

UTAH STATE BULLETIN

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

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

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

Division of Administrative Rules, Salt Lake City 84114

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EXECUTIVE DOCUMENTS

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

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

Governor's Proclamation 2011/03/E: Calling the Fifty-Ninth Legislature into the Third Extraordinary Session

PROCLAMATION

WHEREAS, since the close of the 2011 General Session of the 59th Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

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

NOW, THEREFORE, I, GARY R. HERBERT, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 59th Legislature into the Third Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 21st day of September 2011, at 2 p.m., for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2011 General Session of the Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 6th day of September 2011.

(State Seal)

Gary R. Herbert
Governor

Greg Bell
Lieutenant Governor

2011/03/E

Governor's Executive Order EO/012/2011: Wildland Fire Management

EXECUTIVE ORDER

Wildland Fire Management

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

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

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

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

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

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

It is found, determined and declared that a "State of Emergency" exists statewide due to the threat to public safety, property, natural resources and the environment for thirty days, effective as of September 10, 2011 requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

IN TESTIMONY, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 10th day of September 2011

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Lieutenant Governor
Greg Bell

EO/012/2011

End of the Executive Documents Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between September 02, 2011, 12:00 a.m., and September 15, 2011, 11:59 p.m. are included in this, the October 01, 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 October 31, 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 January 29, 2012, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses and the agency must start the process over.

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

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

The Proposed Rules Begin on the Following Page

Commerce, Administration
R151-4-107
 Computation of Time

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35232

FILED: 09/13/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Due to recent statutory changes, State agencies are returning to a five-day workweek and working again on Fridays. This rule change clarifies that when determining filing deadlines, Fridays are included in the computation.

SUMMARY OF THE RULE OR CHANGE: Fridays are no longer excepted if the filing deadline falls on a Friday.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-1-6 and Subsection 63G-4-102(6)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: This rule amendment clarifies that Fridays are no longer excepted in determining filing deadlines. No costs are anticipated from this clarification.
- ◆ LOCAL GOVERNMENTS: This rule amendment clarifies that Fridays are no longer excepted in determining filing deadlines. No costs are anticipated from this clarification.
- ◆ SMALL BUSINESSES: This rule amendment clarifies that Fridays are no longer excepted in determining filing deadlines. No costs are anticipated from this clarification.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule amendment clarifies that Fridays are no longer excepted in determining filing deadlines. No costs are anticipated from this clarification.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule amendment clarifies that Fridays are no longer excepted in determining filing deadlines. No costs are anticipated from this clarification.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this clarifying rule amendment.

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

COMMERCE
 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:

◆ Masuda Medcalf by phone at 801-530-7663, by FAX at 801-530-6446, or by Internet E-mail at mmedcalf@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2011

AUTHORIZED BY: Francine Giani, Executive Director

R151. Commerce, Administration.

R151-4. Department of Commerce Administrative Procedures Act Rule.

R151-4-107. Computation of Time.

- (1) Periods of time in department proceedings shall:
- (a) exclude the first day of the act, event, or default from which the time begins to run; and
 - (b) include the last day unless it is a [~~Friday,~~]Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a [~~Friday,~~]Saturday, Sunday, or legal holiday.
- (2) When a period of time is less than seven days, [~~Fridays,~~]Saturdays, Sundays, and legal holidays are excluded.
- (3)(a)(i) When a period of time runs after the service of a document by mail, three days shall be added to the end of the prescribed period.
- (ii) Except as provided in R151-4-107(1)(b), these three days include [~~Fridays,~~]Saturdays, Sundays, and legal holidays.
 - (b) No additional time is provided if service is accomplished by electronic means.

KEY: administrative procedures, adjudicative proceedings, government hearings

Date of Enactment or Last Substantive Amendment: [September 7,]2011

Authorizing, and Implemented or Interpreted Law: 13-1-6; 63G-4-102(6)

Commerce, Occupational and
 Professional Licensing
R156-40a
 Athletic Trainer Licensing Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35224

FILED: 09/08/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Athletic Trainer Licensing Board

reviewed the rule and determined a change needs to be made to further define unprofessional conduct for licensed athletic trainers.

SUMMARY OF THE RULE OR CHANGE: In Section R156-40a-102, the definitions section is being added to define unprofessional conduct in the rule. In Section R156-40a-104, the term "division" is capitalized. In Section R156-40a-502, unprofessional conduct section is being added to include violating any provision of the National Athletic Trainer Association (NATA) Code of Ethics.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-40a-101 and Subsection 58-1-202(1)(a) and Subsection 58-1-106(1)(a)

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds NATA Code of Ethics, published by National Athletic Trainers Association, 09/28/2005

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$100 to print and distribute the rule once the proposed amendments are made effective. Adding a definition of unprofessional conduct to the rule that incorporates the National Athletic Trainers Association Code of Ethics will strengthen Division enforcement efforts in cases of unprofessional conduct. Any costs incurred with respect to printing and distribution will be absorbed in the Division's current budget.

◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed athletic trainers. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** The proposed amendments only apply to licensed athletic trainers. As a result, the proposed amendments do not apply to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to licensed athletic trainers. Adding a definition of unprofessional conduct to the rule that incorporates the National Athletic Trainers Association Code of Ethics is not expected to have a cost or saving impact on individual licensees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed athletic trainers. Adding a definition of unprofessional conduct to the rule that incorporates the National Athletic Trainers Association Code of Ethics is not expected to have a cost or saving impact on individual licensees. Also, there is no cost associated with obtaining a copy of the NATA Code of Ethics as it can be found on their website.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing clarifies that unprofessional conduct includes violations of the code of ethics for the profession. No fiscal impact to businesses is anticipated from this clarification.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 10/20/2011 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2011

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-40a. Athletic Trainer Licensing Act Rule.

R156-40a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 40a, as used in this rule:

(1) "Unprofessional conduct" is further defined, in accordance with Subsection 58-1-203(1)(3), in Section R156-40a-502.

R156-40a-104. 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 40a.

R156-40a-502. Unprofessional Conduct.

"Unprofessional conduct" includes violating any provision of the National Athletic Trainers Association (NATA) Code of Ethics, revised September 28, 2005, which is hereby adopted and incorporated by reference.

KEY: licensing, occupational licensing, athletic trainers

Date of Enactment or Last Substantive Amendment: [February 22, 2007]2011

Authorizing, and Implemented or Interpreted Law: 58-40a-101, 58-1-106(1)(a), 58-1-202(1)(a)

**Commerce, Occupational and
Professional Licensing
R156-78B-4
General Provisