state combined panel in which case the entire panel is removable.~~

~~(d) Instrument panel shall have lamps of sufficient candlepower to illuminate all instruments, gauges, and shift selector indicator for automatic transmission.~~

~~(20) Oil Filter~~

~~(a) Oil filter of replaceable element type shall be provided and shall be connected by flexible oil lines if it is not of built-in or engine-mounted design. Oil filter shall have capacity of at least one quart.~~

~~(21) Openings~~

~~(a) All openings in floorboard or firewall between chassis and passenger compartment, such as for gearshift and parking brake lever, shall be sealed unless they are to be altered by the bus body manufacturer. All openings between chassis and passenger~~

compartment made due to alterations by the bus body manufacturer will be sealed by the bus body manufacturer.

~~(22) Retarder, Driveline, or Exhaust Brakes~~

~~(a) Driveline retarders or exhaust brakes, if used, shall maintain the speed of the fully loaded school bus at 19.0 mph or 30 km/hr on a 5 per cent grade for 3.5 miles or 6 kilometers.~~

~~(23) Shock Absorbers~~

~~(a) Bus shall be equipped with front and rear double-action heavy-duty shock absorbers compatible with manufacturers' rated axle capacities at each wheel location.~~

~~(24) Springs~~

~~(a) Capacity of springs or suspension assemblies shall be commensurate with chassis manufacturers' gross vehicle weight ratings.~~

~~(b) If rear leaf springs are used, they shall be either air or progressive type. Front or rear springs may be parabolic.~~

~~(c) Springs or suspension assemblies shall be of ample resiliency under all load conditions and of adequate strength to sustain the loaded bus without evidence of overload.~~

~~(d) Springs or suspension assemblies shall be designed to carry their share of the GVW.~~

~~(e) If leaf-type springs are used, the front of the main leaf eye shall be protected by a second leaf wrapper eye (front and/or rear springs).~~

~~(25) Steering Gear~~

~~(a) Steering gear shall be approved by chassis manufacturer and designed to assure safe and accurate performance when vehicle is operated with maximum load and at maximum speed. All buses shall be equipped with heavy-duty, truck-type integral gear hydraulic power steering that shall assure safe and accurate performance when the fully loaded vehicle is operated at maximum speed. Hydraulic power steering is required and shall be of the integral type with integral valves.~~

~~(b) If external adjustments are required, steering mechanism must be accessible to accomplish same.~~

~~(c) No changes shall be made in steering apparatus that are not approved by chassis manufacturer.~~

~~(d) There shall be clearance of at least two inches between steering wheel and cowl, instrument panel, windshield, or any other surface.~~

~~(e) The steering mechanism shall provide for easy adjustment for lost motion.~~

~~(f) The steering system shall be designed to provide means for lubrication of all wear-points, if wear-points are not permanently lubricated.~~

~~(26) Tires and Wheels~~

~~(a) Tires and wheels of proper size and tires with load rating commensurate with chassis manufacturers' gross vehicle weight ratings shall be provided.~~

~~(b) Dual rear wheels and tires shall be provided on all school buses.~~

~~(c) All tires on any given vehicle shall be of same size and load rating. The load range of all tires shall meet or exceed the gross axle weight rating as required by FMVSS 120.~~

~~(d) If vehicle is equipped with a spare tire, the wheel and tire shall be of the same size and load rating as those mounted on the vehicle.~~

~~(e) If a tire carrier is required, it shall be suitably mounted in accessible location outside the passenger compartment.~~

~~(f) All wheels on any given vehicle shall be of same size and load rating capacity. Wheels shall be steel disc type; cast or spoke wheels are not permitted.~~

~~(27) Tow Hooks~~

~~(a) Two front and two rear heavy-duty frame-mounted tow-hooks shall be furnished on all buses Types B, C, and D. Tow-hooks must be attached so as not to project beyond the front or rear bumpers. The front tow hooks shall be furnished by the chassis manufacturer, and the rear tow hooks furnished by the body manufacturer on Type C buses. Front and rear tow hooks shall be furnished by the body manufacturer on Types B and D buses. The installation shall be according to manufacturers' specifications.~~

~~(28) Transmission~~

~~(a) The input torque capacity of the transmission shall be at least ten percent greater than the maximum net torque developed by the engine.~~

~~(b) The transmission shall be equipped with an automatic back-up light switch for the operation of the back-up light mounted on the rear of the school bus body. The switch will be wired to the back-up light by the body manufacturer. This switch is to be activated by moving the gear shift lever into the "reverse" position.~~

~~(c) Manual Transmission:~~

~~(i) Manual transmission shall be of heavy-duty type. For buses with a capacity of 30 or more passengers, transmission shall have four speeds forward and one in reverse. For buses with a capacity of over 30 passengers, transmissions shall have five speeds forward and one in reverse.~~

~~(ii) Manual transmissions shall be synchromesh or constant-mesh in all gears except first and reverse.~~

~~(d) Automatic transmission shall provide for not less than three forward speeds and one reverse speed. The shift selector, if applicable, shall provide a detent between each gear position when the gear selector quadrant and shift selector are not steering column mounted. (Exception: Type A and B buses.)~~

~~(29) Turning Radius~~

~~(a) Chassis with a wheel base of 264 inches or less shall have a right and left turning radius of not more than 42.5 feet.~~

~~(b) Chassis with a wheelbase of 265 inches or more shall have a right and left turning radius of not more than 44.5 feet.~~

~~(30) Underecoating~~

~~(a) Chassis manufacturer or its agent shall coat undersides of steel or metallic front fenders with rust-proofing compound for which compound manufacturers have certified to chassis builder that compound meets or exceeds all performance and qualitative requirements of paragraph 3.4 of Federal Specification TT-C-520B using modified test.~~

~~(31) Weight Distribution~~

~~(a) Weight distribution of fully-loaded bus on level surface shall not exceed the manufacturer's front gross axle rating and rear gross axle rating.~~

R909-3-6. Body Requirements.

~~(1) Aisle~~

~~(a) Minimum clearance of all aisles including aisle to emergency door(s) shall be 12 inches.~~

~~(b) Seat backs shall be slanted sufficiently to give aisle clearance of 15 inches at tops of seat backs.~~

~~(2) Backup Warning Alarm (Optional)~~

(a) An automatic audible alarm may be installed behind the rear axle and shall comply with the Society of Automotive Engineers published Backup Alarm Standards (SAE 994b) specifying 97±4dB(A) for rubber tired vehicles.

(3) Battery

(a) Battery is to be furnished by chassis manufacturer.

(b) The body manufacturer shall supply a compartment to securely attach battery on slide-out or swing-out tray in a closed, vented compartment in the body skirt, whereby battery may be exposed for convenient servicing. Battery compartment door or cover shall be hinged at front or top and secured by adequate and conveniently operated latch or other type fastener. (Exception: Type A.)

(4) Bumper (Front)

(a) See Chassis Standard, R909-3-5(6).

(5) Bumper (Rear)

(a) Bumper shall be of pressed steel channel or equivalent material at least 3/16-inch thick and nine inches wide (high), and of sufficient strength to permit pushing by another vehicle of the same GVW rating without permanent distortion. (Exception: Type A bus, minimum 3/16 inch x 8 inch.)

(b) Bumper shall be wrapped around back corners of bus. It shall extend forward at least 12 inches, measured from rear-most point of body at floor line.

(c) Bumper shall be attached to chassis frame in such a manner that it may be easily removed, shall be so braced as to develop full strength of bumper section from rear or side impact, and shall be designed to discourage hitching of rides.

(d) Bumper shall extend at least one inch beyond rear-most part of body surface measured at floor line.

(e) The bumper provided by the chassis manufacturer may be used on Type A buses.

(6) Ceiling

(a) See "Insulation" and "Interior," Body Standards, R909-3-6(18) and (19).

(7) Chains

(a) See "Wheelhousing," Body Standards, R909-3-6(79).

(8) Color

(a) The school bus body shall be painted a uniform National School Bus Yellow. The roof may be painted white.

(b) The color known as National School Bus Yellow was designated as such by the 1939 National Conference on School Bus Standards. The National Bureau of Standards of the U.S. Department of Commerce assisted in developing this color and its colorimetric specifications, as follows:

TABLE II

Colorimetric Specifications
National School Bus Yellow

C.I.E.		Daylight	
Chromaticity	Coordinates	Reflectance	Y(%)
x	y	max	std min
.5211	.4549	41.	40.
Dominant Wavelength in millieons		Excitation Purity	
max	std min	max	std min
584.5	583.5 582.5	93.7	89

(c) At the 1980 Conference, the colors in use were reviewed. A color standard was selected, slightly different from the above, and specific tolerances were chosen. These tolerances will insure a continuity of appearance from bus to bus, and within the same bus when different elements are finished or refinished at different times. Specification for the Standard Color, with light and dark tolerances (Upper and Lower Reflectance), are shown below in tabular form.

TABLE III

Specifications for Standard Color

For Source C		Reflectance Tolerances		
CIE Chromaticity Coordinates	Y(%)	Upper	Lower	
x	y			
.5089	.4408	40.14%	41.77%	38.45%

(d) The body exterior paint trim, bumper, lamp hoods, emergency door arrow, and lettering shall be black.

(9) Construction

(a) Construction shall be of prime commercial quality steel or other metal or material with strength at least equivalent to all-steel and corrosion resistance at least equivalent to all-steel as certified by bus body manufacturer (See Section 54, Metal Treatment). Types B, C, and D buses shall meet joint strength standards. Type A buses shall meet joint strength standards for the passenger compartment only as specified in FMVSS-221.

(b) Construction shall provide a reasonably dustproof and watertight product.

(c) A certification plate shall be affixed to the inside of each body in the same area as the body serial number. This certification plate shall contain the following or similar wording: "(manufacturer's name) does hereby certify that (body serial number) has been constructed with standard and/or optional equipment that meets the Colorado Racking Load Test in accordance with Utah State School Bus Standards in effect at time of manufacture."

(10) Defrosters

(a) Defrosting and defogging equipment shall direct a sufficient flow of heated air onto the windshield, the window to the left of the driver, and the glass in the viewing area directly to the right of the driver to eliminate frost, fog, and snow. The defroster unit shall have a separate blower motor in addition to the heater motors. Defrosting and defogging equipment for Type A vehicles shall direct a sufficient flow of heated air onto the windshield to eliminate frost, fog, and snow.

(b) The defrosting system shall conform to Society of Automotive Engineers Standards J-381 and J-382.

(c) The defroster and defogging system shall be capable of furnishing heated outside ambient air except that the part of the system furnishing additional air to the windshield, entrance door and step well may be of the recirculating air type.

(d) Auxiliary fans are not to be considered as a defrosting and defogging system.

(e) Portable heaters may not be used.

(11) Doors

(a) Service Door:

(i) The service door shall be either manual or power-operated under the control of driver and shall be designed to afford

easy release and prevent accidental opening. When hand lever is used, no part shall come together so as to shear or crush fingers, and shall have a heavy duty chrome control handle with lubricated bushings or bearings.

(ii) The service door shall be located on right side of bus opposite driver and within direct view of driver.

(iii) The service door shall have minimum horizontal opening of 24 inches and minimum vertical opening of 68 inches.

(iv) The service door shall be of split type, sedan type, or jack-knife type. (Split-type door includes any sectioned door which divides and opens inward or outward.) If one section of split-type door opens inward and the other opens outward, front section shall open outward.

(v) Lower as well as upper panels shall be of approved safety glass. Bottom of lower glass panel shall not be more than 10 inches from the top surface of the bottom step when bus is unloaded. Top of upper glass panel shall not be more than six inches from top of door.

(vi) Vertical closing edges on the entrance door(s) shall be equipped with flexible material to protect childrens' fingers from injury.

(vii) All doors shall be equipped with padding at the top edge of each door opening. Pad shall be at least three inches wide and one inch thick and extend the full width of the door opening.

(viii) Optional skid plates to protect door step wells may be installed.

(b) Emergency Doors.

(i) Emergency door shall be hinged on the right side if the door is in the rear center of the bus and on the front side if the door is on the left side of the bus. It shall open outward and shall be labeled inside and outside to indicate how it is to be opened.

(ii) Upper portion of emergency door shall be equipped with approved safety glass, exposed area of which shall be not less than 400 square inches. The lower portion of the rear center emergency door shall be equipped with a minimum of 350 square inches of approved safety glass.

(iii) There shall be no steps leading to emergency door.

(iv) The words "EMERGENCY DOOR", both inside and outside in letters at least two inches high, shall be placed at top of or directly above the emergency door or on the door in the metal panel above the top glass.

(v) The emergency door shall be equipped with padding at the top edge of each door opening. Pad shall be at least three inches wide and one inch thick and extend the full width of the door opening.

(vi) The side emergency door, if installed, must meet the requirements set forth in FMVSS 217, S 5.4.2.1, (b), regardless of its use with any other combination of emergency exits.

(vii) All emergency doors, exit windows, and push-out type windows shall be furnished with an audible buzzer to indicate to the driver that the exit is open. Side exit door must be furnished with a three-point bar lock.

(viii) Emergency Exit(s).

(A) Each school bus shall be equipped with either (1) an emergency door located in the center of the rear end or (2) if the engine or a storage compartment is located in the rear, a left side emergency door in the rear half of the bus and an emergency window in the rear end. Double side emergency exits are permitted.

(I) The passage to the emergency door shall be kept clear of obstructions and there shall be no steps leading to the emergency door.

(II) A left side emergency door shall be equipped with safety glass in the upper portion. The lower portion shall be at least the same gauge metal as used in the body.

(III) A positive, mechanical device shall be used that holds the door open and prevents it from closing during emergencies and evacuation drills.

(IV) A rear emergency window (used in conjunction with a left-hand emergency door) shall be at least 16 inches high and 54 inches wide on buses 80 inches or more in total width and at least 16 inches high and 48 inches wide on buses less than 80 inches in total width.

(V) A rear emergency window shall be hinged from the top, and designed to prevent accidental reclosing in an emergency. A header pad that lines the upper length of the window opening shall be furnished.

(VI) Paneling of sufficient strength to support the weight of an occupant shall cover the space between the top of the rear davenport seat and the inside lower ledge of the rear emergency window.

(VII) Emergency doors shall be designed to be opened from either the inside or outside of the bus and shall be equipped with a fastening device which may be quickly released but is designed to offer protection against accidental release. Control from the driver's seat is not permitted. Provisions for opening from the outside shall consist of a nondetachable device designed to prevent hitching-to, but to permit opening when necessary. There shall be no exterior body projections that could injure pupils exiting through the emergency window or door other than the proper opening controls.

(VIII) If the latch handle on the outside of the emergency door is not located on the outer edge of the door, a door pull shall be affixed in the extreme left-hand location at the bottom to prevent hitching-on. The emergency pull shall be constructed of heavy metal and shall be free from any sharp edges likely to cause injury.

(IX) Emergency doors shall be equipped with a slide bar, cam-operated lock. Slide bar shall have minimum stroke of one inch. The door lock shall be equipped with an interior handle that extends approximately to the center of the emergency door. The handle shall lift up to release the lock. The latch handle shall be protected by a metal guard of adequate width to prevent the handle from being actuated by a child falling against the door, but shall have sufficient clearance above the latch handle to permit easy grasp of the handle. The handle shall be of sufficient length to permit a small child to open the door.

(X) Emergency door lock shall be equipped with suitable electric plunger switch connected with a buzzer located in the driver's compartment. Switch shall be enclosed in a metal case, and wires leading from switch shall be concealed in the bus body. Switch shall be so installed that the plunger contacts the outer edge of slide bar in such a manner that any movement of slide bar will immediately close circuit on the switch and activate the buzzer.

(XI) Rear emergency windows shall be equipped with a latch or latches on the inside designed for quick release, but offering protection against accidental release. Windows shall also be equipped with a latching mechanism that can be actuated from the

outside. The outside release shall be nondetachable and be designed to prevent hitching to:

(XII) The window latch shall be equipped to activate the electric buzzer when the latch is released.

(XIII) Emergency doors, hatches, or windows shall be installed, constructed, and identified as prescribed in FMVSS 217. Roof hatches are optional and must be equivalent in quality to the Transpec Triple Value model. Push-out windows are optional.

(XIV) There shall be a head bumper pad installed on the inside of the top of the emergency doors. This pad shall be approximately three inches in width and one inch thick and shall extend across the entire top of the door opening.

(12) Fire Extinguishers

(a) The bus shall be equipped with at least one pressurized, dry chemical type fire extinguisher complete with hose, approved by Underwriters Laboratories. Extinguisher must be mounted in a bracket located in the driver's compartment and must be readily accessible to the driver and passengers. A pressure gauge shall be mounted on the extinguisher so as to be easily read without moving the extinguisher from its mounted position.

(b) The fire extinguisher shall be rated at 3A40BC or greater. The operating mechanism shall be sealed with a type of seal that will not interfere with the use of the fire extinguisher.

(13) First Aid and Body Fluid Clean-up Kits

(a) The bus shall have a first aid kit in a removable, moisture and dustproof metal container mounted in an accessible place within driver's compartment. This place shall be marked to indicate its location.

(i) Minimum contents are as follows:

(A) 2 - 1" x 2-1/2 yards adhesive tape rolls

(B) 24 - sterile gauze pads 3" x 3"

(C) 100 - 3/4" x 3" adhesive bandages

(D) 8 - 2" bandage compress

(E) 10 - 3" bandage compress

(F) 2 - 3" x 6 yards sterile gauze roller bandages

(G) 2 - nonsterile triangular bandages approximately 40" x 36" x 54" with 2 safety pins

(H) 3 - sterile gauze pads 36" x 36"

(I) 3 - sterile eye pads

(J) 1 - blunt end scissors

(K) 1 - pair latex gloves

(L) 1 - mouth-to-mouth airway

(b) In addition to the first aid kit, all buses shall have a body fluid clean-up kit in a metal container properly labeled and mounted:

(i) Minimum contents are:

(A) Full sized polyethylene apron

(B) Surgical face mask

(C) Protective goggles

(D) 1 pair latex gloves

(E) Absorption matter (4 ounces.)

(F) 2 biohazard disposal bags (at least one red in color)

(G) Antibacterial disinfectant in crystal, liquid or powder form (2 ounces), or in towlette form.

(H) 2 large paper towels

(I) Clean-up spatula, plastic or cardboard

(e) Plastic clean-up kit containers purchased prior to the adoption of this edition of the Standards are acceptable. Containers purchased following adoption of this edition must be metal.

(14) Floor

(a) Floor in underseat area, including tops of wheelhousings, driver's compartment, and toeboard, shall be covered with smooth rubber floor covering or equivalent having minimum overall thickness of .125 inch.

(b) Floor covering in aisle shall be of aisle-type rubber or equivalent, wear-resistant, and ribbed. Minimum overall thickness shall be .187 inch measured from tops of ribs. Floor covering in driver's compartment may be ribbed.

(c) Floor covering must be permanently bonded to floor and must not crack when subjected to sudden changes in temperature. Bonding or adhesive material shall be waterproof and shall be of type recommended by manufacturer of floor covering material. All seams must be sealed with waterproof sealer and covered with a metal strip.

(d) Metal cove moldings shall be furnished along all floor to sidewall areas, and rear floor to sidewall areas including corners.

(15) Heaters

(a) Heaters shall be of hot water type.

(b) If only one heater is used, it shall be of fresh air or combination fresh air and recirculating type.

(c) If more than one heater is used, additional heaters may be of recirculating air type.

(d) The heating system shall be capable of maintaining throughout the bus a temperature of not less than 40 degrees Fahrenheit at the average minimum January temperature as established by the U.S. Department of Commerce, Weather Bureau, for the area in which the vehicle is to be operated.

(e) All heaters installed by body manufacturers shall bear a name plate that shall indicate the heater rating in accordance with SBMI Code 001. Said plate, to be affixed by the heater manufacturer, shall constitute certification that the heater performance is as specified in the SBMI Code cited above.

(f) Heater hoses shall be adequately supported to guard against excessive wear due to vibration. The hoses shall not dangle or rub against the chassis or sharp edges and shall not interfere with or restrict the operation of any engine function. Heater hose shall conform to SAE J20c. Heater lines on the interior of bus shall be shielded to prevent scalding of the driver or passengers.

(g) Each hot water system installed by a body manufacturer shall include a shutoff valve installed in the pressure and return lines at or near the engine in an accessible location.

(h) There shall be a water flow regulating valve installed in the pressure line for convenient operation by the driver.

(i) Accessible bleeder valves shall be installed in an appropriate place in the return lines of body company-installed heaters to remove air from the heater lines.

(j) Heater motors, cores, and fans must be readily accessible for service. Access panels shall be provided as needed.

(k) The body company shall furnish permanent type ethylene glycol base antifreeze that will provide for protection to the cooling and heating system to at least 40 degrees below zero Fahrenheit.

(l) An auxiliary heater booster water pump shall be furnished by the body company on all Type C and D buses. It shall be driven by a 12-volt electric motor and have a minimum flow capacity of 12 gallons per minute with three feet at head measurement.

~~_____ (m) Auxiliary fuel-fired heaters are optional. If used, they must conform to FMVSS 301, Standards for Fuel System Integrity.~~

~~_____ (16) Identification~~

~~_____ (a) The body shall bear the words "SCHOOL BUS" in black letters at least eight inches high, one inch line width, both front and rear of body. The lettering shall be located between the warning signal lamps as high as possible without impairment of its visibility. Lettering shall conform to "Series B" of Standard Alphabets for highway signs. There shall be no other lettering on the front or rear of the bus except for the emergency door identification.~~

~~_____ (b) The name of the school district, independent school, or transportation company shall be placed on each side of the bus body. The name shall be in black letters, approximately six inches in height and proportionately spaced to achieve a balanced appearance.~~

~~_____ (c) On bodies of school buses leased to a school board by private owners, the name of the owner followed by the word "OWNER" shall be in black letters, approximately six inches in height and proportionately spaced to achieve a balanced appearance.~~

~~_____ (d) The manufacturer's rated pupil seating capacity shall be shown in two-inch letters, either painted on or in decal form, on the inside upper portion of the entrance door or inside the body above the right hand windshield.~~

~~_____ (e) The numbering of individual buses for identification purposes is permissible. Numerals shall be black and six inches in height. The location of the numbers shall be:~~

~~_____ (i) Right side--at district identification belt line aft service door.~~

~~_____ (ii) Rear of the vehicle--curb side below tail light.~~

~~_____ (iii) Driver panel--belt line on the left side.~~

~~_____ (iv) One additional position that is optional with district.~~

~~_____ (f) Lettering and numbering as described above are the only permissible permanent markings. Bumper stickers, decals, or commercial markings are not permitted.~~

~~_____ (17) Inside Height~~

~~_____ (a) Inside body height shall be 72 inches or more, measured metal to metal, at any point on longitudinal center line from front vertical bow to rear vertical bow.~~

~~_____ (18) Insulation~~

~~_____ (a) Ceiling and walls shall be insulated with proper material to deaden sound and to reduce vibration to a minimum.~~

~~_____ (b) Thermal insulation is required and shall be of fire-resistant material approved by Underwriters Laboratories, Inc. The material shall be fiberglass batt type or equal with a minimum thickness of 1.5 inches. It shall be installed in the entire roof area, entire body sides, front and rear bulkheads, and rear area walls.~~

~~_____ (c) Floor insulation is optional. If required, it must be five-ply at least one-half inch thick and/or it shall equal or exceed properties of exterior-type softwood plywood, CD grade as specified in standard issued by U.S. Department of Commerce.~~

~~_____ (19) Interior~~

~~_____ (a) Interior of bus shall be free of all unnecessary projections likely to cause injury. This standard requires inner lining on ceilings and walls. If ceiling is constructed so as to contain lapped joints, forward panel shall be lapped by rear panel and exposed edges shall be beaded, hemmed, flanged, or otherwise treated to eliminate sharp edges.~~

~~_____ (b) The driver's area forward of the foremost padded barriers will permit the mounting of required safety equipment and vehicle operating equipment.~~

~~_____ (c) Every school bus shall be constructed so that the noise level taken at the ear of the occupant nearest to the primary vehicle noise source shall not exceed 85 dB(A).~~

~~_____ (d) Interior side panels from the passenger side window line to the seat mounting ledge shall be mar-resist, aluminized steel, textured panels, stainless steel, or equal non-painted surface to minimize vandalism.~~

~~_____ (e) Perforated acoustic interior ceiling panels are optional.~~

~~_____ (20) Lamps and Signals~~

~~_____ (a) Interior lamps shall be provided that adequately illuminate aisle and stepwell. Stepwell light shall be connected to the automatic door control switch for its operation.~~

~~_____ (b) Body instrument panel lights shall be controlled by an independent rheostat switch or may be in combination with headlight rheostat switch.~~

~~_____ (c) School Bus Alternately Flashing Signal Lamps.~~

~~_____ (i) Definition: School bus red signal lamps are alternately flashing lamps mounted horizontally both front and rear, intended to identify a vehicle as a school bus and to inform others that such vehicle is stopped to take on or discharge school children.~~

~~_____ (ii) School bus amber signal lamps are alternately flashing lamps mounted horizontally both front and rear, intended to identify a vehicle as a school bus and to inform others that such vehicle is about to stop to take on or discharge school children.~~

~~_____ (A) Bus shall be equipped with two red lamps at rear of vehicle and two red lamps at front of vehicle.~~

~~_____ (B) In addition to four red lamps described in A above, four amber lamps shall be installed as follows: One amber lamp shall be located near each red signal lamp, at same level, but closer to vertical centerline of bus. Red and amber signal lamps shall be wired so that amber lamps are activated manually, and red lamps are automatically activated (with amber lamps being automatically cancelled) when bus service door is opened.~~

~~_____ (C) A master switch is required for the warning light system.~~

~~_____ (D) The amber warning signal lamps shall be activated manually by a switch mounted on the driver control panel. The red warning signal lamps shall be automatically activated and the operation of the amber lamps cancelled when the bus door is opened. The red warning lamps shall be automatically activated any time the door is opened, irrespective of whether the amber warning lamps were activated immediately preceding the door opening.~~

~~_____ (E) The alternately flashing warning signal lamp system shall include an amber and red pilot indicator lamps located within the easy view of the driver that will indicate when the amber or red flashing lamps are operating.~~

~~_____ (F) The area around the lens of each alternately flashing signal lamp and extending outward approximately three inches shall be painted black. Where there is no flat vertical area of body immediately surrounding the entire lens of lamps, a circular or square band of black approximately three inches wide, immediately below and to both sides of lens, shall be painted on body or roof area to fit the shape of hoods/visors and roofcap. Individual~~

hood/visor is required for each light and shall be painted totally black.

~~(G) A single visor/hood for each set of dual lamps or an individual visor/hood for each lamp shall be provided. The visor/hoods shall fit the shape of the lights and roofcaps, be a minimum depth of 5 inches, and be painted black.~~

~~(H) All flashers for alternately flashing red and amber signal lamps shall be enclosed in the body in a readily accessible location.~~

~~(I) A monitor light for the front and rear lamps of the school bus is optional. If used, the monitor shall be mounted in full view of the driver. If the full circuit current passes through the monitor, each circuit shall be protected by a fuse or circuit breaker protecting against any short circuit or intermittent current.~~

~~(d) Turn Signals:~~

~~(i) Bus body shall be equipped with two rear amber arrow-type turn signal lamps, each with a face of at least 38 square inches, and meet specifications of the Society of Automotive Engineers.~~

~~(ii) The bus body shall be equipped with two amber arrow turn signal lamps, each with a face of at least 38 square inches on the front of the bus body. These are required on Type B and D buses. They are also required on Type C buses in addition to fender-mounted chassis-directional lamps. Type A buses shall be manufacturers' standards.~~

~~(iii) Two side directional signal lights of 32 candlepower shall be located in the beltline near the front of the bus body. (Exception: Type A)~~

~~(iv) Two one-half inch directional pilot lights shall be provided that indicate to the driver that either the left or right directional flashers or the hazard warning flashers are activated. These pilots shall be green in color and bright enough that they can be seen in operation in bright sunlight. They shall be located on the dash or bulkhead above the driver.~~

~~(v) All directional signal lamps must be connected to the chassis hazard warning switch to cause simultaneous flashing of turn signal lamps when needed as vehicular traffic hazard warning.~~

~~(vi) Turn signal lamps are to be placed as wide apart as practical and in plain sight of traffic approaching from front or rear.~~

~~(e) Stop and Tail Lights:~~

~~(i) The bus shall be equipped with four combination stop and tail lamps mounted on the rear of the body. Two shall be a minimum diameter of seven inches and the other two shall be a minimum of four inches in diameter. The lens color shall be red. The light emitted from the lamps shall be plainly visible for the distance of 500 feet to the rear. The tail lights will be operated by the headlamp switch and the brake lights by the brake light switch. No lettering is permitted on these lamps except for manufacturers' markings.~~

~~(ii) The bottoms of the four-inch diameter stop/tail lights shall emit white light downward to illuminate the rear license plate and bus identification number from a distance of not less than 60 feet in periods of darkness.~~

~~(iii) Stop lights and tail lights shall be placed as wide apart as practical and in plain sight of traffic approaching from the rear.~~

~~(f) Back Up Lights:~~

~~(i) Two four-inch diameter back up lights shall be provided and shall be of sufficient intensity to inform vehicle~~

~~operators and pedestrians that the school bus is in reverse. The back up lights shall be automatically illuminated when the ignition switch is "on" and the reverse gear is engaged. The chassis manufacturer shall provide the switch for operation of back up lights.~~

~~(g) Clearance Marker Lights:~~

~~(i) The bus body shall be equipped with clearance lights on each corner of the bus body, mounted as high as possible on the permanent structure of the bus in such a manner as to indicate the extreme width of the body, and a cluster of three identification lights on the top roof edge of both front and rear ends of the body located at the body's highest point. Side marker lights shall be installed midway between the front and rear clearance lights.~~

~~(ii) The lights on the front and sides shall be amber and the rear lights shall be red.~~

~~(h) Reflex Reflectors:~~

~~(i) The bus body shall be equipped with four side-mounted and two rear-mounted reflex reflectors. Light lenses do not suffice as reflectors.~~

~~(ii) Reflectors shall be mounted at a height of not less than 15 inches nor more than 60 inches above the ground.~~

~~(iii) The front side reflectors shall be amber. The right front side reflector shall be located immediately aft of the door, and the other front side reflector shall be located at a similar position on the left side.~~

~~(iv) The rear reflectors (side and rear) shall be red. The two on the sides (one on each side) shall be located as far to the rear as possible, and the two on the rear as far apart as practical.~~

~~(v) All buses shall be equipped with two additional amber reflectors which shall be located at or near the midpoint between the front and rear side reflectors.~~

~~(vi) Lights and reflectors at or below the bottom window line shall have rounded protective shields or shall be finished in such a manner that sharp edges do not protrude or snag clothing.~~

~~(i) Warning Device:~~

~~(i) Each school bus shall contain at least three reflectorized triangle road warning devices that comply with FMVSS 125, mounted in an accessible place in the driver's compartment in a container. The mounting location in Type A vehicles is optional.~~

~~(21) Metal Treatment~~

~~(a) All metal 12 gauge and thinner used in construction of bus body shall be zinc or aluminum coated or treated by equivalent process before bus is constructed. Included are such items as structural members, inside and outside panels, door panels, and floor sills. Excluded are such items as door handles, grab handles, interior decorative parts, and other interior plated parts.~~

~~(b) All metal parts that will be painted shall be (in addition to above requirements) chemically cleaned, etched, zinc/phosphate coated, and zinc/chromate or epoxy primed or conditioned by equivalent process.~~

~~(c) In providing for these requirements, particular attention shall be given lapped surfaces, welded connections of structural members, cut edges, punched or drilled hole areas in sheet metal, closed or box sections, unvented or undrained areas, and surfaces subjected to abrasion during vehicle operation.~~

~~(d) As evidence that above requirements have been met, samples of materials and sections used in construction of bus body, when subjected to 1000-hour salt spray test as provided for in latest~~

revision of ASTM designation, 8-117 "Standard Method of Salt Spray (Fog) Testing," shall not lose more than ten percent of material by weight.

~~(22) Mirrors~~

~~(a) Interior Mirror: Interior mirror shall be either clear view laminated glass or clear view glass bonded to a backing that retains the glass in the event of breakage. Mirror shall have rounded corners and protected edges. Type A and Type B cutaway buses shall have a minimum of a 6 inch x 16 inch mirror and Type B, C, and D buses shall have a minimum of a 6 inch x 30 inch mirror.~~

~~(b) Exterior Mirrors: Each bus shall have a minimum of one exterior left side and one exterior right side rearview mirror that comply with FMVSS 111. Type A vehicles may be manufacturer's standard. All exterior rearview mirrors must be adjustable to allow any driver to have visibility aft of the rear wheels at ground level.~~

~~(c) Indirect Visibility: Each bus shall have a mirror system that will provide an unobstructed field of view of the area around the bus and that conforms with FMVSS 111 as amended December 2, 1993.~~

~~(23) Bus Body Mounting~~

~~(a) Chassis frame shall support rear body cross member. Bus body shall be attached to chassis frame at each main floor sill, except where chassis components interfere, in such manner as to prevent shifting or separation of body from chassis under severe operating conditions.~~

~~(b) Insulating material shall be placed at all contact points between body and chassis frame on Type B, C, and D buses, and shall be so attached to chassis frame or body that it will not move under severe operating conditions.~~

~~(24) Mud flaps~~

~~(a) All buses shall be provided with mud flaps or mud shields at all front and rear wheel positions to prevent mud, slush, and gravel from being thrown onto the lower sections of the bus and service entrance area. Mud flaps must be heavy duty construction.~~

~~(25) Rubber fenders~~

~~(a) Cove-style rubber fenders shall be furnished on Type D buses on both the front and rear wheelhousing rims to prevent mud, slush, and water from being thrown onto the sides of the bus. Cove-style rubber fenders shall be furnished on the rear wheelhousing rims on Type C buses. Rubber fenders are not required on Type A and B buses.~~

~~(26) Overall Length and Width~~

~~(a) Overall length of bus shall not exceed forty feet. Overall width of bus shall not exceed 102 inches excluding accessories.~~

~~(27) Rub Rails~~

~~(a) Both sides of the vehicle shall have four rubrails. They shall be located at the window line, seat line, floor line, and bottom of the body skirt.~~

~~(b) The window line rubrail shall extend from the rear of the service door opening along the right side of the body, extending around the right rear corner to the emergency door, and on the left side from the point of beginning of the passenger compartment along the left side extending around the left rear corner to the emergency door.~~

~~(c) The seat line rubrail shall cover the same longitudinal area as the window line rubrail.~~

~~(d) The floor line rubrail shall cover the same longitudinal area as the window line rubrail except at wheelhousings, extending around the radii of the right and left rear corners as far as possible.~~

~~(e) The skirt line rubrail shall cover the same longitudinal area as the window line rubrail, except that it shall terminate at the rear corners of the vehicle.~~

~~(f) The window line, seat line, and floor line rubrails shall be attached to the outside of the body at each body post and to all other vertical structural members.~~

~~(g) The skirt line rubrail shall be attached to the outside of the body panels and other structural members behind the body panels.~~

~~(h) All rubrails shall be four inches or more in width in their finished form and shall be of 16 gauge steel or suitable material of equivalent strength. They shall be constructed in corrugated or ribbed fashion.~~

~~(i) Pressed-in or snap-on rub rails are not acceptable.~~

~~(j) Exception: Rub rails will not extend around rear corners of buses using rear center luggage compartment or Type D buses with rear engine, and must accommodate side emergency doors.~~

~~(28) Seat Belt for Driver~~

~~(a) A Type 2 lap belt/shoulder harness restraint system shall be provided for the driver. The assembly shall be equipped with an emergency locking retractor (ELR) for the continuous belt system. The lap portion of the belt shall be guided or anchored where practical to prevent the driver from sliding sideways under it.~~

~~(29) Driver's Seat~~

~~(a) The driver's seat must be a high-back, six (6) way adjustable without the use of tools. It shall adjust forward and backward, be mounted to adjust upward and downward, with a tiltback that allows the back to tilt forward and rearward. (Exception: Type A and Type B Cutaway chassis manufacturers' standards.)~~

~~(b) Air-ride and lumbar support are approved optional features.~~

~~(30) Seats and Crash Barriers~~

~~(a) All seats shall have minimum depth of 15 inches.~~

~~(b) In determining seating capacity of bus, allowable average rump width shall be:~~

~~(i) 13 inches where 3-3 seating plan is used.~~

~~(ii) 15 inches where 3-2 seating plan is used.~~

~~(c) Seat, seat back cushion, and crash barrier shall be covered with a material having 42 ounce finished weight, 54 inches width and finished vinyl coating of 1.06 broken twill, or other material with equal tensile strength, tear strength, seam strength, adhesion strength, resistance to abrasion, resistance to cold and flex separation.~~

~~(d) Each seat leg shall be secured to the floor by a minimum of two bolts, washers and nuts or flange-headed bolts.~~

~~(e) All seat frames shall be fastened to the seat rail with two bolts, washers and nuts or flange-headed bolts.~~

~~(f) Type A buses shall have crash barriers.~~

~~(31) Steering Wheel~~

~~(a) 18" or 20" steering wheel as specified in the 1994 purchase specification guidelines on file with the Utah State Board of Education.~~

~~_____ (32) Steps~~
~~_____ (a) The first step at service door shall be not less than 12 inches and not more than 16 inches from ground, based on standard chassis specifications.~~
~~_____ (b) Service door entrance may be equipped with two-step or three-step stepwell. Risers in each case shall be approximately equal. When plywood floor is used on steel, differential may be increased by thickness of plywood used. Risers shall not exceed 10 inches.~~
~~_____ (i) When three-step stepwell is specified, the first step at service door shall be approximately ten to fourteen inches from the ground when bus is empty, based on standard chassis specifications.~~
~~_____ (ii) Type D vehicles shall have a three-step stepwell with the first step at service door twelve to sixteen inches from the ground.~~
~~_____ (c) Steps shall be enclosed to prevent accumulation of ice and snow.~~
~~_____ (d) Steps shall not protrude beyond side body line.~~
~~_____ (e) Heated rubber steps are optional.~~
~~_____ (33) Grab Handle~~
~~_____ (a) A grab handle approximately 20 inches in length shall be provided in an unobstructed location inside doorway on both left and right sides. Base of grab handle attaching it to the bus body shall be designed in such a manner that clothing, draw strings, straps, or buttons cannot catch or hang up at the joint.~~
~~_____ (34) Step Treads~~
~~_____ (a) All steps, including floor line platform area, shall be covered with 3/16-inch rubber floor covering or other materials equal in wear resistance and abrasion resistance to top grade rubber.~~
~~_____ (b) Metal back of tread, minimum 24-gauge cold rolled steel, shall be permanently bonded to ribbed rubber; grooved design shall be such that said grooves run at a 90-degree angle to long-dimension of step tread.~~
~~_____ (c) 3/16-inch ribbed step tread shall have a 1.5 inch white nosing as integral piece without any joint.~~
~~_____ (d) Rubber portion of step treads shall have the following characteristics:~~
~~_____ (i) Special compounding for good abrasion resistance and high coefficient of friction.~~
~~_____ (ii) Flexibility so that it can be bent around a .5 inch mandrel at 130 degrees F. and at 20 degrees F. without breaking, cracking, or crazing.~~
~~_____ (iii) Show a durometer hardness of 85 to 95.~~
~~_____ (35) Stirrup Steps~~
~~_____ (a) The shall be at least one folding stirrup step or recessed foothold and suitably located handles on each side of the front of the body for easy accessibility for cleaning the windshield and lamps except when windshield and lamps are easily accessible from the ground. Steps are permitted in or on the front bumper in lieu of the stirrup steps, if the windshield and lamps are easily accessible for cleaning from that position. (Exception: Type A and Type B cutaway.)~~
~~_____ (36) Stop Signal Arm~~
~~_____ (a) Stop signal arm shall meet the applicable requirements of FMVSS 131. The arm shall be of an octagonal shape with white letters and border on a red background, and shall be of a reflective material meeting U.S. Department of Transportation FHWA FP-85 Type 2A or Type 3A. Flashing strobe lights on stop arm shall be connected to the red alternately flashing~~

~~signal lamp circuits. The stop signal shall be vacuum, electric, or air operated. Arm shall be automatically operated when red warning lights are activated.~~
~~_____ (b) The stop signal arm shall be mounted outside the bus body near the driver on the left side immediately below the driver's window. One stop signal arm per bus is permitted.~~
~~_____ (37) Storage Compartment (Optional)~~
~~_____ (a) If tools, tire chains and/or tow chains are carried on the bus, a container of adequate strength and capacity may be provided. Such storage container may be located either inside or outside the passenger compartment. If located inside, it shall have a cover (seat cushion may not serve this purpose) capable of being securely latched and be fastened to the floor convenient to either the service or emergency door. Storage racks may not be installed inside the passenger compartment of the bus.~~
~~_____ (38) Sun Shield~~
~~_____ (a) An interior adjustable transparent sun shield not less than 6 inches x 30 inches for Type B, C, and D vehicles, and not less than 6 inches x 16 inches for Type A vehicles with a finished, padded edge shall be installed in a position convenient for use by driver. It shall be fully adjustable. Type A and Type B cutaway shall be manufacturers' standards.~~
~~_____ (39) Tailpipe~~
~~_____ (a) Exhaust pipe, muffler and tailpipe shall be outside bus body compartment and attached to chassis.~~
~~_____ (b) Tailpipe shall be constructed of a corrosion-resistant tubing material at least equal in strength and durability to 16-gauge steel.~~
~~_____ (c) Tailpipe may (1) extend beyond rear axle and extend at least five inches beyond chassis frame and be mounted outside of chassis frame rail at end point, or (2) extend to, but not beyond the body limits on the left side of the bus, behind the driver's compartment, outboard of chassis center line and shall terminate from chassis centerline as follows:~~

Type A buses	Manufacturers' standards
Type B buses	42.5 inches
Type C and D buses	48.5 inches

~~_____ (i) Exception: The exhaust system on vehicles designed for the transportation of disabled pupils shall be routed to the left of the right frame rail to allow for the installation of a lift on the right side of the vehicle.~~
~~_____ (d) Exhaust system on gasoline-powered buses shall be properly insulated from fuel tank connections by a securely attached metal shield at any point where it is 12 inches or less from fuel tank or tank connections.~~
~~_____ (e) Muffler shall be constructed of corrosion-resistant material.~~
~~_____ (40) Traction Assisting Devices (Optional)~~
~~_____ (a) When used, sanders shall:~~
~~_____ (i) Be of hopper cartridge-valve type.~~
~~_____ (ii) Have metal hopper with all interior surfaces treated to prevent condensation.~~
~~_____ (iii) Be of at least 100-pound (grit) capacity.~~
~~_____ (iv) Have cover on filler opening of hopper that screws into place, sealing unit airtight. Filling to be accomplished from outside the bus body.~~

~~(v) Have discharge tubes extending under fender to front of each rear wheel.~~

~~(vi) Have no-clogging discharge tubes with slush-proof, non-freezing rubber nozzles.~~

~~(vii) Be operated by electric switch with pilot light mounted on instrument panel.~~

~~(viii) Be exclusively driver-controlled.~~

~~(ix) Have gauge to indicate hoppers need refilling when they are down to one-quarter full.~~

~~(b) Automatic traction chains may be installed.~~

~~(41) Tow Hooks~~

~~(a) Two front and two rear heavy-duty frame mounted tow hooks shall be furnished on all buses Type B, C, and D. Tow hooks must project beyond the front or rear bumpers. The front tow hooks shall be furnished by the chassis manufacturer, and the rear tow hooks furnished by the body manufacturer on Type C buses. Front and rear tow hooks shall be furnished by the body manufacturer on Type B and D buses.~~

~~(42) Undercoating~~

~~(a) Entire underside of bus body, including floor sections, cross member, and below floor line side panels, shall be coated with rust-proofing compound for which compound manufacturer has issued notarized certification of compliance to bus body builder that compound meets or exceeds all performance and qualitative requirements of Department of the Army Coating Compounds TT-C-520b, Paragraph 3.4 (1973), using modified test procedures* (*Test panels are to be prepared in accordance with paragraph 4.6.12 of TT-C-520b with modified procedure requiring that tests be made on a 48-hour air cured film at thickness recommended by compound manufacturer) for the following requirements:~~

~~(i) Salt spray resistance--pass test modified to five percent salt and 1,000 hours.~~

~~(ii) Abrasion resistance--pass.~~

~~(iii) Fire resistance--pass.~~

~~(b) Undercoating compound shall be applied with suitable airless or conventional spray equipment to recommended film thickness and shall show no evidence of voids in cured film.~~

~~(42) Ventilation~~

~~(a) Auxiliary Fans (Optional)~~

~~(i) Auxiliary fans shall be placed in locations where they can be adjusted to their maximum effectiveness.~~

~~(ii) These fans shall be approximately six inches in diameter and two-speed.~~

~~(iii) The blades of the fans shall be covered with a protective cage. Each of these fans shall be controlled by a separate switch.~~

~~(b) Body shall be equipped with suitable, controlled ventilating system of sufficient capacity to maintain proper quantity of air under operating conditions without opening of windows except in extremely warm weather.~~

~~(c) Static-type, non-closable exhaust ventilation shall be installed in low-pressure area of roof.~~

~~(d) Power Roof Vent Fans (Optional)~~

~~(i) If power roof vent fans are required they shall be two-speed electric type with a switch for each fan that is supplied. The roof fan ventilation opening shall be provided with an iris-type closing mechanism to provide for shutting off the air flow in inclement weather.~~

~~(43) Wheelhousing~~

~~(a) The wheelhousing opening shall allow for easy tire removal and service.~~

~~(b) The inside height of the wheelhousing above the floor line shall not exceed 12 inches. All wheel housings shall be rubber covered.~~

~~(c) The wheelhousing shall provide clearance for installation and use of tire chains on dual power-driving wheels.~~

~~(d) No part of a raised wheelhousing shall extend into the emergency door opening.~~

~~(44) Windows~~

~~(a) Glass Quality and Dimensions~~

~~(i) The windshield shall be large enough to permit the driver to see the road clearly and shall be slanted or "swept back" to reduce glare. It shall be mounted between front corner posts that provide a minimal obstruction to the driver's view.~~

~~(ii) The glass used in the windshield shall be AS-1 standard. Side windows and all doors shall be at least AS-2 standard, and rear windows shall be at least AS-3 standard. All windows shall be mounted so the monogram is visible.~~

~~(iii) Windshield glass shall be tinted or shaded with a horizontal gradient band gradually decreasing in light transmission to 35 percent or less at the top of the windshield.~~

~~(iv) The edges of all glass mounted in a fixed position shall be held in place by a rubber gasket of such type that broken glass can be easily removed and replaced.~~

~~(v) For ventilation purposes, the driver's window shall be adjustable and shall be equipped with a positive latch that is lockable from the inside. The driver's window shall be of a sliding type.~~

~~(A) Exception: Type A and Type B cutaway manufacturers' standards.~~

~~(vi) The side window latches shall be easy to operate and capable of holding the sash securely in place in all positions.~~

~~(vii) The side windows shall be equipped with sash locks of such construction that spring tension shall push the latch into place and hold it securely in place.~~

~~(b) Each full side window shall provide unobstructed emergency opening not less than nine inches nor more than 12 inches high and 22 inches wide, obtained by lowering window. Side windows, except driver's window, may be tinted.~~

~~(c) Push-out type, split-sash windows may be used.~~

~~(46) Windshield Washers~~

~~(a) A windshield washer system shall be provided.~~

~~(47) Windshield Wipers~~

~~(a) A windshield wiping system, two-speed or more, shall be provided.~~

~~(b) The wipers shall be operated by one or more air or electric motors of sufficient power to operate wipers. If one motor is used the wiper shall work in tandem to give full sweep of windshield. If more than one motor is used, each motor shall have a separate switch.~~

~~(48) Wiring~~

~~(a) All wiring shall conform to current standards of the Society of Automotive Engineers.~~

~~(b) Circuits~~

~~(i) Wiring shall be arranged in circuits as required with each circuit protected by a fuse or circuit breaker. A system of color and number coding shall be used.~~

(ii) Wiring shall be arranged in at least six regular circuits, as follows:

- (A) Head, tail, stop (brake), and instrument panel lamps.
 - (B) Clearance and step-well lamps (step-well lamp shall be actuated when service door is opened).
 - (C) Dome lamp.
 - (D) Ignition and emergency door signal.
 - (E) Turn signal lamps.
 - (F) Alternately flashing signal lamps.
- (iii) Any of the above combination circuits may be subdivided into additional independent circuits.

(iv) Whenever heaters and defrosters are used, at least one additional circuit shall be installed.

(v) The bus body electrical system shall be equipped with a continuous duty solenoid switch operated by the ignition switch that cuts off the electrical power to most body circuits such as heaters, dome lights, etc. when the ignition switch is turned to the "off" position.

(vi) Whenever possible, all other electrical functions (such as Sanders and electric type windshield wipers) shall be provided with independent and properly protected circuits.

(vii) Each body circuit shall be coded by number or letter and color on a diagram of circuits and shall be attached to the body in readily accessible location.

(c) The entire electrical system of the body shall be designed for the same voltage as the chassis on which the body is mounted.

(d) All wiring shall have an amperage capacity equal to or exceeding the designed load. All wiring splices are to be done at accessible locations and noted as splices on wiring diagram.

(e) A body wiring diagram of easily readable size shall be furnished with each bus body or affixed in an area convenient to the electrical accessory control panel.

(f) Body power wire shall be attached to a special terminal on the chassis.

(g) All wires passing through metal openings shall be protected by a grommet or loom.

(h) Wires not enclosed within body shall be fastened securely at intervals of not more than 18 inches. All joints shall be soldered or joined by equally effective connectors.

(i) A main battery power disconnect switch is optional.

R909-3-7. Vehicles for Transporting Disabled Students.

(1) General Requirements

(a) The specifications in this section are intended to be supplementary to specifications in the chassis and body sections. In general, buses used for transporting disabled students should meet the requirements of all preceding sections plus those listed in this section. Since it is recognized by the entire industry that the field of transportation for students with disabilities is characterized by special needs for individual cases and by a rapidly changing technology for meeting these needs, a flexible, common-sense approach to the adoption and enforcement of specifications for these vehicles is prudent.

(b) School buses are defined as vehicles designed to carry more than ten persons. Vehicles with ten passenger positions (including the driver) cannot be certified as buses. For this reason, the classification "Multipurpose Passenger Vehicle" (MPV) must be used by manufacturers for these vehicles in lieu of the classification

"school bus." In determining passenger capacity, wheelchair positions are counted as passenger positions.

(c) The following standards address modifications as they pertain to school buses that, with standard seating arrangements prior to modification, would accommodate more than ten persons. If by addition of a power lift, wheelchair positions, or other modifications, the capacity is reduced such that vehicles become MPVs, the intent of these standards is that these vehicles are required to meet the same standards required prior to such modifications and such MPVs are included in all references to school buses and school bus requirements.

(d) School buses designed for transporting children with special transportation needs shall comply with state Standards applicable to school buses and to Federal Motor Vehicle Safety Standards (FMVSS) for their Gross Vehicle Weight Rating (GVWR) category.

(e) Any school bus that is used for the transportation of children who are confined to a wheelchair and/or other mobile-positioning device or who require life support equipment that prohibits their use of the regular service entrance, shall be equipped with a power lift unless a ramp is needed for unusual circumstances related to passenger needs.

(2) Aisles

(a) All school buses equipped with a power lift shall have aisles leading to the emergency door(s) from wheelchair area of sufficient width (minimum 30 inches) to permit passage of maximum size wheelchair.

(3) Communications

(a) All school buses should be equipped with an electronic two-way voice communication system.

(4) Fastening Devices

(a) Occupant securement systems must comply with the requirements of FMVSS 222.

(b) The following information shall be provided with each vehicle equipped with a securement system:

(i) Detailed installation instructions and parts list.

(ii) Detailed instructions and a diagram showing the proper placement and positioning of the system, including correct belt angles.

(5) Glass

(a) Tinted glass up to 30 percent light transmission may be installed wherever AS-3 glass is permitted.

(6) Heaters

(a) Additional heater(s) may be installed in the rear portion of the bus on or behind wheel wells.

(7) Power lift

(a) Lifting mechanism shall be able to lift minimum payload of 800 pounds. A clear opening and platform to accommodate a 30-inch wide wheelchair shall be provided.

(b) When the platform is in the fully up position, it shall be locked in position mechanically to prevent the lift platform from falling while in operation due to a power failure.

(c) Controls shall be provided that enable the operator to activate the lift mechanism from either inside or outside of the bus. There shall be a means of preventing the lift platform from falling while in operation due to a power failure.

(d) Power lifts shall be so equipped that they may be manually raised in the event of power failure of the power lift mechanism.

~~_____ (c) Lift travel shall allow the lift platform to rest securely on the ground.~~

~~_____ (f) All edges of the platform shall be designed to restrain wheelchair and operator's feet from being entangled during the raising and lowering process.~~

~~_____ (g) Platform shall be fitted on both sides and rear with full width shields that extend above the floor line of the lift platform.~~

~~_____ (h) A restraining device shall be affixed to the outer edge (curb end) of the platform that will prohibit the wheelchair from rolling off the platform when the lift is in any position other than fully lowered to ground level.~~

~~_____ (i) A self-adjusting, skid-resistant plate shall be installed on the outer edge of the platform to minimize the incline from the lift platform to the ground level. This plate, if so designed, may also suffice as the restraining device described in Subsection 91.08 above. The lift platform must be skid-resistant.~~

~~_____ (j) A circuit breaker or fuse shall be installed between power source and lift motor if electrical power is used.~~

~~_____ (k) The lift mechanism shall be equipped with adjustable limit switches or by-pass valves to prevent excessive pressure from building in the hydraulic system when the platform reaches the full up position or full down position.~~

~~_____ (8) Ramps~~

~~_____ (a) When a power system is not adequate to load and unload students having special and unique needs, a ramp device may be installed.~~

~~_____ (b) If a ramp is used, it shall be of sufficient strength and rigidity to support the special device, occupant, and attendant(s). It shall be equipped with a protective flange on each longitudinal side to keep the special device on the ramp.~~

~~_____ (c) Floor of ramp shall be of non-skid construction.~~

~~_____ (d) Ramp shall be of such weight that an average-sized female driver or attendant can lift it, and designed in such a way (including lifting handles or slots) that the driver or attendant can put it in place and return it to its storage place without undue stress.~~

~~_____ (9) Regular Service Entrance~~

~~_____ (a) In Type C and D buses, there shall be three-step risers of equal height in the entrance well. The first step at the service door shall be not less than 10 inches and not more than 14 inches from the ground, based on standard chassis specifications. Service door of Type D buses shall be 12 to 16 inches from the ground.~~

~~_____ (b) Step risers shall not exceed a height of 10 inches. When plywood is used on a steel floor or step, the riser height may be increased by the thickness of the plywood.~~

~~_____ (c) On power lift-equipped vehicles, step shall be the full width of the stepwell, excluding the thickness of the doors in open position.~~

~~_____ (d) Steps shall be enclosed to prevent accumulation of ice or snow.~~

~~_____ (e) Steps shall not protrude beyond side body line.~~

~~_____ (f) As an option, an additional fold-out step may be provided to reduce the distance from the first step to the ground.~~

~~_____ (10) Restraining Devices~~

~~_____ (a) Seat frames may be equipped with attachments or devices to which belts, restraining harnesses, or other devices may be attached. Optional seats with built-in anchors may be used.~~

~~_____ (11) Seating Arrangements~~

~~_____ (a) Flexibility in seat spacing to accommodate special devices shall be permitted due to constantly changing passenger requirements and shall be consistent with the student Individualized Education Plan (IEP).~~

~~_____ (12) Special Lights~~

~~_____ (a) Lights shall be placed inside the bus to sufficiently illuminate lift area and shall be activated from the lift door area. In addition an exterior light shall be provided in the skirt area to illuminate the outside area around the lift.~~

~~_____ (13) Special Service Entrance~~

~~_____ (a) Bus bodies may have a special service entrance constructed in the body to accommodate a wheelchair lift for the loading and unloading of passengers. If such an entrance is constructed in the bus body, it must conform to the placement restrictions set forth in FMVSS 217.~~

~~_____ (b) The opening, to accommodate the special service entrance, shall be at any convenient point on the right (curb side) of the bus and far enough to the rear to prevent the door(s), when open, from obstructing the right front regular service door (excluding a regular front service door lift).~~

~~_____ (c) The opening may extend below the floor through the bottom of the body skirt. If such an opening is used, reinforcements shall be installed at the front and rear of the floor opening to support the floor and provide the same strength as other floor openings.~~

~~_____ (d) The opening, with doors open, shall be of sufficient width to allow the passage of wheelchairs. The minimum clear opening through the door and the lift mechanism shall be 30 inches in width.~~

~~_____ (e) A drip molding shall be installed above the opening to effectively divert water from the entrance.~~

~~_____ (f) The entrance shall be of sufficient width and depth to accommodate various mechanical lifts and related accessories as well as the lifting platform.~~

~~_____ (g) Door posts and headers at the entrance shall be reinforced sufficiently to provide support and strength equivalent to the areas of the side of the bus not used for service doors.~~

~~_____ (14) Special Service Entrance Doors~~

~~_____ (a) A single door may be used if the width of the door opening does not exceed 42 inches. Three point bar lock is required.~~

~~_____ (b) Two doors shall be used if a single door opening would have to exceed 42 inches.~~

~~_____ (c) All doors shall open outwardly.~~

~~_____ (d) All doors shall have positive fastening devices to hold doors in the open position.~~

~~_____ (e) All doors shall be weather sealed. Double door configurations shall be so constructed that a flange on the forward door overlaps the edge of the rear door when the doors are closed.~~

~~_____ (f) If optional power doors are installed, the design shall permit release of the doors for opening and closing by the attendant from the platform inside the bus.~~

~~_____ (g) When manually operated dual doors are installed, the rear door shall have at least one point fastening device connecting it to the header. The forward mounted door shall have at least three point fastening devices. One shall be to the header, one to the floor line of the body, and the other shall be into the rear door. These~~

locking devices shall afford maximum safety when the doors are in the closed position. The door and hinge mechanism shall be of a strength that will provide for the same type of use as that of a standard entrance door.

(h) Lift door materials, panels, and structural strength shall be equivalent to the conventional service and emergency doors. Color, rub rails, paneling, lettering, and other exterior features shall match adjacent sections of the body.

(i) Each door shall have windows set in rubber compatible within one inch of the lower line of adjacent sash.

(j) Door(s) shall be equipped with a device that will activate a flashing one-inch light located in the driver's compartment when door(s) is not securely closed and ignition is in "on" position.

(k) Special service entrance doors shall be equipped with padding at the top edge of the door opening. Pad shall be at least three inches wide and one inch thick and extend the full width of the door opening.

(l) A switch shall be installed to prevent the lifting mechanism from operating when the lift platform door is closed.

(m) Optional portable student support equipment or special accessories shall be secured at the mounting location to withstand a pulling force of five times the weight of the item or shall be retained in an enclosed, latched compartment. Such special items include:

(i) Belt cutter for use in emergencies. Belt cutter should be designed to eliminate the possibility of the operator or others getting cut during its use. It should be stored in a safe place such as in the first aid kit.

(ii) Crutches, walkers, canes and similar devices.

(iii) Medical support equipment such as oxygen tanks and ventilators.

R909-3-8. School Buses Equipped to Operate on Compressed Natural Gas.

(1) General Requirements.

(a) All compressed natural gas (CNG) installations shall meet all applicable federal and state laws, standards, and requirements, National Fire Protection Association (NFPA) standards, American Society of Mechanical Engineers (ASME) and American Society for Testing and Materials (ASTM) codes and industry safety requirements. In addition, CNG installations shall meet the requirements set forth in R714-400, "Compressed and Liquefied Gas Fuel Systems."

(b) All CNG installations shall be made in compliance with the standards contained in NFPA Pamphlet No. 52.

(c) All devices used in the CNG system that may be subjected to container pressure shall be designed for the working pressure within a design safety factor of at least 4 and shall be plainly marked as such.

(d) A certified mechanic shall inspect all fittings and attachments at least quarterly for leaks, wear, tightness, or undue stress.

(e) CNG Tanks.

(i) All tanks shall be fabricated of steel, aluminum, or composite materials and be certified in accordance with U.S. Department of Transportation (DOT), Canadian Transport Commission (CTC), or ASME regulations to a service pressure of not less than 3,000 psi and a test burst pressure minimum of 5,000

psi and plainly marked with the words "CNG ONLY," and equipped with a DOT, CTC or ASME certified springload pressure relief valve plainly marked for discharge psi setting and discharge cfm capacity.

(ii) All tanks shall be directly secured to the main frame in such a manner as to prevent jarring loose, slipping or rotating, withstanding a static force of eight times the weight of a fully pressurized tank with a maximum displacement of .5 inch.

(f) CNG Fuel Lines and Installation

(i) Fuel lines shall be permanently secured at intervals of not more than two feet and shall be placed in such a manner as to minimize the possibility of damage due to vibration, strains, or wear.

(ii) Fuel lines passing through structural members shall be protected by rubber grommets or bulkhead fittings and follow the main frame channel wherever possible.

(iii) All fuel lines shall be approved stainless steel with a maximum working pressure of 3,000 psi, a minimum burst pressure of four times the working pressure, and shall be labeled as to the working pressure and CNG service.

(iv) An approved lock-off or solenoid valve, with filter, shall be provided in the fuel line at a point ahead of the inlet of the natural gas converter, designed to prevent the flow of fuel to the converter when the engine is not running. This may be accomplished by (a) an approved mechanical lock-off controlled by either the engine vacuum or oil pressure, or (b) an approved electric solenoid controlled by either a vacuum or oil pressure switch.

(g) CNG Valves, Appurtenances, and Connections

(i) All container valves, appurtenances and connections shall be protected to prevent damage due to accidental contact with stationary or loose objects, mud or ice and, to the extent possible, from damage due to vehicular accidents.

(ii) Relief valve discharge shall be directed so that any gas released will not impinge on the vehicle and so that the possibility of impingement on adjacent vehicles or persons is minimized. The vent hose shall be attached in such a manner that ice hanging on it will not detach it from its mounting.

(iii) Outlets shall be protected by caps, covers, or other means to keep water or dirt from collecting in the lines, thus restricting the flow of natural gas.

(iv) Each line and its connectors shall withstand the pressure caused by the discharge of vapor from a safety device in fully open position.

(h) Fuel Injection

(i) Gas mixers, fuel injectors and pressure regulators for CNG shall meet minimum design standards set forth in NFPA Pamphlet No. 52.

(i) Fueling CNG vehicles

(i) Fueling shall be done by personnel who have been trained and certified by the fuel supplier.

(ii) No passenger shall be on board during fueling.

(iii) Engine must be shut off during fueling.

(iv) No source of ignition shall be permitted within 10 feet of the vehicle being fueled.

(v) Filling level shall not exceed 125 percent of working pressure.

(vi) Instructions shall be conspicuously posted at the fueling site.

R909-3-9. Requirements for Used School Buses.

- _____ (1) General Requirements:
 - _____ (a) This part of the Standards for Utah School Buses and Operations, 1994 Edition sets forth the requirements for used school buses to be used in Utah whether purchased or leased by the school district or private school. The modifications necessary to make a used bus comply with this section of the Standards can be made either by the seller or the buyer. The ultimate responsibility for assuring that a used bus complies with all federal and state standards before the bus is placed in service is the responsibility of the using district or school.
 - _____ (b) Used school buses shall:
 - _____ (i) comply with the version of the Standards for Utah School Buses and Operations in effect at the time of purchase of the bus, and
 - _____ (ii) comply with the applicable sections of current state standards. This requirement shall be satisfied irrespective of whether the bus had previously been used in the State of Utah.
 - _____ (c) If required, glass used in used school buses shall be replaced to make it comply with current state standards.

R909-3-10. New School Bus Requirements.

- _____ (1) Procurement and Inspection:
 - _____ (a) New school bus procurement is outlined below:
 - _____ (i) Procurement policies and vehicle specifications need to be established by local school districts and private schools.
 - _____ (ii) Prepare procurement specifications. Mail one copy to State Office of Education, Pupil Transportation Specialist. Specification for bid shall include all applicable FMVSS and Utah standards.
 - _____ (iii) Request for bids and specifications sent to qualified suppliers of school buses.
 - _____ (iv) Bids received, evaluated, and selection made.
 - _____ (v) District issues purchase order.
 - _____ (vi) Successful bidder provides school bus or buses.
 - _____ (vii) Before any new school bus is placed into service in a school district, it shall first be inspected and tested to verify compliance with the Standards for Utah School Buses and Operations, 1994 Edition.
 - _____ (viii) Inspection shall be conducted by the Safety Inspection Office of the Utah Highway Patrol. On or before delivery of a new bus, the school district or private school shall notify the Safety Inspection Office and request a new vehicle inspection. Such inspection shall be carried out within 30 days of delivery.
 - _____ (ix) Acceptance testing is conducted by local agency or with assistance from the Utah Department of Transportation and the Pupil Transportation Specialist, Utah State Office of Education, to insure that the school bus complies with all standards and specifications.
 - _____ (b) The acceptance test shall include but not be limited to:
 - _____ (i) An inventory of required safety features and equipment specified will be compared with the line ticket as issued by the manufacturer.
 - _____ (ii) Functional tests of all lamps and signals, emergency braking system, horn and other operating systems.
 - _____ (iii) Power tests.
 - _____ (iv) Braking test.

R909-3-11. Exemption From or Modification of Requirements.

- _____ (1) General Requirements
 - _____ (a) It is anticipated that to achieve the stated objectives of these standards, i.e., provide maximum safety consistent with the economic use of pupil transportation funds and available school bus technology, quality, reliability, conformity, and serviceability, it shall be necessary to allow exemption from the requirements and periodically modify the requirements. This part of the Standards sets forth the procedures for obtaining exemptions and modifying the provisions of the Standards for Utah School Buses and Operations, 1994 Edition.
 - _____ (b) An exemption from the requirements of the Standards may be initiated by a manufacturer or supplier of pupil transportation equipment or a local school district. The request shall be written, should include sufficient supporting data to justify the request for an exemption, and should be submitted to the Pupil Transportation Specialist, Utah State Office of Education.
 - _____ (c) All requests for exemptions from the requirements of the Standards shall be reviewed by a committee consisting of at least one representative of the Utah State Department of Transportation, one representative of the Utah State Department of Public Safety, and such consultants as deemed appropriate. If necessary, the committee may require that the request be presented in person.
 - _____ (d) All requests for exemption from the requirements of the Standards, together with the recommendations of the review committee, shall be submitted to the State Office of Education for its action and transmittal to the Utah Department of Transportation. Final authority for determining the disposition of a request is vested with the Utah Department of Transportation.
 - _____ (e) Modification Procedures:
 - _____ (i) An intent to modify the Standards shall be distributed to certified suppliers and other interested parties at least thirty (30) days prior to consideration of the modification by the Utah State Office of Education and the Utah Department of Transportation.
 - _____ (ii) After approval of the proposed modification by the Utah State Office of Education and the Utah Department of Transportation, the modification shall become effective 90 days following distribution.

R909-3-12. Appendix 1.

- _____ (1) Colorado Racking Load Test
 - _____ (a) A Racking Load Test (University of Colorado, Boulder, 1972) shall be performed to assure adequate shear stiffness and strength of the bus body. The racking load shall be applied along a line connecting the most distant points on a transverse cross section of the bus interior.
 - _____ (b) The maximum jack load for the two-frame assembly is determined by the following formula:

TABLE V

$$j = 2P, \text{ where } j = \text{maximum jack load for two frame test assembly}$$

$$p = DVW / N \text{ and } p = \text{load/frame}$$

$$DVW = DF \times GVW \quad DVW = \text{dynamic vehicle weight}$$

$$DF = \text{dynamic factor, not less than 1.5}$$

$$GVW = \text{gross vehicle weight}$$

$$N = \text{total number of bus body frames}$$

~~Thus for a DF = 1.5, a GVW = 22,000 lbf and N=11, the dynamic vehicle weight is DVW = 33,000 lbf, the load/frame is P = 3000 lbf and the maximum jack load is j = 6000lbf.~~

~~(c) When a complete bus body is rack loaded, the total load DVW must be distributed uniformly along the bus body. This may be accomplished by mounting a series of hydraulic jacks along the length of the bus interior. Seats may be removed to facilitate jack mounting although removal is not recommended when upper seat frames are normally attached to the body structure. The rack load will be considered to be uniformly distributed when the variation in the hydraulic jack readings is less than 10%. At maximum load the sum of all jack readings shall equal DVW.~~

R909-3-13. Appendix 2.

- ~~(1) Power Test~~
 - ~~(a) Performance Requirements: The bus shall be so powered and geared that the completed bus shall be capable of surmounting a 3.7 percent grade at a speed of twenty miles per hour with a full passenger load on a continuous pull.~~
 - ~~(b) Recommended Procedure:~~
 - ~~(i) Measure the weight of the vehicle. $Wt = \dots$ lbs.~~
 - ~~(ii) Determine the time in seconds it takes to accelerate the bus from 15 to 25 mph on a level roadway. ($T = \dots$ seconds).~~
 - ~~(iii) Perform the following calculations (Where n = maximum number of passengers):~~
 - ~~(A) $Wt_2 = Wt \dots + 300 =$~~
 - ~~(B) $Wt_2 = Wt \dots + 150 + 120n =$~~
 - ~~(C) $a = 0.455/T \times Wt_1/Wt_2$~~
 - ~~(iv) If the "a" from step three is greater than or equal to 0.037, the bus is adequate. If it is less than .037, the bus is not adequate.~~

R909-3-14. Appendix 3.

- ~~(1) Braking Test~~
 - ~~(a) Performance Requirement: The service braking system shall be designed and constructed such that by the application of a single control unit, the bus will achieve a deceleration of 14 feet per second from a speed of 20 mph with a pedal effort of not more than 75 pounds.~~
 - ~~(b) Recommended Procedure:~~
 - ~~(i) Determine the time it takes to stop the bus from 20 mph (where $T = \dots$ seconds)~~
 - ~~(ii) If "T" is less than or equal to 2.5 seconds, the bus is adequate. If it is greater than 2.5 seconds, the bus is not adequate.~~
 - ~~(iii) Contact Pupil Transportation Specialist, State Office of Education, for use of a decelerometer instrument to measure braking efficiency.]~~

R909-3-1. Authority and Purpose.

~~This rule is enacted under authority of Section 41-6a-1304 and 41-6a-1309 for the purpose of governing the design and operation of school buses and governing the placement of advertisements on school buses.~~

R909-3-2. Adoption of Standards for Utah School Buses and Operations Standards 2010 Edition.

~~(1) In Cooperation with the Utah State Office of Education and the Department of Public Safety, The Standards for Utah School Buses and Operations and Appendix as contained in~~

~~the 2010 Edition, is incorporated by reference, except for Part, "Finance, School District".~~

~~(a) The Standards for Utah School Buses and Operations is published by the Utah State Office of Education and can be found at <http://www.schools.utah.gov/finance/DOCS/Transportation/2010-BusStandards.aspx>.~~

~~(b) The 2010 Standards Appendix is published by the Utah State Office of Education and can be found at <http://www.schools.utah.gov/finance/DOCS/Transportation/2010-StandardsAppendix.aspx>.~~

~~(2) These requirements apply to the design and operation of all school buses in this state when:~~

- ~~(a) owned and operated by any school district;~~
- ~~(b) privately owned and operated under contract with a school district; or~~
- ~~(c) privately owned for use by a private school.~~

R909-3-3. Advertisement on School Buses.

~~(1) In addition to the restrictions listed in Section 41-6a-1309 advertisements placed on a bus may not:~~

- ~~(a) cover, obscure or interfere with the operation of any required lighting, reflective tape, emergency exits or any other safety equipment;~~
- ~~(b) be placed within six inches of any required markings, lighting or other required safety equipment;~~
- ~~(c) resemble a traffic control device; or~~
- ~~(d) be illuminated or be constructed of reflective material.~~

KEY: school buses, safety

Date of Enactment or Last Substantive Amendment: [1994]2011

Notice of Continuation: January 5, 2009

Authorizing, and Implemented or Interpreted Law: 41-6a-1304

**Transportation, Program Development
R926-14
Utah Scenic Byway Program
Administration; Scenic Byways
Designation, De-designation, and
Segmentation Processes**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34956

FILED: 06/20/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: There are three purposes to the amendments to Rule R926-14. The first set of amendments is to allow the Utah State Scenic Byway Committee to conduct meetings

through electronic means to reduce the travel required of committee members, particularly for meetings called in addition to the mandated Spring meeting. The second set of amendments clarifies the offset distance required for regulated outdoor advertising, as it applies to byway segmentation, and the potential impact on segmentation decisions that National Highway System status may have. The third set of amendments gives direction to UDOT on what tasks need to be carried out after changes are approved on the byway system.

SUMMARY OF THE RULE OR CHANGE: The changes allow the Utah State Scenic Byway Committee to conduct meetings through electronic means to reduce the travel required of committee members, particularly for meetings called in addition to the mandated Spring meeting, clarify the offset distance required for regulated outdoor advertising, as it applies to byway segmentation, and the potential impact on segmentation decisions that National Highway System status may have, and give direction to UDOT on what tasks need to be carried out after changes are approved on the byway system.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 52-4-207 and Section 63G-3-201 and Section 72-4-301 and Section 72-4-301.5 and Section 72-4-302 and Section 72-4-303 and Section 72-4-304

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There may be some savings to the state budget by allowing the Utah State Scenic Byway Committee to hold some meetings through electronic means reducing per diem and travel costs for committee members.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated cost or savings to local government because changes to sign spacing and segmentation eligibility are only clarifications of state and federal regulations already in place and do not create any new impacts.
- ◆ **SMALL BUSINESSES:** There are no anticipated cost or savings to small businesses because changes to sign spacing and segmentation eligibility are only clarifications of state and federal regulations already in place and do not create any new impacts.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because changes to sign spacing and segmentation eligibility are only clarifications of state and federal regulations already in place and do not create any new impacts.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs for affected persons because the rule outlines the internal processes of the Utah Scenic Byway Committee and does not create compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts on businesses because the rule outlines the internal processes of the Utah Scenic Byway Committee and does not create fiscal impacts.

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

TRANSPORTATION
PROGRAM DEVELOPMENT
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:

- ◆ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: John Njord, Executive Director

R926. Transportation, Program Development.

R926-14. Utah Scenic Byway Program Administration; Scenic Byways Designation, De-designation, and Segmentation Processes.

R926-14-1. Purpose.

The purpose of this rule is to establish the following:

- (1[a]) administration of the Utah Scenic Byway program;
- (2[b]) the criteria that a highway shall possess to be considered for designation as a state scenic byway;
- (3[e]) the process for nominating a highway to be designated as a state scenic byway;
- (4[d]) the process for nominating an existing state scenic byway to be considered for designation as a National Scenic Byway or All-American Road;
- (5[e]) the process and criteria for removing the designation of a highway as a scenic byway or segmentation of a portion thereof; and
- (6[f]) the requirements for public hearings to be conducted regarding proposed changes to the scenic byway status of corridor, and related notifications.

R926-14-2. Authority.

The provisions of this rule are authorized by the following grants of rulemaking authority and provisions of Utah Code: Title 52, Chapter 4; Title 63G, Chapter 3; and the Designation of Highways Act, Title 72, Chapter 4.

R926-14-3. Definitions.

Terms used in this rule are defined in Title 72, Chapter 4. The following additional terms are defined for this rule:

(1) "All-American Road" means a scenic byway designation made at the national level for state scenic byways that significantly meet criteria for multiple qualities out of the six defined intrinsic qualities.

(2) "America's Byways" means the brand utilized by the National Scenic Byways Program for promotion of the National Scenic Byways and All American Roads.

(3) "Committee" or "State Committee" means the Utah State Scenic Byway Committee as defined in Title 74, Chapter 4 and does not refer to any local scenic byway committee[;] herein defined.

(4) "Corridor management plan" means a written document prepared by the local scenic byway committee in accordance with federal policies that specifies the actions, procedures, controls, operational practices, and administrative strategies necessary to maintain the intrinsic qualities of a scenic byway.

(5) "De-designation" means removing a current state scenic byway designation by the committee from an entire existing scenic byway.

(6) "Department" means the Utah Department of Transportation.

(7) "Designation" means selection of a roadway by the committee as a state scenic byway or selection of an existing state scenic byway by the U.S. Secretary of Transportation as one of America's Byways.

(8) "Federal policies" means those rules outlining the National Scenic Byway Program and that set forth the criteria for designating roadways as National Scenic Byways or All-American Roads, specifically the FHWA Interim Policy.

(9) "Governmental Body" means the elected governing board of a political subdivision, such as a town, city, county, tribal government or Association of Governments.

(10) "Grant" means discretionary funding available on a competitive basis to designated scenic byways from the Federal Highway Administration through the National Scenic Byways Program.

(11) "Intrinsic quality" means scenic, historic, recreational, cultural, archaeological, or natural features that are considered representative, unique, irreplaceable, or distinctly characteristic of an area. The National Scenic Byways Program further defines each of these qualities.

(12) "Local Scenic Byway Committee" means the committee consisting of the local byway coordinator and representatives from nearby governmental bodies, agencies, tourism related groups and interested individuals that recommends and prioritizes various projects and applications relating to a scenic byway. The local scenic byway committee promotes and preserves intrinsic values along the byway.

(13) "Local Byway Coordinator" means an individual recognized by the local scenic byway committee as chair. If a local scenic byway committee does not exist for a scenic byway, the local byway coordinator is an individual recognized by the state committee chair as the person to contact for applications and other administrative business for the state scenic byway.

(14) "National Scenic Byway" means a scenic byway designation made at the national level for byways that significantly meet criteria for at least one quality out of the six defined intrinsic qualities.

(15) "National Scenic Byways Program" or "NSBP" means a program provided by the Federal Highway Administration to promote the recognition and enjoyment of America's memorable roads.

(16) "State Scenic Byway" means a Utah roadway corridor that has been duly designated by the committee for its intrinsic qualities.

(17) "Status" refers to the current designation of a scenic byway, i.e., state scenic byway, National Scenic Byway, All-American Road, undesignated roadway, segmented scenic byway or de-designated scenic byway.

R926-14-4. Utah State Scenic Byway Committee Organization and Administration.

(1) The authorization of the committee, its membership, administration, powers, and duties are defined in Title 72, Chapter 4.

(2) The committee shall meet annually, at a minimum, or as frequently as needed to administer the State Scenic Byway program within the State of Utah. This business shall include, but not be limited to;

_____ (a) designating, de-designating and segmenting of state scenic byways;

_____ (b) recommending considerations for National and All-American Road recognition to the Legislature;

_____ (c) [;] recommending applications to the NSBP;

_____ (d) prioritizing applications for Scenic Byway Discretionary funding and other funding that may be available; and

_____ (e) other business as may be needed to administer the scenic byway program.

(3) The committee will meet in the second quarter of the calendar year. Additional committee meetings may be called to conduct business necessary to administer the state scenic byway program.

_____ (a) The Spring meeting is intended to be an in-person gathering of the full committee at a single anchor location. Where the need arises, and as authorized by Title 52, Chapter 4, individual members may request to be connected to the meeting via teleconference, video conference, web conference, or other emerging electronic technology, if they make the request at least three days prior to the committee meeting to allow for arrangements to be made for the connection.

_____ (b) All additional meetings called by the chair may be held as either in-person or electronic meetings, at the discretion of the chair, as authorized by Title 52, Chapter 4.

_____ (i) Electronic meetings may be fully electronic, i.e. each member may join on an individual remote connection (depending on the technology used), but an anchor location must be provided for the public at one or more connections, preferably at a conference room available to either the department or the Utah Office of Tourism, that is large enough to accommodate anticipated demand.

_____ (ii) Electronic meetings may be via teleconference, video conference, web conference, or other emerging electronic technology, at the discretion of the chair, as long as adequate time is provided to set up the required electronic connections for all participants and the technology used is generally publicly available.

_____ (iii) All meetings, whether in-person or electronic, must be advertised and accessible to the public for both hearing and

comment, which in the case of electronic meetings will require publication of connection details and anchor locations.

(iv) The published agenda for electronic meetings needs to include details on the format of how and when public comment will be received and addressed by the committee. For example, comment during a web conference may be taken continuously via a chat window, then read by the moderator during the time set aside for public input, with committee responding. In a teleconference, public participants may be requested to hold their comments until a designated period is opened by the chair.

~~_____ (6) A poll by telephone or email may be taken of all members for the purpose of approving applications submitted for National Scenic Byway or All-American Road recognition. All committee members will be furnished poll results. A second poll will then be taken of the voting committee members concerning submitting the applications, with the results determining if the application will be submitted. The results will be forwarded to all committee members, and reported at the next committee meeting.~~

~~_____ (7) A poll by telephone or email may be taken of all members for the purpose of prioritizing the funding of grant applications submitted for Scenic Byway Discretionary funds and other available funds. All committee members will be furnished poll results. A second poll will then be taken of the voting committee members concerning prioritizing the applications, with the results determining priorities of the applications to be submitted. The results will be forwarded to all committee members, and reported at the next committee meeting.~~

R926-14-6. Process for Nominating a Highway to Be Designated a State Scenic Byway.

(1) Nominations for a corridor to be designated a state scenic byway shall be forwarded to the committee by a local governmental body.

(2) The nomination application must demonstrate how the nominated road meets the criteria to qualify as a state scenic byway.

(3) The committee will act on a byway-related application only after the responsible organization has held public hearings and submitted minutes of the hearings, including names and addresses of people making comments, a detailed summary of comments made, and proof of public notification.

(4) The committee will consider the nomination after review of the application and after a presentation by the nominating sponsor group, either at the byway location, or at a committee meeting. The committee will vote on proposed designations at the next committee meeting. The committee will report the results of the vote to the nomination sponsor.

(5) Individual communities along the byway corridor that do not support the designation of the byway within the limits of their community have the statutory right, as prescribed in Title 72, Chapter 4, to opt out of any new byway designation through official action of their legislative body, but they become ineligible for byway grants and promotional considerations by doing so.

(6) Upon approval by the committee of a scenic byway nomination, the committee shall notify the Utah Office of Tourism, the department and other interested agencies of the new designation and of the approved alignment and limits of the designated corridor.

(a) The committee will make a request to these agencies that they modify reference of the segment, to reflect the change in scenic byway status, on maps and in materials and website applications identifying scenic byways.

(7) On receiving notification of a newly designated state scenic byway, the department shall amend Rule 926-13 to include the description of the byway and the date of its approval. The department shall forward to the NSBP any electronic files needed to describe or display the new byway in online maps, brochures, or other publications of the NSBP. The department will add the scenic byway to the official highway map at its next printing.

R926-14-7. Process for Nominating a Highway to Be Designated a National Scenic Byway or All-American Road.

In addition to state recognition, state scenic byways may be nominated to the National Scenic Byways Program so that they may be recognized as a byway of national significance through designation as a National Scenic Byway or All-American Road.

(1) Local scenic byway committees shall notify the state committee of their intent to apply for National Scenic Byway or All-American Road status and the state committee shall in turn notify the Legislature of this intent.

(2) Local scenic byway committees desiring national designation are required by the National Scenic Byways Program to prepare nomination applications, adhering to the criteria outlined in applicable federal policies.

(a) A corridor management plan for the byway will be required by the NSBP to be prepared before a nomination application will be considered. The required information and criteria to be included in the corridor management plan are outlined in the federal policies.

(b) The NSBP will issue a call for applications, at which time the local scenic byway committee may submit a nomination application as long as the state scenic byway has been approved for consideration in accordance with the requirements of Title 72, Chapter 4.

(3) Local scenic byway committees are to confer with the state committee during the preparation of a corridor management plan and will submit their nomination applications to the committee for review prior to submitting to the NSBP.

(4) The committee will refer all considerations for America's Byways designations to the Legislature for approval, along with the recommendation of the committee. As required in Title 72, Chapter 4, Legislative approval must be obtained before any application for nomination may be submitted to the NSBP.

(5) Upon approval by the NSBP of a National Scenic Byway nomination, the committee shall notify the Utah Office of Tourism, the department and other interested agencies of the new designation and of any differences in alignment or limits as related to existing state scenic byway designations.

(a) The committee will make a request to these agencies that they modify reference of the segment, to reflect the change in scenic byway status, on maps and in materials and website applications identifying scenic byways.

(6) On receiving notification of a change in byway status to National Scenic Byway or All-American Road, the department shall amend Rule 926-13 to update the description of the byway to reflect the approved changes and the date of NSBP approval.

R926-14-8. Process and Criteria for Removing the Designation of a Highway as a Scenic Byway or Segmentation of a Portion Thereof.

(1) The committee may de-designate a scenic byway if the intrinsic values for which the corridor was designated have become significantly degraded and no longer meet the requirements for which it was originally designated.

(2) The committee may also remove designation on a localized segment of a designated byway if the intrinsic values within the segment have become degraded or if the segment being considered was included primarily for continuity of travel along the designated corridor, does not in and of itself contain the intrinsic values for which the corridor was designated, and the segmentation has strong community-based support.

(3) Highways that are part of the National Highway System (NHS) are still subject to certain federal outdoor advertising regulations, regardless of their scenic byway status. When considering a de-designation or segmentation on an NHS route, either the committee or the local legislative body should become familiar with the regulatory differences between scenic byway status and NHS status, since de-designation or segmentation would not affect the ongoing applicability of NHS regulations and may not always produce the desired effect.

~~(3)~~(4) De-designated corridors and communities or parcels segmented out of the scenic byway designation are no longer subject to byways-related regulations and are no longer eligible for byways-related grants and promotional considerations.

(4)(5) Committee processes for de-designation or segmentation may be initiated by the committee itself or by request from a governmental body.

(5)(6) Alternatively, segmentation of specific parcels or portions of a scenic byway may be considered directly by the legislative body of a county, city, or town where the segmentation is proposed, as provided in Title 72, Chapter 4. The same public hearing requirements are followed for local legislative actions as are ~~stipulated~~ provided herein for committee actions.

~~(6)~~(7) Requests to the committee for segmentation or de-designation of state scenic byways shall be submitted by a governmental body along or adjacent to the scenic byway corridor. Each request shall include discussion of the specific reasons for segmentation or de-designation. Reasons may include, but are not limited to:

(a) segment or corridor is no longer consistent with the state's criteria for selection as a scenic byway;

(b) failure to have maintained or enhanced intrinsic values for which the scenic byway was designated;

(c) degradation of the intrinsic values for which the scenic byway was selected;

(d) segment of byway is not representative of the intrinsic values for which the scenic byway was designated and was included primarily for connectivity; or

(e) state scenic byway designation has become a liability to the corridor.

(8) Parcels on existing byways may not be segmented out of a byway solely for the purpose of evading state and federal regulations pertaining to byway designation, but must also be considered non-scenic or otherwise meet the criteria listed in Paragraph (7). However, towns, cities, and counties may remove

themselves entirely for any purpose, as provided in Title 72, Chapter 4.

(9) State and federal highway regulations require that no regulated outdoor advertising be located within 500 feet of a designated scenic area. Therefore, the size of any parcel or parcels being considered for segmentation would need to be large enough to meet that offset requirement.

~~(7)~~(10) Upon receipt of the request for segmentation or de-designation, the committee chair will add the request to the agenda of the next committee meeting.

~~(8)~~(11) The committee will review the request at the next committee meeting and discuss at least the following:

(a) reasons for segmentation or de-designation;

(b) whether segmentation or de-designation of the scenic byway will significantly degrade the statewide scenic byway system; and

(c) whether segmentation or de-designation is an attempt to evade applicable rules, regulations or requirements.

~~(9)~~(12) The committee will act on a byway segmentation or de-designation request only after the responsible organization has held public hearings and submitted minutes of the hearings, including names and addresses of people making comments, a detailed summary of comments made, and proof of public notification.

~~(10)~~(13) Following discussion of the request, the committee will vote on the request for segmentation or de-designation. The committee will then forward the result of the vote to the requesting governmental body. For segmentation requests heard by the committee and for de-designation actions, the date of approval by the committee is considered the official date of the segmentation or de-designation, for the intent and purpose of how it affects byway program eligibility and subjection to byway regulations.

~~(11)~~(14) Upon approval or disapproval of a de-designation or segmentation request, the acting body, whether the committee or the local legislative body, shall notify the Utah Office of Tourism, the department and other interested agencies of the action taken.

(a) In the case of approval of a de-designation or segmentation, the acting body will make a request to these agencies that they modify reference of the segment, to reflect the change in scenic byway status, on maps and in materials and website applications identifying scenic byways.

(b) In the case where the committee approves the de-designation of a scenic byway that had also been designated as a National Scenic Byway, the committee will inform the National Scenic Byway Program of the decision and make a request to the NSBP that they modify reference of the segment, to reflect the change in scenic byway status, on maps and in materials and website applications identifying scenic byways.

(c) In the case of a local legislative action on a segmentation request, the legislative body shall also notify the committee and the local byway coordinator of the action taken. For segmentation requests heard by a local governmental body, the date of approval by the local governmental body is considered the official date of the segmentation, for the intent and purpose of how it affects byway program eligibility and subjection to byway regulations.

~~[(12)](15)~~ Appeals to the committee concerning local legislative actions are handled as provided in Title 72, Chapter 4.

(16) On receiving notification of segmentation or de-designation, the department shall amend Rule 926-13 to update the description of the byway to reflect the approved changes. The department shall forward to the NSBP any changes that would have a substantive effect on online maps, brochures, or other publications of the NSBP. The department will also show substantive changes on the official highway map at its next printing.

KEY: transportation, scenic byways, highways

Date of Enactment or Last Substantive Amendment: ~~June 21, 2010~~ 2011

Authorizing, and Implemented or Interpreted Law: 52-4-207, 63G-3-201, 72-4-301, 72-4-301.5, 72-4-302, 72-4-303, 72-4-304

Transportation, Program Development R926-15 Designated Scenic Backways

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 34954

FILED: 06/20/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The primary purpose is to provide a record of the 58 scenic backways that were designated in 1990 at the time the Utah State Scenic Byway program was created. A secondary purpose is to emphasize the local responsibility to these backways and the limitation of authority of UDOT over them.

SUMMARY OF THE RULE OR CHANGE: A total of 58 scenic backways or "backcountry byways" were designated in April 1990. Although these backways were designated at the same time as most of the scenic byways and were included in tourist brochures at the time, they were not included when Rule R926-7 (the predecessor of Rule R926-13) was enacted. Rule R926-7 was drawn up in large part to codify the exact limits of the scenic byways so as to define where federal regulations applied and what portions of roadways were eligible for byway grants. Since the backways are not eligible to participate in the National Scenic Byway Program and are not subject to federal regulations, it was decided that they would not need to be included in Rule R926-7. However, as time has gone on, it has become evident that the historical record of these designations could be lost unless the list is added to a companion rule to Rule R926-13.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-3-201 and Section 72-4-303

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget because the rule only enacts the previous designations of backways in Utah.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government because the rule only enacts the previous designations of backways in Utah.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small business because the rule only enacts the previous designations of backways in Utah.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities because the rule only enacts the previous designations of backways in Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs for affected persons because the rule only enacts the previous designations of backways in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts on businesses because the rule only enacts the previous designations of backways in Utah.

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

TRANSPORTATION

PROGRAM DEVELOPMENT

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:

♦ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: John Njord, Executive Director

R926. Transportation, Program Development.

R926-15. Designated Scenic Backways.

R926-15-1. Purpose.

(1) The primary purpose of this rule is to identify the specific roadways designated as state scenic backways by the Utah State Scenic Byways Committee in 1990, and any additions or deletions made by that body since then, in order to preserve the historical record of those designations and the general definition of the extents of these backways provided by the committee at the time of designation.

(2) A secondary purpose of this rule is to clarify the jurisdiction and limitations of authority for maintaining the intrinsic qualities, quality of life, and wayfinding signs on scenic backway routes.

R926-15-2. Authority.

The provisions of this rule are authorized by the following grants of rulemaking authority and provisions of Utah Code: Title 63G, Chapter 3; and the Designation of Highways Act, Title 72, Chapter 4.

R926-15-3. Definitions.

Terms used in this rule are defined in Title 72, Chapter 4 and in Rules 926-13-3 and 926-14-3. The following additional term is defined for this rule:

(1) "Scenic backway" is a route that has been designated by the committee in recognition of its intrinsic qualities, as defined for scenic byways, but that does not meet either the width, grade, curvature, paving, or safety criteria necessary to be considered a state scenic byway.

(a) The route must be on a road that is legally accessible to the public.

(b) Preference is given to roads that form a loop or are part of a network of scenic roads or trails.

(c) Travel on a scenic backway route is considered to be reasonably safe, although a certain amount of risk may be involved.

(d) Scenic backways fall into three categories or types, depending on the characteristics of the road. These characteristics are typically outlined in tourist information, but not specified here in the list of designated backways because there may be segments of each type in any given backway.

(i) Type I scenic backways are roads that may be partly paved or have an all-weather surface and grades that are negotiable by a normal touring car. These are usually narrow, slow speed, secondary roads.

(ii) Type II scenic backways are roads that are usually not paved, but may have some type of surfacing. Grades, curves, and road surfaces may be negotiated with a two-wheel-drive, high-clearance vehicle without undue difficulty.

(iii) Type III scenic backways are roads that are usually not surfaced and have grades, tread surface, and other characteristics that require four-wheel-drive or other specialized off-highway vehicles such as dirt bikes or ATVs.

R926-15-4. Jurisdiction Over State Scenic Backways and Limitations of Authority.

(1) The Utah State Scenic Byways Committee has authority to designate and de-designate scenic backways.

(a) The network of scenic backways is already extensive and the committee intends to limit the number of backways in order to maintain the quality and integrity of the scenic backway system. For this reason, the likelihood of new designations is low, but proposals for new backway routes will be considered.

(b) Backway routes that are improved after designation to the point of meeting the criteria required of state scenic byways may be presented to the committee for consideration of a re-designation to scenic byway status.

(2) Scenic backways do not qualify for the National Scenic Byways Program nor are any of them part of the National

Highway System. They are not subject to any federal regulations pertaining to designated scenic byways, including outdoor advertising restrictions, and they are not eligible for federal byway grants.

(3) The authority and responsibility for maintaining the intrinsic qualities for which each scenic backway was designated, including the regulation of outdoor advertising, rests with the cities, towns, counties and resource agencies through which the route passes.

(a) Preserving the intrinsic qualities of and quality of life along each backway corridor, as determined locally, is dependant on local zoning and signing ordinances.

(b) Except for routes on state highways, the Utah Department of Transportation holds no oversight authority on backway routes.

(4) Installation and maintenance of scenic backway wayfinding signs is a local responsibility.

(a) The design, size, and installation details of the signs are maintained by the Utah Office of Tourism, in consultation with the Utah Department of Transportation, for continuity across the state and to ensure conformity to the Manual on Uniform Traffic Controls.

(b) Historically, the UDOT Traffic and Safety Division has allowed local agencies and local committees to purchase scenic backway signs from its sign shops and through its outside vendors under its sign contracts, to help provide statewide continuity and to help reduce taxpayer costs through shared volume buying.

R926-13-5. Highways Within the State That Are Designated as State Scenic Backways.

The following roads are designated as state scenic backways (date of designation is April 9, 1990 unless otherwise specified):

(1) Central Pacific Railroad Trail Scenic Backway. Following the abandoned railroad grade from Locomotive Springs (south of Snowville and west of Golden Spike National Monument) through Lucin to the Utah/Nevada State Line.

(2) Silver Island Mountain Loop Scenic Backway. From Danger Cave Archaeological Site near Wendover, around Silver Island Mountain.

(3) Bountiful/Farmington Loop Scenic Backway. Along Skyline Drive from east Bountiful, over Bountiful Peak and down Farmington Canyon, through Farmington to US-89.

(4) Trappers Loop Road Scenic Backway. State Route 167 from Mountain Green through Wasatch-Cache National Forest to Huntsville and the Ogden River Scenic Byway.

(5) Willard Peak Road Scenic Backway. From Mantua through Wasatch-Cache National Forest to Inspiration Point near Willard Peak.

(6) Hardware Ranch Road Scenic Backway. From Hyrum on SR-101 through Hardware Ranch and then north through Wasatch-Cache National Forest and past the Sinks to US-89, ten miles west of Bear Lake on the Logan Canyon National Scenic Byway.

(7) Middle Canyon Road Scenic Backway. From Tooele up Middle Canyon, over Butterfield Peak, and down Butterfield Canyon to Highway 111 (former Lark site).

(8) South Willow Road Scenic Backway. From Mormon Trail Road, five miles south of Grantsville, west to Deseret Peak.

(9) Alpine Scenic Loop. State Route 92 from the mouth of American Fork Canyon through Uinta National Forest and along the back side of Mount Timpanogos to US-189, one mile east of Vivian Park on the Provo Canyon Scenic Byway.

(10) Cascade Springs Scenic Backway. From Alpine Scenic Loop east past Cascade Springs and north to Wasatch Mountain State Park.

(11) Guardsman Pass Road Scenic Backway. From Wasatch Mountain State Park to Park City and Brighton on the Big Cottonwood Canyon Scenic Byway.

(12) Pioneer Memorial Backway. State Route 65 from Henefer past East Canyon State Park to Emigration Canyon Road and Emigration Canyon Road from SR-65 to Hogle Zoo.

(13) North Slope Road Scenic Backway. From Mirror Lake Scenic Byway (SR-150), six miles south of the Utah/Wyoming State Line, east past China Lake and north to Stateline Reservoir.

(14) Broadhead Meadow Road Scenic Backway. Murdock Basin Road from Mirror Lake Scenic Byway (SR-150), 24 miles east of Kamas, to Broadhead Meadow Road, then north past Broadhead Meadow and back to Mirror Lake Highway just south of Upper Provo River Falls.

(15) Red Cloud/Dry Fork Loop Scenic Backway. From US-191, 14 miles north of Vernal on the Flaming Gorge-Uintas National Scenic Byway, west through Ashley National Forest, then south to Dry Fork near Maeser.

(16) Sheep Creek/Spirit Lake Loop Scenic Backway. From SR-44, 15 miles west of the junction of SR-44 and US-191 on the Flaming Gorge-Uintas National Scenic Byway, looping back through Sheep Creek Canyon to SR-44 six miles south of Manila, plus the spur road to Spirit Lake starting about 3 miles west of SR-44.

(17) Jones Hole Road Scenic Backway. From 500 North Street, 4 miles east of Vernal, north and east to Diamond Mountain Plateau and east to Jones Hole at the Utah/Colorado State Line.

(18) Brown's Park Road Scenic Backway. From Jones Hole Road Scenic Backway at Diamond Mountain Plateau, north down Crouse Canyon and through Brown's Park, then west through Jessie Ewing Canyon to US-191, five miles north of Dutch John on the Flaming Gorge-Uintas National Scenic Byway.

(19) Notch Peak Loop Scenic Backway. From US-50, 43 miles west of Delta, north around the House Range Mountains to Dome Canyon Pass and south around the western side of the range back to US-50.

(20) Pony Express Trail Scenic Backway. From Fairfield west through Faust, over Lookout Summit, and past Simpson Springs and Fish Springs to Callao, Clifton, and Ibabah.

(21) Deep Creek Mountains Scenic Backway. From Pony Express Trail Scenic Backway at Callao, south to Trout Creek, plus the side roads into each of the five canyons into the Deep Creek Mountains.

(22) Reservation Ridge Scenic Backway. From US-191 at the Avantaquin Campground turnoff on the Dinosaur Diamond Prehistoric Highway National Scenic Byway, west along the ridge line to US-6, just east of Soldier Summit.

(23) White River/Strawberry Road Scenic Backway. From US-6, just east of Soldier Summit, north to Trail Hollow and north past Strawberry Reservoir to US-40, 23 miles east of Heber.

(24) Nine Mile Canyon Scenic Backway. From US-191, two miles east of Wellington on the Dinosaur Diamond Prehistoric Highway National Scenic Byway, north and east through Nine Mile Canyon to Myton.

(25) Chicken Creek Road Scenic Backway. From Levan to Chester through the Uinta National Forest over the San Pitch Mountains.

(26) Skyline Drive Scenic Backway. From the Tucker Rest Area on US-6 up the left fork of Clear Creek, crossing the Energy Loop National Scenic Byway, and south through the Manti-La Sal and Fishlake National Forests to I-70 at Taylor Flat, 18 miles east of Salina.

(27) Mayfield-Ferron Scenic Backway. From Mayfield to Ferron, crossing Skyline Drive Scenic Backway in the Manti-La Sal National Forest.

(28) Wedge Overlook/Buckhorn Draw Scenic Backway. From Castle Dale on SR-10 to the Wedge Overlook and from the Wedge Overlook turnoff, 13 miles east of SR-10, through Buckhorn Draw to I-70 at Exit 131.

(29) Dinosaur/Cedar Overlook Scenic Backway. From Cleveland south and east to the Cleveland-Lloyd Dinosaur Quarry and from the turnoff, six miles west of the quarry, on south and east to Cedar Mountain.

(30) Temple Mountain/Goblin Valley Road Scenic Backway. From SR-24, 24 miles south of I-70, west to the base of Temple Mountain, then south to Goblin Valley State Park.

(31) Kimberly/Big John Flat Road Scenic Backway. State Route 153 from Junction on US-89 to the east end of the Beaver Canyon Scenic Byway, then from SR-153 north along Big John Flat Road, Beaver Creek Road, and Kimberly Road to I-70 at Castle Rock, plus the Kent's Lake Loop (Forest Road 137).

(32) Cove Mountain Road. From Koosharem on SR-62 through Fishlake National Forest to Glenwood on SR-119.

(33) Cathedral Valley Road Scenic Backway. From SR-24, 1/2 mile west of Caineville on the Capitol Reef Country Scenic Byway, north along Cathedral Valley into the northern part of Capitol Reef National Park, then north to Fremont Junction on I-70.

(34) Thousand Lake Mountain Road Scenic Backway. From SR-72, five miles northeast of Fremont, to Baler Ranch Road which connects to Factory Butte Road and Elkhorn Road, which passes through Capitol Reef National Park and connects to Factory Butte.

(35) Gooseberry/Fremont Road Scenic Backway. From Johnson Valley Reservoir at the Fishlake Scenic Byway, north through Fishlake National Forest to I-70, 6.5 miles east of Salina.

(a) Originally defined as running from SR-72, two miles north of Fremont, to I-70.

(b) The southern segment of this backway, between Fremont and Johnson Valley Reservoir, was redesignated a scenic byway and added to the Fishlake Scenic Byway November 18, 1992.

(36) La Sal Mountain Loop Road Scenic Backway. From US-191, six miles south of Moab, over the La Sal Mountains in the Manti-La Sal National Forest and through Castle Valley to SR-128 and the Dinosaur Diamond Prehistoric Highway National Scenic Byway.

(37) Lockhart Basin Road Scenic Backway. From Moab south through Kane Creek Canyon, Lockhart Basin and alongside

Canyonlands National Park to SR-211 and the Indian Creek Corridor Scenic Byway.

(38) Needles/Anticline Overlook Road Scenic Backway. From US-191, 12 miles south of La Sal Junction, north to Anticline Overlook and Needles Overlook.

(39) The Trail of the Ancients Scenic Backway. State Route 261 from SR-95 south to US-163, plus SR-316 from SR-261 to Goosenecks Overlook. Also the roadways running on SR-262 between US-191 and County Road FAS-2416, and on FAS-2416 starting at SR-262 and running southeasterly to County Road FAS-2422, then northeasterly on FAS-2422 to the Utah/Colorado State Line near Hovenweep National Monument.

(a) Originally designated as the Moki Dugway Scenic Backway.

(b) Renamed and extended on February 7, 1994, to also include the route between US-191 and Hovenweep.

(c) Redesignated on September 22, 2005 as part of the Trail of the Ancients National Scenic Byway.

(40) Elk Ridge Road Scenic Backway. From SR-275 near Natural Bridges National Monument, one mile west of the junction of SR-95 on the Trail Of the Ancients National Scenic Byway, north and east through Bears Ears and across Elk Ridge to SR-211 and the Indian Creek Corridor Scenic Byway.

(41) Abajo Loop Scenic Backway. From Monticello west around Abajo Peak and south to Blanding at the northern end of the Trail of the Ancients National Scenic Byway.

(42) Bull Creek Pass Road Scenic Backway. From SR-95, 15 miles south of SR-24 on the Bicentennial Highway Scenic Byway, to McMillan Springs through Steven Narrows and east to SR-276, five miles south of SR-95.

(a) Originally called Bull Mountain Road Scenic Backway.

(43) Notom Road Scenic Backway. From SR-24 at the Capitol Reef National Park boundary on the Capitol Reef Country Scenic Byway, south to the Burr Trail Scenic Backway.

(44) Burr Trail Scenic Backway. From SR-12 at Boulder on the Scenic Byway 12 All-American Road, east and south across the Waterpocket Fold in Capitol Reef National Park to SR-276 near Bullfrog.

(45) Hole in the Rock Scenic Backway. From SR-12, five miles east of Escalante on the Scenic Byway 12 All-American Road, southeast through Grand Staircase-Escalante National Monument and Glen Canyon National Recreation Area to the Hole in the Rock at Lake Powell.

(46) Smoky Mountain Road Scenic Backway. From SR-12 at Escalante on the Scenic Byway 12 All-American Road, south across the Kaiparowits Plateau and through the Grand Staircase-Escalante National Monument to Big Water on US-89.

(47) Posey Lake Road Scenic Backway. From Escalante on the Scenic Byway 12 All-American Road, north through the Dixie National Forest, past Death Hollow Wilderness Area and Posey Lake, to Bicknell on the Capitol Reef Country Scenic Byway.

(48) Griffin Top Road Scenic Backway. From Posey Lake on the Posey Lake Road Scenic Backway west and south through the Dixie National Forest to the historic Widtsoe settlement (Widtsoe Junction).

(49) Cottonwood Canyon Road Scenic Backway. From US-89 at the Paria Ranger Station, north through the Grand Staircase-Escalante National Monument to Cannonville on the Scenic Byway 12 All-American Road.

(50) Johnson Canyon/Alton Amphitheater Scenic Backway. From US-89, eight miles east of Kanab, north and west to Glendale through the Grand Staircase National Monument and the Vermillion Cliffs, White Cliffs, and Pink Cliffs. Also a spur route from 8 miles east of Glendale, north to Alton.

(51) Paria River Valley Scenic Backway. From US-89, at the Spur, 40 miles east of Kanab, north to the Paria ghost town and movie set.

(52) East Fork of the Sevier Scenic Backway. From SR-12, 14 miles east of the US-89 junction on the Scenic Byway 12, All-American Road, south through the Dixie National Forest and parallel to the west boundary of Bryce Canyon National Park, to the southern terminus at the clifftop.

(53) Ponderosa/Coral Pink Sand Dunes Scenic Backway. From US-89, seven miles northwest of Kanab, southwest past Ponderosa Campground to Coral Pink Sand Dunes State Park.

(54) Smithsonian Butte Scenic Backway. From SR-9 at Rockville on the Zion Park Scenic Byway, south to US-89 at Apple Valley.

(55) Kolob Reservoir Road Scenic Backway. From SR-9 at Virgin on the Zion Park Scenic Byway, through Zion National Park to SR-14, six miles east of Cedar City on the Cedar Breaks Scenic Byway.

(56) Dry Lakes/Summit Canyon Scenic Backway. From Summit on Old US-91 (near I-15), east through Dixie National Forest to SR-143, eight miles south of Parowan on the Utah's Patchwork Parkway National Scenic Byway.

(57) Mojave Desert/Joshua Tree Road Scenic Backway. From Old US-91, two miles south of Shivwits, south around Jarvis Peak and west back to Old US-91, two miles north of the Utah/Arizona State Line.

(58) Snow Canyon Road Scenic Backway. From Ivins north through Snow Canyon State Park to SR-18.

KEY: transportation, scenic byways, scenic backways, highways

Date of Enactment or Last Substantive Amendment:

Authorizing, and Implemented or Interpreted Law: 72-4-303, 63G-3-201

Workforce Services, Employment
Development
R986-100-134
Payments of Assistance Pending the
Hearing

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35002

FILED: 06/30/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to end payments pending appeal.

SUMMARY OF THE RULE OR CHANGE: Clients receiving Family Employment Program and Family Employment Program Two Parent assistance will no longer be eligible for continued benefits pending appeal. It is not required by federal law as it is for food stamps or refugee resettlement assistance so is being discontinued.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Section 35A-3-101 and Section 35A-3-301 and Section 35A-3-401 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 the local government.
- ◆ **SMALL BUSINESSES:** There will be no costs to small businesses to comply with these changes because this is a federally-funded program.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no compliance costs associated with these changes for any persons, businesses or government entities because this is a federally-funded program and there are no fees or costs associated with these proposed changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with these changes for any persons because this is a federally-funded program and there are no fees or costs associated with these proposed changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with 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 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Kristen Cox, Executive Director

R986. Workforce Services, Employment Development.**R986-100. Employment Support Programs.****R986-100-134. Payments of Assistance Pending the Hearing.**

(1) A client is entitled to receive continued assistance pending a hearing contesting a Department decision to reduce or terminate food stamps[;]or RRP[; FEPTP, or FEP] financial assistance if the client's request for a hearing is received no later than 10 days after the date of the notice of the reduction, or termination. The assistance will continue unless the certification period expires until a decision is issued by the ALJ. If the certification period expires while the hearing or decision is pending, assistance will be terminated. If a client becomes ineligible or the assistance amount is reduced for another reason pending a hearing, assistance will be terminated or reduced for the new reason unless a hearing is requested on the new action.

(2) If the client can show good cause for not requesting the hearing within 10 days of the notice, assistance may be continued if the client can show good cause for failing to file in a timely fashion. Good cause in this paragraph means that the delay in filing was due to circumstances beyond the client's control or for circumstances which were compelling and reasonable. Because the Department allows a client to request a hearing by telephone or mail, good cause does not mean illness, lack of transportation or temporary absence.

(3) A client can request that payment of assistance not be continued pending a hearing but the request must be in writing.

(4) If payments are continued pending a hearing, the client is responsible for any overpayment in the event of an adverse decision.

(5) If the decision of the ALJ is adverse to the client, the client is not eligible for continued assistance pending any appeal of that decision.

(6) If a decision favorable to the client is rendered after a hearing, and payments were not made pending the decision, retroactive payment will be paid back to the date of the adverse action if the client is otherwise eligible.

(7) Financial assistance payments under FEP, FEPTP, GA or WTE, and CC subsidies will not continue during the hearing process regardless of when the appeal is filed.

(8) Financial assistance under the RRP will not extend for longer than the eight-month time limit for that program under any circumstances.

~~_____ (9) Clients receiving financial assistance under the FEPTP program must continue to participate to receive financial assistance during the hearing process.~~

~~_____ (10) Financial assistance under the FEPTP program will not extend for longer than the seven-month time limit for that program under any circumstance.~~

] ~~(11) Assistance is not allowed pending a hearing from a denial of an application for assistance.~~

KEY: employment support procedures

Date of Enactment or Last Substantive Amendment: [~~April 11,~~ 2011

Notice of Continuation: September 8, 2010

Authorizing, and Implemented or Interpreted Law: 35A-3-101 et seq.; 35A-3-301 et seq.; 35A-3-401 et seq.

Workforce Services, Employment Development **R986-400-404** Participation Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35001

FILED: 06/30/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to better serve our clients by elimination of unnecessary paperwork.

SUMMARY OF THE RULE OR CHANGE: The rule currently says the applicant must meet with a Department representative. The Department will conduct those interviews via telephone when possible so clients will not have to visit the office. Further, clients with disabilities expected to last less than 12 months will not need to complete an agreement. This is to free up staff time to provide services which are more beneficial to our clients.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Section 35A-3-401 and Section 35A-3-402 and Subsection 35A-1-104(4)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs of savings to the state budget as these proposed changes are nonsubstantive in nature and will not affect current funding levels.

◆ **LOCAL GOVERNMENTS:** These changes are nonsubstantive in nature and the program is state funded so there will be no costs or savings to local government.

◆ **SMALL BUSINESSES:** There are no compliance costs for small businesses associated with this proposed change.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These proposed changes are nonsubstantive in nature and there are no compliance costs for any businesses or local government entities associated with this change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons as these changes are nonsubstantive in nature and there are no costs for complying.

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 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: Kristen Cox, Executive Director

R986. Workforce Services, Employment Development.

R986-400. General Assistance.

R986-400-404. Participation Requirements.

(1) A[H] GA client[s-are] with an impairment that is expected to last 12 months or longer is required to [~~meet with an employment counselor and~~]sign the General Assistance Agreement Form within 30 days after the initial financial benefit has been issued. A GA client with an impairment that is expected to last at least 60 days, but less than 12 months, will not be required to sign the General Assistance Agreement Form.

(2) The requirement to sign the General Assistance Agreement form, complete an assessment and negotiate an employment plan is limited to clients with long term impairments expected to last 12 months or longer.

(3) If the impairment is expected to last 12 months or longer, the client must apply for SSI/SSDI benefits.

(4) A client must accept any and all offers of appropriate employment as determined by the Department. "Appropriate employment" means employment that pays a wage that meets or exceeds the applicable federal or state minimum wage law and has daily and weekly hours customary to the occupation. If the minimum wage laws do not apply, the wage must equal what is normally paid for similar work and in no case less than three-fourths of the minimum wage rate. The employment is not

appropriate employment if the client is unable, due to physical or mental limitations, to perform the work.

(5) A client must cooperate in obtaining any and all other sources of income to which the client may be entitled including, SSI/SSDI, VA Benefits, and Workers' Compensation.

(6) A client who meets the eligible alien status requirements for GA but does not meet the eligible alien requirements for SSI can participate in activities that may help them to become eligible for SSI such as pursuing citizenship.

KEY: general assistance

Date of Enactment or Last Substantive Amendment:
~~September 22, 2009~~2011

Notice of Continuation: September 8, 2010

**Authorizing, and Implemented or Interpreted Law: 35A-3-401;
35A-3-402**

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive public comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period, and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends August 15, 2011.

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 November 12, 2011, an agency may notify the Division of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303; Rule R15-2; and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page

Health, Children's Health Insurance
Program
R382-10
Eligibility

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 34561

FILED: 06/30/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Based on public comments received by the Department, the purpose of this change is to clarify that only households eligible under the Children's Health Insurance Program (CHIP) can use the most recent adjusted gross income from the Utah State Tax Commission to determine eligibility for CHIP renewals.

SUMMARY OF THE RULE OR CHANGE: This change to the proposed rule clarifies that only CHIP eligible households can use the most recent adjusted gross income from the Utah State Tax Commission to determine eligibility for CHIP renewals. It also makes other clarifications. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the May 1, 2011, issue of the Utah State Bulletin, on page 61. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 40

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because this change only clarifies that all CHIP eligible households have the option to allow the eligibility agency to access their most recent AGI from the Utah State Tax Commission regardless of other medical assistance that they receive.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide CHIP services and do not determine CHIP eligibility.
- ◆ **SMALL BUSINESSES:** There is no impact to small businesses because this change only clarifies that all CHIP eligible households have the option to allow the eligibility agency to access their most recent AGI from the Utah State Tax Commission regardless of other medical assistance that they receive.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to CHIP clients and to CHIP providers because this change only clarifies that all CHIP eligible households have the option to allow the eligibility agency to access their most recent AGI from the Utah State Tax Commission regardless of other medical assistance that they receive.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no cost to a single CHIP client or to a single CHIP provider because this change only clarifies that all CHIP eligible households have the option to allow the eligibility agency to access their most recent adjusted gross income from the Utah State Tax Commission regardless of other medical assistance that they receive.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Allowing access to tax records with the permission of the applicant should reduce the burden of verification and have a positive impact on recipients.

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

HEALTH
CHILDREN'S HEALTH INSURANCE PROGRAM
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

R382. Health, Children's Health Insurance Program.

R382-10. Eligibility.

R382-10-13. Income Provisions.

(1) To be eligible to enroll in the Children's Health Insurance Program, gross household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of equal size.

(a) All gross income, earned and unearned, received by the parents and stepparents of any child who is included in the household size, counts toward household income, unless this section specifically describes a different treatment of the income.

(b) When a CHIP household is scheduled for a renewal of eligibility, the household may give consent to the eligibility agency to access the household's most recent adjusted gross income from the Utah State Tax Commission. Only CHIP eligible households [~~with no other assistance programs open~~] can elect this option. When the household elects this option, the eligibility agency shall use the adjusted gross income from the most recent tax record as the countable income of the household to determine eligibility for CHIP.

(2) The Department may not count as income any payments from sources that federal law specifically prohibits from being counted as income to determine eligibility for federally-funded programs.

(3) The Department may count any income in a trust that is available to, or is received by any of the following household members:

- (a) a parent or spouse of a parent;
- (b) an eligible child who is the head of the household;
- (c) a spouse of an eligible child if the spouse is 19 years of age or older; or
- (d) a spouse who is under 19 years old and is the head of the household.

(4) Payments received from the Family Employment Program, General Assistance, or refugee cash assistance is countable income.

(5) Rental income is countable income. The following expenses can be deducted:

- (a) taxes and attorney fees needed to make the income available;
- (b) upkeep and repair costs necessary to maintain the current value of the property;
- (c) utility costs only if they are paid by the owner; and
- (d) interest only on a loan or mortgage secured by the rental property.

(6) Deposits to joint checking or savings accounts are countable income, even if the deposits are made by a non-household member. An applicant or enrollee who disputes household ownership of deposits to joint checking or savings accounts shall be given an opportunity to prove that the deposits do not represent income to the household. Funds that are successfully disputed are not countable income.

(7) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(8) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the eligibility period.

(9) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service or did not work to receive is not counted as income.

(10) SSI and State Supplemental Payments are countable income.

(11) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(12) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

(13) Child Care Assistance under Title XX is not countable income.

(14) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the Department are not countable income.

(15) Needs-based Veteran's pensions are counted as income. The Department may only count ~~only~~ the portion of a Veteran's Administration benefit to which the individual is legally entitled.

(16) The Department may not count the income of a child under the age of 19 if the child is not the head of a household.

(17) The Department shall count the income of the spouse of an eligible child if:

- (a) the spouse is 19 years of age or older; or
- (b) the spouse is under 19 years old and is the head of the household.

(18) Educational income such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

(19) Reimbursements for expenses incurred by an individual are not countable income.

(20) Any payments made to an individual because of his status as a victim of Nazi persecution as defined in Pub. L. No. 103 286 are not countable income, including payments made by the Federal Republic of Germany, Austrian Social Insurance payments, and Netherlands WUV payments.

(21) Victim's Compensation payments as defined in Pub. L. No. 101 508 are not countable income.

(22) Disaster relief funds received if a catastrophe has been declared a major disaster by the President of the United States as defined in Pub. L. No. 103 286 are not countable income.

(23) Income of an alien's sponsor or the sponsor's spouse is not countable income.

(24) If the household expects to receive less than \$500 per year in taxable interest and dividend income, then they are not countable income.

(25) Income paid by the U.S. Census Bureau to a temporary census taker to prepare for and conduct the census is not countable income.

(26) The additional \$25 a week payment to unemployment insurance recipients provided under Section 2002 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, which an individual may receive from March 2009 through June 2010 is not countable income.

(27) The one-time economic recovery payments received by individuals receiving social security, supplemental security income, railroad retirement, or veteran's benefits under the provisions of Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, and refunds received under the provisions of Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, for certain government retirees are not countable income.

(28) The Consolidated Omnibus Reconciliation Act (COBRA) premium subsidy provided under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111[-].5, 123 Stat. 115, is not countable income.

(29) The making work pay credit provided under Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, is not countable income.

(30) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resolution Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(31) The eligibility agency may not count as income any federal tax refund and refundable credit that an individual receives

between January 1, 2010, and December 31, 2012, pursuant to the Tax Relief Unemployment Insurance Reauthorization and Job Creation Act of 2010, Pub. L. No. 111 312, 124, Stat 3296.

.....

KEY: children's health benefits

Date of Enactment or Last Substantive Amendment: 2011

Notice of Continuation: May 19, 2008

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-40

End of the Notices of Changes in Proposed Rules Section

**NOTICES OF
120-DAY (EMERGENCY) RULES**

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule.

Because **120-DAY RULES** are effective immediately, the law does not require a public comment period. However, when an agency files a **120-DAY RULE**, it usually files a **PROPOSED RULE** at the same time, to make the requirements permanent. Comments may be made on the **PROPOSED RULE**. Emergency or **120-DAY RULES** are governed by Section 63G-3-304; and Section R15-4-8.

Education, Administration
R277-726
Statewide Public Education Online
Program

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 35003
FILED: 06/30/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule is in response to S.B. 65, 2011 General Session. The purpose of this rule is to define necessary terms, provide and describe a public education online registration agreement and provide other requirements for local education agencies (LEAs), the Utah State Office of Education, parents and students, and providers for Statewide Public Education Online Program implementation and accountability.

SUMMARY OF THE RULE OR CHANGE: The rule provides definitions, minimal standards and procedures for the course credit acknowledgment (CCA) process, eligible student/parent rights and responsibilities, local education agency requirements and responsibilities, Utah State Board of Education requirements and responsibilities, and provider requirements and responsibilities.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-15-1210 and Section 53A-15-1213 and Subsection 53A-1-401(3)

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

JUSTIFICATION: This rule is submitted as a 120-Day (Emergency) rule because the new law that provides for the Statewide Public Education Online Program becomes effective on 07/01/2011 and a rule with standards and procedures must be in place to provide for the Program.

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. Utah State Office of Education staff will implement the Statewide Public Education Online Program with existing staff and within existing budgets.

◆ **LOCAL GOVERNMENTS:** There may be some costs to local education agencies (LEAs) for students participating in the Statewide Public Education Online Program because funding to online Providers for students taking online courses will be transferred from the primary LEA to the designated Provider. Numbers of students and costs are too speculative to determine at this time.

◆ **SMALL BUSINESSES:** There are no anticipated costs to businesses. The Statewide Public Education Online Program applies to public education entities and does not affect businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There may be costs to persons other than small businesses,

businesses, or local government entities. The rule does not provide for fee waivers for computer equipment and internet connectivity for participants in the Statewide Public Education Online Program. Students who do not have computer equipment or internet connectivity may be unable to participate due to the cost of the Program. Costs for individual students are speculative at this point.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons (public providers of online courses). Providers will receive public education funds for providing online courses.

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

EFFECTIVE: 06/30/2011

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

R277. Education, Administration.

R277-726. Statewide Public Education Online Program.

R277-726-1. Definitions.

A. "Actively participates" means the student actively participates as defined by the provider.

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

C. "Course completion" means that a student has completed a course with a passing grade and the provider has transmitted the grade and credit to primary LEA of enrollment.

D. "Course Credit Acknowledgment (CCA)" means the agreement and registration record using the USOE provided Statewide Public Education Online Program form. The CCA shall be signed by the student, parent, designee of primary school of enrollment and qualified online Provider.

E. "Eligible student" means a student enrolled in grades 9-12 in a public school, but does not include students enrolled in adult education programs.

F. "Enrollment confirmation" means the student initially registered and actively participated, as defined under R277-726-1A.

G. "Executed CCA" means that all parties have signed the CCA and the CCA has been received by the USOE. Following enrollment confirmation and participation, the USOE directs funds to Provider, consistent with Sections 53A-15-1206 and 1207.

H. "LEA" means a local education agency in Utah that has local administrative control and direction for public education.

I. "Online course" means a course of instruction offered through the Statewide Public Education Online Program.

J. "Online course payment" means the amount withheld from the student's primary LEA and disbursed to the designated Provider following satisfaction of the requirements of the law, and as directed in Section 53A-15-1207.

K. "Online course provider (Provider)" means a district school, a charter school or an LEA program created for the purpose of serving Utah students grades 9-12 online.

L. "Primary LEA of enrollment" means the student's LEA defined under Section 53A-15-1202(9).

M. "Primary school of enrollment" means a student's school of record, where the student takes the majority of his classes and the school that maintains the student's cumulative file, enrollment information and transcript.

N. "SEOP" means student education occupation plan as defined in R277-700.

O. "Statewide assessment" means Criterion-Referenced tests or adaptive tests required under R277-404.

P. "Statewide Public Education Online Program (Program)" means courses offered to students from Providers other than the students' primary LEAs of enrollment.

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

R. "USOE course code" means a code for a designated subject matter course assigned by the USOE.

S. "Withdrawal from online course" means that a student withdraws or ceases participation in an online course within 10 days of student enrollment confirmation by the USOE in the online course. Withdrawal may also occur as the result of a student suspension from an online course following adequate due process by the Provider.

R277-726-2. 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-15-1210 which requires the Board to make rules providing for the administration of statewide assessments to students enrolled in online courses and requiring an online course provider to proctor the state-designated assessments, Section 53A-15-1213 which requires the Board to make rules that establish a course credit acknowledgment form and procedures for completing and submitting the form to the Board, 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 define necessary terms, provide and describe a public education online registration agreement and provide other requirements for LEAs, the USOE, parents and students, and Providers for Program implementation and accountability.

R277-726-3. Course Credit Acknowledgment (CCA) Process.

A. A student or student's parent may initiate a CCA by filing a CCA with the student's primary school of enrollment.

B. A counselor designated by the primary school of enrollment shall review the CCA to ensure consistency with graduation requirements, the student's SEOP, and the student's Individualized Education Plan (IEP) or Section 504 plan, if

applicable. If approved, the counselor gives preliminary approval to the CCA and submits the CCA.

C. The USOE shall develop and administer procedures for facilitation of the CCA that inform all appropriate parties.

R277-726-4. Eligible Student/Parent Rights and Responsibilities.

A. Eligible students may register for up to two Program credits in the 2011-2012 school year.

B. Eligible students may register for more than two online credits if the student's current SEOP indicates specifically that the student intends to complete high school graduation requirements and exit high school before the rest of the student's high school cohort and the student's schedule demonstrates progress toward early graduation.

C. Eligible students are expected to complete courses in which they enroll in a timely manner consistent with Section 53A-15-1206.

D. An eligible student may not enroll in an online course under the Program for a given semester after the first 10 school days of enrollment by the student or within 10 days of student's initial enrollment.

R277-726-5. LEA Requirements and Responsibilities.

A. A primary school of enrollment shall facilitate student enrollment with any and all eligible Providers selected by eligible students consistent with course credit limits.

B. A primary school of enrollment shall use the CCA form, records and processes provided by the USOE for the Program. A school counselor shall use a separate form for each course selected by parent/student.

C. A primary school of enrollment shall provide information about available online courses and programs in registration materials or through other reasonable communication and on the LEA's or school's website.

D. A primary school of enrollment shall include a student's online courses in student's enrollment records and, upon course completion, include online course grades and credits on student transcripts.

R277-726-6. State Board of Education (Board) Requirements and Responsibilities.

A. The Board shall develop and provide a website for the Program that provides information required under Section 53A-15-1212 and other information as determined by the Board.

B. The Board shall direct Providers to administer state-designated assessments consistent with R277-404 and R277-473 for identified courses using LEA-adopted and state-approved assessments.

C. The Board may determine space available standards and appropriate course load standards for online courses consistent with Sections 53A-15-1006(2) and 53A-15-1204(1)(b). Course load standards may differ based on subject matter and differing accreditation standards.

D. The Board shall withhold funds from primary LEAs of enrollment and make payments to Providers consistent with Sections 53A-15-1206 and 1207.

E. The Board shall establish an appeals process for students who request more than two online courses in the 2011-

2012 school year and who are first denied by their primary LEA or school of enrollment.

F. The Board may refuse to provide funds under a CCA if the Board finds that information has been submitted fraudulently or in violation of the law or Board requirements by any of the parties to a CCA.

G. The USOE or the Board's designee shall receive, investigate complaints and impose sanctions, if appropriate, regarding course integrity, financial mismanagement, enrollment fraud or inaccuracy, or violations of the law or this rule specific to the requirements and provisions of this Program.

H. If a Board investigation finds that a Provider has violated IDEA or Section 504 provisions for students taking online courses, the Provider shall compensate the student's primary LEA of enrollment for all costs related to compliance.

I. The USOE may audit, at the Board's sole discretion, an LEA's or Program participant's compliance with any requirement of state or federal law or Board rule under the Program. All participants shall provide timely access to all records, student information, financial data or other information requested by the Board, the Board's auditors, the Superintendent or the Superintendent's designee upon request.

J. The Board may impose penalties, withhold funds, or sanction Program participants for participants' failure to comply with reasonable requests for records or information.

K. All records related to the Program that do not disclose protected student information are public records and shall be available upon request under Section 63G-2-301 or 63G-2-305.

R277-726-7. Provider Requirements and Responsibilities.

A. Providers shall administer state-designated assessments as directed by the Board, including proctoring, consistent with R277-473. Providers shall pay administrative and proctoring costs for all state-designated assessments.

B. Providers shall provide parents/students with email and telephone contacts for the provider during regular business hours in order to facilitate parent information.

C. Providers and third parties working with Providers shall satisfy all Board requirements for consistency with course curriculum, criminal background checks for Provider employees, documentation of student enrollment and participation and compliance with IDEA, Section 504, and requirements for ELL students for all eligible students.

D. Providers shall receive payments for students properly enrolled in the Program from the USOE consistent with Board procedures, timelines and Sections 53A-15-1206, 53A-15-1207 and 53A-15-1208.

E. Providers may charge fees consistent with other secondary schools. If the Provider intends to charge fees, the Provider:

(1) shall notify the primary school of enrollment with whom the Provider has the CCA of the purpose for fees, amounts of fees, and provide timely notice to parents of required fees and fee waiver opportunities, and post fees on Provider website.

(2) shall be responsible for fee waivers for eligible students, including all materials for students designated fee waiver eligible by a student's primary school of enrollment.

F. Providers shall maintain student records and comply with the federal Family Educational Rights and Privacy Act,

including protecting the confidentiality of student records and providing parents and eligible students access to records.

G. Except as provided in R277-726-8A, the Provider shall submit a student's credit and grade within 30 days after a student satisfactorily completes an online semester course to the USOE, primary school of enrollment, and parent(s).

H. Providers shall not withhold students' credits, grades, or transcripts from students, parents or students' schools of enrollment for any reason.

I. If a Provider desires to suspend a student from an online course for disciplinary reasons, the Provider is responsible for all student due process procedures, including the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. 1400 and Section 504 of the Rehabilitation Act of 1973. If a student is suspended for more than 10 days, the Provider shall notify the USOE of a withdrawal.

J. Providers shall provide to the USOE a list of course options using the USOE-provided course codes (all courses shall be coded as semester courses). Course offerings shall be updated in January and August annually.

K. Providers shall serve all students on a first-come-first-served basis who desire to take courses and who are designated eligible by a primary school of enrollment if desired courses have space available.

L. Providers shall provide all records maintained as part of a public online school or program, including financial and enrollment records, and information for accountability and audit purposes upon request by the USOE, and the Provider's external auditor(s).

M. Providers shall maintain documentation of student work, including dates of submission, for Program audit purposes.

N. Providers are primarily responsible for complete and timely submissions of record changes to executed CCAs and submission of other reports and records as required by the USOE.

O. Providers shall inform students and parents of expectations for active participation in course work.

P. LEAs may participate in the Program as Providers by offering schools or programs or both to Utah students in grades 9-12 who are not resident students of the LEA consistent with Section 53A-15-1205(3).

Q. Program schools or programs:

(1) shall be accredited by the Northwest Accreditation Commission consistent with R277-413;

(2) shall have a designated administrator who meets the requirements of Section 53A-6-110 or Section 53A-1a-512(5);

(3) shall ensure that students who qualify for fee waivers shall receive all services offered by and through the public schools consistent with Section 53A-12-103 and R277-407;

(4) shall maintain student records consistent with the federal Family Educational Rights and Privacy Act, 34 CFR Part 99; and

(5) shall offer course work aligned with Utah Core standards, course requirements, and the provisions of R277-700 and R277-404, and R277-473.

R. LEAs that offer online programs or schools as Providers under the Program:

(1) shall employ only licensed Utah educators as teachers;

(2) shall not employ individuals whose educator licenses have been suspended or revoked;

(3) shall require all employees to meet requirements of Section 53A-3-410 and R277-516 prior to the Provider offering services to students;

(4) shall only employ teachers who meet the requirements of R277-510, Educator Licensing - Highly Qualified Assignment;

(5) shall agree to administer and have the capacity to carry out state-designated assessments, including proctoring, consistent with Section 53A-15-1210(2), R277-404 and R277-473;

(6) shall provide services to students consistent with requirements of the IDEA, Section 504, and Title VI of the Civil Rights Act of 1964 for English Language Learners (ELL);

(7) shall maintain copies of all CCAs (for audit purposes);

(8) shall agree that funds shall be withheld by the USOE consistent with Section 53A-15-1206. A Provider shall cooperate with the USOE in providing timely documentation of student participation, enrollment, and other additional data consistent with Board directives and procedures and as requested; and

(9) shall ensure that third parties assisting with LEA online schools or programs comply with R277-726-7R, R277-404 and R277-473.

R277-726-8. Other Information.

A. Primary schools of enrollment shall set reasonable timelines and standards and Providers shall adhere to timelines and standards for student grades and enrollment in online courses for purposes of:

(1) school awards and honors;

(2) Utah High School Activities Association participation; and

(3) high school graduation.

B. Withholding of the online course payment from a primary LEA of enrollment and payments to the eligible Provider shall occur at the nearest monthly transfer of funds subject to verification of information.

C. The USOE shall pay the Provider consistent with Minimum School Program funding transfer schedules.

D. The Superintendent or the Superintendent's designee may make decisions on questions or issues unresolved by Section 53A-15-1002 et seq. or R277-726 on a case-by-case basis. The Superintendent shall report decisions to the Board consistent with the purposes of the law and this rule.

KEY: public education online program

Date of Enactment or Last Substantive Amendment: June 30, 2011

authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-15-1210; 53A-15-1213; 53A-1-401(3)

**Health, Health Care Financing,
Coverage And Reimbursement Policy
R414-1-29
Provider-Preventable Conditions**

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 34992
FILED: 06/30/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to implement Section 2702 of the Patient Protection and Affordable Care Act, which issues final regulations on the prohibition of payments for provider-preventable conditions. These final regulations become effective on 07/01/2011.

SUMMARY OF THE RULE OR CHANGE: This change implements final regulations on the prohibition of payments for provider-preventable conditions that become effective on 07/01/2011. (DAR NOTE: A corresponding proposed amendment is under DAR No. 34993 in this issue, July 15, 2011, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 76 FR 32837 and Section 26-1-5 and Section 26-18-3

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.
JUSTIFICATION: This emergency rule is necessary to implement the final rule on the prohibition of payments for provider-preventable conditions, which was published in the Federal Register on 06/06/2011. These final regulations become effective on 07/01/2011.

MATERIALS INCORPORATED BY REFERENCES:
◆ Adds Federal Register, published by Government Printing Office, 06/06/2011

ANTICIPATED COST OR SAVINGS TO:
◆ **THE STATE BUDGET:** The Department does not anticipate any impact to the state budget because this rule, through its implementation of federal law, only incorporates existing state practices that prohibit payments for provider-preventable conditions.
◆ **LOCAL GOVERNMENTS:** The Department does not anticipate any impact to local governments because they do not fund or provide Medicaid services.
◆ **SMALL BUSINESSES:** The Department does not anticipate any impact to small businesses because this rule, through its implementation of federal law, only incorporates existing state practices that prohibit payments for provider-preventable conditions.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate any impact to Medicaid providers because this rule, through its implementation of federal law, only incorporates existing state practices that prohibit payments for provider-preventable conditions. Further, there are no out-of-pocket expenses to Medicaid clients who cannot be billed for these payments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not anticipate any impact to a single Medicaid provider because this rule, through its implementation of federal law, only incorporates existing state practices that prohibit payments for provider-preventable conditions. Further, there are no out-of-pocket expenses to a single Medicaid client who cannot be billed for these payments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Current practice prohibits billing for services where actions by the provider created the need for the care. Any impact on business is justified. Taxpayers should not pay for the preventable mistakes of providers.

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

EFFECTIVE: 07/01/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-1. Utah Medicaid Program.

R414-1-29. Provider-Preventable Conditions.

The following applies to inpatient hospital services provided to Medicaid recipients and dual eligible beneficiaries:

(1) In accordance with 76 FR 32837, which is incorporated by reference, Medicaid will not reimburse providers or contractors for provider-preventable conditions as defined in this CMS rule. Providers and contractors are prohibited from submitting claims for payment of these conditions except as permitted in 76 FR 32837 when the provider-preventable condition existed prior to the initiation of treatment by the provider.

(2) Medicaid providers who treat Medicaid eligible patients must report all provider- preventable conditions whether or not reimbursement for the services is sought. Medicaid providers must complete the Provider-Preventable Conditions Report as found at <http://health.utah.gov/medicaid/index.html>. Completed reports must be mailed to one of the following addresses within 30 calendar days of the event, as appropriate:

(a) Via U.S. Post Office: Utah Department of Health; DHCF, BCRP; Attn: Provider-Preventable Conditions Reporting; PO Box 143102; Salt Lake City, UT 84114-3102; or

(b) Via UPS or FedEx: Utah Department of Health; DHCF, BCRP; Attn: Provider-Preventable Conditions Reporting; 288 North 1460 West; Salt Lake City, UT 84116-3231.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: July 1, 2011

Notice of Continuation: April 16, 2007

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-34-2

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to remove obsolete rules from the Utah Administrative Code. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **NOTICE**. By filing a Notice, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. **NOTICES** are effective upon filing.

NOTICES are governed by Section 63G-3-305.

Agriculture and Food, Animal Industry **R58-2** Diseases, Inspections and Quarantines

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 34975
FILED: 06/23/2011

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is promulgated under the authority of Sections 4-31-15 and 4-31-17 which allow the Commissioner of Agriculture to invoke quarantines to protect the health of animals in the State of Utah from infectious diseases and to prevent or minimize the spread of infectious diseases.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: In Rule R58-1, there was a section that indicated that all swine shows had to be terminal shows. This was removed from Rule R58-1 and recently added to this rule, R58-2, to allow the show management to decide if they wanted to conduct a terminal show for any species. This change was requested by several swine exhibitors. The rule was changed to allow the use of terminal shows to protect animal populations in the State of Utah.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department of Agriculture and Food justifies the continuation of this rule as it allows the quarantine of premises to contain infectious diseases in animals and prevent or minimize the spread, which could result in extreme economic consequences and hardships.

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

AGRICULTURE AND FOOD
ANIMAL INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Bruce King by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at bking@utah.gov
◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
◆ Wyatt Frampton by phone at 801-538-7165, by FAX at 801-538-7169, or by Internet E-mail at wframpton@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 06/23/2011

Agriculture and Food, Animal Industry **R58-4** Use of Animal Drugs and Biologicals in the State of Utah

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 34976
FILED: 06/23/2011

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is promulgated under the authority of Section 4-5-17 which allows the Commissioner of the Department of Agriculture to control the use and distribution of animal biologicals in the State of Utah.

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 comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Department of Agriculture and Food justifies the continuation of this rule as it allows the control of the use of animal biologicals in the State of Utah to protect the livestock industry and public health.

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

AGRICULTURE AND FOOD
ANIMAL INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Bruce King by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at bking@utah.gov
◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
◆ Wyatt Frampton by phone at 801-538-7165, by FAX at 801-538-7169, or by Internet E-mail at wframpton@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 06/23/2011

**Agriculture and Food, Animal Industry
R58-14
Holding Live Raccoons or Coyotes in
Captivity**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 34974
FILED: 06/23/2011

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The rule is promulgated under the authority of Section 4-23-11 which allows the Utah Department of Agriculture and Food to control the holding of raccoons and coyotes in captivity in the State of Utah.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been submitted in support or opposition of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Department of Agriculture and Food justifies the continuation of this rule as the Department is still responsible to issue permits to individuals to allow the holding of raccoons and coyotes by the permittee. Allowing these animals to be held in captivity without restrictions creates substantial public health liability and concerns with the spread of disease. Therefore, this rule should be continued.

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

AGRICULTURE AND FOOD
ANIMAL INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Bruce King by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at bking@utah.gov

◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
◆ Wyatt Frampton by phone at 801-538-7165, by FAX at 801-538-7169, or by Internet E-mail at wframpton@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 06/23/2011

**Crime Victim Reparations,
Administration
R270-1**

Award and Reparation Standards

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 34990

FILED: 06/29/2011

**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: Crime Victim Reparations (CVR) statute, Subsection 63M-7-506(c), provides for clarification, implementation, and administration of the CVR Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have not been any written comments for or against this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule continues to provide important interpretation and standards for administering the program. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
CRIME VICTIM REPARATIONS
ADMINISTRATION
ROOM 200
350 E 500 S
SALT LAKE CITY, UT 84111-3347
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Melvin Wilson by phone at 801-238-2367, by FAX at 801-533-4127, or by Internet E-mail at melwilson@utah.gov

AUTHORIZED BY: Melvin Wilson , Director

EFFECTIVE: 06/29/2011

**Crime Victim Reparations,
Administration
R270-2**

**Crime Victim Reparations Adjudicative
Proceedings**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 34991

FILED: 06/29/2011

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 63M-7-515(1) requires the Office to write rules governing procedures for contested determinations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have not been any written comments for or against this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule continues to clarify informal hearing procedures for the Crime Victim Reparations (CVR) office. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
CRIME VICTIM REPARATIONS
ADMINISTRATION
ROOM 200
350 E 500 S
SALT LAKE CITY, UT 84111-3347
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Melvin Wilson by phone at 801-238-2367, by FAX at 801-533-4127, or by Internet E-mail at melwilson@utah.gov

AUTHORIZED BY: Melvin Wilson , Director

EFFECTIVE: 06/29/2011

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

EFFECTIVE: 06/30/2011

Education, Administration
R277-478
Block Grant Funding

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 34998
FILED: 06/30/2011

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(3) allows the Utah State Board of Education 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 continue to be necessary because it provides criteria and procedures for distributing block grant funds for school districts and charter schools. 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

Education, Administration
R277-479

Expenditure of Appropriation for District Services

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35000
FILED: 06/30/2011

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(3) allows the Utah State Board of Education 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: The Utah State Board of Education (Board) reviewed this rule for continuation and determined that the rule is no longer necessary because programs provided for in the rule have been discontinued or replaced by new legislation or rules. The rule will be continued and then repealed as directed by the Board.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

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

EFFECTIVE: 06/30/2011

Education, Administration

R277-717

Mathematics, Engineering, Science
Achievement (MESA)

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 34999

FILED: 06/30/2011

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(3) allows the Utah State board of Education 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: The Utah State Board of Education (Board) reviewed this rule for continuation and determined that the rule is no longer necessary because the statute that provided funding for this program has been repealed and replaced with a new statute titled "Enhancement for At-Risk Students Program" that provides greater flexibility for using funds appropriation to local education agencies (LEAs) to provide for students who are at-risk for academic failure. This rule will be continued and then repealed as directed by the Board.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

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

EFFECTIVE: 06/30/2011

Environmental Quality, Water Quality

R317-7

Underground Injection Control (UIC)
Program

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 34951

FILED: 06/20/2011

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Underground Injection Control (UIC) rules for state programs are federally mandated by 40 CFR 145.11(b), as a result of the federal Safe Drinking Water Act (SDWA). If a state does not obtain and maintain primacy to enforce UIC rules at least equivalent to the federal rules, then the Environmental Protection Agency (EPA) will enforce the federal rules in that state using Direct Implementation procedures. The Utah Water Quality Board promulgated the Utah UIC Rules under the authority of Section 19-5-104 of the Water Quality Act which allows rules to be made in order to protect drinking water sources.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This rule was last amended on 8/25/2006. No comments were received during the rulemaking process. This has not been a controversial rule. No other comments have been received either supporting or opposing the rule since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is required to maintain state primacy for administering Utah's UIC Program. If Utah does not

obtain and maintain primacy to enforce UIC rules at least equivalent to the federal rules, then the EPA will enforce the federal rules using Direct Implementation procedures. In promulgating the rule, the Water Quality Board made the determination that the UIC Program is best administered at the state level so therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY
WATER QUALITY
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Dave Wham by phone at 801-536-4337, by FAX at 801-536-4301, or by Internet E-mail at dwham@utah.gov

AUTHORIZED BY: Walter Baker, Director

EFFECTIVE: 06/20/2011

Environmental Quality, Water Quality
R317-11
Certification Required to Design,
Inspect and Maintain Underground
Wastewater Disposal Systems, or
Conduct Percolation and Soil Tests for
Underground Wastewater Disposal
Systems

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 34978
FILED: 06/27/2011

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-5-104(1)(f) authorizes the Utah Water Quality Board to adopt and enforce rules to protect the public health for the design, construction, operation, and maintenance of underground wastewater disposal systems, liquid scavenger operations, and vault and earthen pit privies. Section 19-5-121 sets forth certification requirements in order to design, inspect, maintain, or conduct

percolation or soil test for underground wastewater disposal systems.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This rule was last amended on 01/26/2007. No comments were received during the rulemaking process. This has not been a controversial rule. Only one comment has been received since that amendment. The CLEHA Onsite Wastewater Partnership has notified the Division of Water Quality that it voted to support expanding the coverage of the rule to include installers of onsite systems. However, no official changes in rule text have yet been proposed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is required for the Water Quality Board to implement the state's certification program associated with the design, inspection, and maintenance of underground wastewater disposal systems as outlined in the Water Quality Act. The certification program is established in order to assist in protecting the quality of waters in the state of Utah by helping ensure that personnel have adequate experience and training to design, inspect, maintain, or conduct percolation or soil tests for underground wastewater disposal systems. Therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY
WATER QUALITY
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

AUTHORIZED BY: Walter Baker, Director

EFFECTIVE: 06/27/2011

Health, Disease Control and
Prevention, Environmental Services
R392-110
Home-based Child Care Food Service

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 34985
FILED: 06/28/2011

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The rule is authorized by Section 26-15-2. The section requires the department to adopt rules to implement minimum standards in all places where food or drink is handled, sold, or served to the public.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Bureau of Epidemiology, Environmental Sanitation Program received two comments from the local health departments, one which voiced support of continuation of the rule, and the other listed minor changes to the inspection form as a proposed request. No other comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule establishes minimum requirements and standards for the safe handling of food service in home-based childcare settings. This rule is important because it protects the children in home based child care settings to ensure that the food served is free from disease causing organisms, and potential contamination. Therefore, this rule should be continued.

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

HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
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:

◆ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

AUTHORIZED BY: David Patton, Executive Director

EFFECTIVE: 06/28/2011

Regents (Board of), Administration
R765-608

Utah Engineering and Computer
Science Scholarship Program

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 34980
FILED: 06/28/2011

**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 53B-6-105 requires an administrative rule under Section 53B-6-105.7 to provide policy for a computer and engineering scholarship program within the state system of higher education. This program is intended to encourage studies in related fields which lead to employment within the state of Utah for scholarship recipients.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received during the past five years since this rule was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This is a scholarship program that has not been terminated and thus the continuation of this rule is needed in support of this program as enacted by the Utah Legislature.

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

REGENTS (BOARD OF)
ADMINISTRATION
BOARD OF REGENTS BUILDING, THE GATEWAY
60 SOUTH 400 WEST
SALT LAKE CITY, UT 84101-1284
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ronell Crossley by phone at 801-321-7291, by FAX at 801-321-7299, or by Internet E-mail at rcrossley@utahsbr.edu

AUTHORIZED BY: William Sederburg, Commissioner

EFFECTIVE: 06/28/2011

**NOTICES OF
FIVE-YEAR REVIEW EXTENSIONS**

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules. The extension permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed extensions for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

The five-year review extension is governed by Subsections 63G-3-305(4) and (5).

**Public Lands Policy Coordinating
Office, Administration
R694-1
Archeological Permits**

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 34977

FILED: 06/23/2011

EXTENSION REASON AND NEW DEADLINE: Because the state archeologist recently moved on to other employment, the agency needs to extend the deadline for the five-year review until a new archeologist is hired in a few weeks and can review the rule. New deadline is 10/21/2011.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ John Harja by phone at 801-537-9275, by FAX at 801-537-9226, or by Internet E-mail at johnharja@utah.gov

AUTHORIZED BY: John Harja, Assistant Director for Planning and Policy

EFFECTIVE: 06/23/2011

End of the Notices of Five-Year Review Extensions Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a Notice of Effective Date within 120 days from the publication of a Proposed Rule or a related Change in Proposed Rule the rule lapses and the agency must start the rulemaking process over.

Notices of Effective Date are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

Administrative Services

Finance

No. 34764 (AMD): R25-7. Travel-Related Reimbursements for State Employees

Published: 05/15/2011

Effective: 07/01/2011

Agriculture and Food

Animal Industry

No. 34694 (AMD): R58-11. Slaughter of Livestock

Published: 05/01/2011

Effective: 06/21/2011

Plant Industry

No. 34711 (AMD): R68-7. Utah Pesticide Control Rule

Published: 05/15/2011

Effective: 06/21/2011

Commerce

Administration

No. 34752 (AMD): R151-3. Americans With Disabilities Act Rule

Published: 05/15/2011

Effective: 06/21/2011

Real Estate

No. 34704 (AMD): R162-2e. Appraisal Management Company Administrative Rules

Published: 05/01/2011

Effective: 06/22/2011

No. 34703 (AMD): R162-104-14. Special Circumstances

Published: 05/01/2011

Effective: 06/22/2011

Environmental Quality

Drinking Water

No. 34552 (AMD): R309-700-5. Loan, Credit Enhancement, Interest Buy-Down, and Hardship Grant Consideration Policy

Published: 05/01/2011

Effective: 07/01/2011

No. 34553 (AMD): R309-705-6. Applicant Priority System and Selection of Terms of Assistance

Published: 05/01/2011

Effective: 07/01/2011

Governor

Economic Development

No. 34762 (NEW): R357-5. Motion Picture Incentive Fund

Published: 05/15/2011

Effective: 06/30/2011

Health

Children's Health Insurance Program

No. 34560 (AMD): R382-1. Benefits and Administration

Published: 05/01/2011

Effective: 06/16/2011

Health Care Financing, Coverage and Reimbursement Policy

No. 34556 (AMD): R414-304. Income and Budgeting

Published: 05/01/2011

Effective: 06/16/2011

No. 34683 (AMD): R414-305. Resources

Published: 05/01/2011

Effective: 06/16/2011

No. 34767 (AMD): R414-401-3. Assessment

Published: 05/15/2011

Effective: 07/01/2011

No. 34766 (AMD): R414-504. Nursing Facility Payments

Published: 05/15/2011

Effective: 07/01/2011

Human Resource Management

Administration

No. 34741 (AMD): R477-1. Definitions
Published: 05/15/2011
Effective: 07/01/2011

No. 34742 (AMD): R477-2. Administration
Published: 05/15/2011
Effective: 07/01/2011

No. 34743 (AMD): R477-4. Filling Positions
Published: 05/15/2011
Effective: 07/01/2011

No. 34744 (AMD): R477-6. Compensation
Published: 05/15/2011
Effective: 07/01/2011

No. 34745 (AMD): R477-7. Leave
Published: 05/15/2011
Effective: 07/01/2011

No. 34747 (AMD): R477-9. Employee Conduct
Published: 05/15/2011
Effective: 07/01/2011

No. 34749 (AMD): R477-12-3. Reduction in Force
Published: 05/15/2011
Effective: 07/01/2011

No. 34750 (AMD): R477-13. Volunteer Programs
Published: 05/15/2011
Effective: 07/01/2011

No. 34751 (AMD): R477-14. Substance Abuse and Drug-Free Workplace
Published: 05/15/2011
Effective: 07/01/2011

Human Services

Recovery Services

No. 34685 (NEW): R527-250. Emancipation
Published: 05/01/2011
Effective: 07/01/2011

Insurance

Administration

No. 34769 (AMD): R590-192. Unfair Accident and Health Income Replacement Claims Settlement Practices Rule
Published: 05/15/2011
Effective: 06/30/2011

No. 34768 (AMD): R590-203. Health Grievance Review Process and Disability Claims
Published: 05/15/2011
Effective: 06/30/2011

No. 34709 (AMD): R590-246-4. Initial and Renewal Licensing Process

Published: 05/15/2011
Effective: 06/27/2011

No. 34727 (AMD): R590-259. Dependent Coverage to Age 26

Published: 05/15/2011
Effective: 06/27/2011

No. 34770 (NEW): R590-261. Health Benefit Plan Adverse Benefit Determinations

Published: 05/15/2011
Effective: 06/30/2011

Labor Commission

Adjudication

No. 34728 (AMD): R602-1. General Provisions

Published: 05/15/2011
Effective: 06/22/2011

No. 34729 (AMD): R602-2-1. Pleadings and Discovery

Published: 05/15/2011
Effective: 06/22/2011

No. 34732 (AMD): R602-4-4. Pleadings and Discovery

Published: 05/15/2011
Effective: 06/22/2011

No. 34730 (AMD): R602-7. Adjudication of Discrimination Claims

Published: 05/15/2011
Effective: 06/22/2011

No. 34731 (AMD): R602-8. Adjudication of Utah Occupational Safety and Health Citation Claims

Published: 05/15/2011
Effective: 06/22/2011

Industrial Accidents

No. 34725 (R&R): R612-12. Reporting Requirements for Workers' Compensation Coverage Waivers

Published: 05/15/2011
Effective: 06/22/2011

Natural Resources

Forestry, Fire and State Lands

No. 34763 (NEW): R652-150. Utah Bioprospecting Act

Published: 05/15/2011
Effective: 06/21/2011

Public Service Commission

Administration

No. 34760 (AMD): R746-343-15. Surcharge

Published: 05/15/2011
Effective: 08/01/2011

Regents (Board Of)

Administration

No. 34734 (AMD): R765-604. New Century Scholarship
Published: 05/15/2011
Effective: 06/22/2011

No. 34721 (REP): R765-612. Lender Participation
Published: 05/15/2011
Effective: 06/30/2011

Tax Commission

Administration

No. 34753 (AMD): R861-1A-29. Decisions, Orders, and
Reconsideration Pursuant to Utah Code Ann. Section 63G-4-
302
Published: 05/15/2011
Effective: 06/23/2011

No. 34687 (AMD): R861-1A-43. Electronic Meetings
Pursuant to Utah Code Ann. Section 52-4-207
Published: 05/01/2011
Effective: 06/23/2011

No. 34754 (AMD): R861-1A-45. Procedures for Commission
Meetings Not Open to the Public Pursuant to Utah Code Ann.
Section 59-1-405
Published: 05/15/2011
Effective: 06/23/2011

Auditing

No. 34755 (AMD): R865-6F-40. Foreign Operating
Company Subtraction from Unadjusted Income Pursuant to
Utah Code Ann. Sections 59-7-101 and 59-7-106
Published: 05/15/2011
Effective: 06/23/2011

No. 34756 (AMD): R865-19S-92. Computer Software and
Other Related Transactions Pursuant to Utah Code Ann.
Section 59-12-103
Published: 05/15/2011
Effective: 06/23/2011

No. 34757 (AMD): R865-19S-103. Municipal Energy Sales
and Use Tax Pursuant to Utah Code Ann. Sections 10-1-303,
10-1-306, and 10-1-307
Published: 05/15/2011
Effective: 06/23/2011

Motor Vehicle

No. 34686 (AMD): R873-22M-27. Issuance of Special Group
License Plates Pursuant to Utah Code Ann. Sections 41-1a-
418, 41-1a-419, 41-1a-420, and 41-1a-421
Published: 05/01/2011
Effective: 06/23/2011

Transportation

Program Development

No. 34765 (AMD): R926-11. Rules for Permitting of Eligible
Vehicles for a Clean Fuel Special Group License Plate On or
After January 1, 2009
Published: 05/15/2011
Effective: 06/21/2011

End of the Notices of Rule Effective Dates Section

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2011 through July 01, 2011. 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).

DAR NOTE: A processing error caused the exclusion of 110 nonsubstantive changes from the Index. These nonsubstantive changes reflect changed agency names in the Department of Health. The Division is working to correct the error.

Questions regarding the index and the information it contains should be addressed to Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Administration</u>					
R13-3	Americans with Disabilities Act Grievance Procedures	34347	AMD	03/10/2011	2011-3/4
R13-3-2	Definitions	34674	NSC	04/27/2011	Not Printed
<u>Facilities Construction and Management</u>					
R23-23	Health Reform - Health Insurance Coverage in State Contracts - Implementation	34801	EMR	05/10/2011	2011-11/105
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	34764	AMD	07/01/2011	2011-10/6
<u>Fleet Operations</u>					
R27-3	Vehicle Use Standards	34256	AMD	01/25/2011	2010-24/6
R27-4-11	Capital Credit or Reservation of Vehicle Allocation for Surrendered Vehicles	34257	AMD	01/25/2011	2010-24/7
AGRICULTURE AND FOOD					
<u>Administration</u>					
R51-3	Government Records Access and Management Act	34491	5YR	03/03/2011	2011-7/43
R51-4	ADA Complaint Procedure	34492	5YR	03/03/2011	2011-7/43
<u>Animal Industry</u>					
R58-1	Admission and Inspection of Livestock, Poultry and Other Animals	34343	AMD	03/24/2011	2011-3/7
R58-2	Diseases, Inspections and Quarantines	34352	AMD	03/24/2011	2011-3/13
R58-2	Diseases, Inspections and Quarantines	34975	5YR	06/23/2011	Not Printed
R58-4	Use of Animal Drugs and Biologicals in the State of Utah	34976	5YR	06/23/2011	Not Printed
R58-11	Slaughter of Livestock	34694	AMD	06/21/2011	2011-9/2
R58-11-2	Definitions	34914	NSC	06/30/2011	Not Printed
R58-14	Holding Live Raccoons or Coyotes in Captivity	34974	5YR	06/23/2011	Not Printed
R58-20	Domesticated Elk Hunting Park	34906	EMR	06/07/2011	Not Printed
<u>Marketing and Development</u>					
R65-8	Management of the Junior Livestock Show Appropriation	34489	5YR	03/03/2011	2011-7/44
<u>Plant Industry</u>					
R68-4	Standardization, Marketing, and Phytosanitary Inspection of Fresh Fruits, Vegetables, and Other Plant and Plant Products	34414	5YR	02/08/2011	2011-5/107
R68-7	Utah Pesticide Control Act	34488	5YR	03/02/2011	2011-7/44
R68-7	Utah Pesticide Control Act	34430	AMD	06/02/2011	2011-5/2

R68-7	Utah Pesticide Control Rule	34711	AMD	06/21/2011	2011-10/10
R68-7-10	Responsibilities of Business and Applicator	34456	NSC	06/02/2011	Not Printed
R68-7-10	Responsibilities of Business and Applicator	34498	AMD	06/02/2011	2011-7/2
R68-8	Utah Seed Law	34345	5YR	01/05/2011	2011-3/55
R68-18	Quarantine Pertaining to Karnal Bunt	34412	5YR	02/08/2011	2011-5/107
R68-21-2	Authority	34558	NSC	04/27/2011	Not Printed

Regulatory Services

R70-330	Raw Milk for Retail	34518	5YR	03/16/2011	2011-8/29
R70-370	Butter	34519	5YR	03/16/2011	2011-8/29
R70-380	Grade A Condensed and Dry Milk Products and Condensed and Dry Whey	34517	5YR	03/16/2011	2011-8/30
R70-410	Grading and Inspection of Shell Eggs with Standard Grade and Weight Classes	34378	5YR	01/24/2011	2011-4/35

ALCOHOLIC BEVERAGE CONTROL

Administration

R81-1	Scope, Definitions, and General Provisions	34787	5YR	05/10/2011	2011-11/123
R81-1-29	Disclosure of Conflicts of Interest	34337	AMD	02/24/2011	2011-2/4
R81-1-30	Factors for Granting Licenses	34336	AMD	02/24/2011	2011-2/5
R81-2	State Stores	34788	5YR	05/10/2011	2011-11/124
R81-3	Package Agencies	34789	5YR	05/10/2011	2011-11/125
R81-3-13	Operational Restrictions	34340	AMD	02/24/2011	2011-2/6
R81-4A	Restaurant Liquor Licenses	34790	5YR	05/10/2011	2011-11/125
R81-5	Private Clubs	34791	5YR	05/10/2011	2011-11/126
R81-6	Special Use Permits	34792	5YR	05/10/2011	2011-11/127
R81-7	Single Event Permits	34793	5YR	05/10/2011	2011-11/128
R81-8	Manufacturers (Distillery, Winery, Brewery)	34794	5YR	05/10/2011	2011-11/128
R81-9	Liquor Warehousing License	34795	5YR	05/10/2011	2011-11/129
R81-11	Beer Wholesalers	34796	5YR	05/10/2011	2011-11/129
R81-12	Manufacturer Representative (Distillery, Winery, Brewery)	34797	5YR	05/10/2011	2011-11/130

CAPITOL PRESERVATION BOARD (STATE)

Administration

R131-4	Capitol Preservation Board General Procurement Rule	34675	5YR	04/11/2011	2011-9/117
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COMMERCE

Administration

R151-3	Americans With Disabilities Act Rule	34752	AMD	06/21/2011	2011-10/20
R151-4	Department of Commerce Administrative Procedures Act Rule	34479	NEW	04/21/2011	2011-6/4
R151-14	New Automobile Franchise Act Rule	34761	5YR	05/02/2011	2011-10/117
R151-14-3	Adjudicative Proceedings	34735	NSC	05/25/2011	Not Printed
R151-35-3	Adjudicative Proceedings	34736	NSC	05/25/2011	Not Printed
R151-46b	Department of Commerce Administrative Procedures Act Rules	34480	REP	04/21/2011	2011-6/18

Consumer Protection

R152-11-9	Direct Solicitations	34100	AMD	02/07/2011	2010-20/4
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Corporations and Commercial Code

R154-2	Utah Uniform Commercial Code, Revised Article 9 Rules	34785	5YR	05/10/2011	2011-11/131
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Occupational and Professional Licensing

R156-1-102	Definitions	34323	AMD	02/24/2011	2011-2/7
R156-3a	Architect Licensing Act Rule	34396	5YR	01/31/2011	2011-4/35
R156-9a	Uniform Athlete Agents Act Rules	34499	5YR	03/10/2011	2011-7/45
R156-9a	Uniform Athlete Agents Act Rules	34496	NSC	04/06/2011	Not Printed
R156-15	Health Facility Administrator Act Rule	34545	AMD	05/26/2011	2011-8/10
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rule	34409	AMD	03/24/2011	2011-4/6

RULES INDEX

R156-46b	Division Utah Administrative Procedures Act Rule	34397	5YR	01/31/2011	2011-4/36
R156-46b	Division Utah Administrative Procedures Act Rule	34469	AMD	04/25/2011	2011-6/33
R156-46b	Division Utah Administrative Procedures Act Rule	34712	NSC	05/25/2011	Not Printed
R156-50	Private Probation Provider Licensing Act Rules	34282	NSC	01/06/2011	Not Printed
R156-55a	Utah Construction Trades Licensing Act Rule	34470	AMD	04/25/2011	2011-6/35
R156-55c-102	Definitions	34338	AMD	02/24/2011	2011-2/10
R156-55e-303a	Continuing Education - Standards	34673	NSC	04/27/2011	Not Printed
R156-60a	Social Worker Licensing Act Rule	34310	AMD	02/10/2011	2011-1/6
R156-60c	Professional Counselor Licensing Act Rule	34339	AMD	02/24/2011	2011-2/12
R156-60d	Substance Abuse Counselor Act Rule	34395	5YR	01/31/2011	2011-4/37
R156-63a	Security Personnel Licensing Act Contract Security Rule	34370	AMD	03/24/2011	2011-4/12
R156-63a-302f	Qualifications for Licensure - Good Moral Character - Disqualifying Convictions	34360	NSC	01/26/2011	Not Printed
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R861-1A-13	Requests for Accommodation and Grievance Procedures Pursuant to Utah Code Ann. Section 63G-3-201, 28 CFR 35.107 1992 edition, and 42 USC 12201	34758	NSC	05/25/2011	Not Printed
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R912-8	Minimum Tire, Axle and Suspension Ratings for Heavy Vehicles and the Use of Retractable or Variable Load Suspension Axles in Utah	34454	NSC	03/10/2011	Not Printed

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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
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<u>acupuncture</u> Commerce, Occupational and Professional Licensing	34543	R156-72	AMD	05/26/2011	2011-8/14
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	34480	R151-46b	REP	04/21/2011	2011-6/18
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<u>administrative procedures</u> Agriculture and Food, Animal Industry	34974	R58-14	5YR	06/23/2011	Not Printed
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	34730	R602-7	AMD	06/22/2011	2011-10/84
	34731	R602-8	AMD	06/22/2011	2011-10/88
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	34436	R652-80	5YR	02/14/2011	2011-5/116
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	34350	R307-110-28	AMD	04/07/2011	2011-3/26
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Natural Resources, Parks and Recreation	34422	R651-219	5YR	02/10/2011	2011-5/111
	34514	R651-219	AMD	05/09/2011	2011-7/14
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	34487	R710-6-4	AMD	04/21/2011	2011-6/84
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	34914	R58-11-2	NSC	06/30/2011	Not Printed

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	34225	R162-2c-201	AMD	01/08/2011	2010-23/16
	34226	R162-2c-203	AMD	01/08/2011	2010-23/19
	34227	R162-2c-204	AMD	01/08/2011	2010-23/23
	34737	R162-2c-401	NSC	05/25/2011	Not Printed
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	34553	R309-705-6	AMD	07/01/2011	2011-9/25
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Corrections, Administration	34858	R251-114	NSC	06/14/2011	Not Printed
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	34147	R410-14	CPR	04/25/2011	2011-6/96
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	34992	R414-1-29	EMR	07/01/2011	Not Printed
	34524	R414-14	AMD	05/25/2011	2011-8/9
	34509	R414-14A	AMD	05/16/2011	2011-7/5
	34316	R414-54-3	AMD	04/05/2011	2011-1/21
	34525	R414-54-3	AMD	05/25/2011	2011-8/22
	34317	R414-59-4	AMD	04/05/2011	2011-1/22
	34526	R414-59-4	AMD	05/25/2011	2011-8/23
	34314	R414-61	AMD	04/05/2011	2011-1/23
	34683	R414-305	AMD	06/16/2011	2011-9/80
	34767	R414-401-3	AMD	07/01/2011	2011-10/26
	34267	R414-501	AMD	04/05/2011	2010-24/44
	34562	R414-501-3	AMD	06/07/2011	2011-9/92
	34766	R414-504	AMD	07/01/2011	2011-10/27
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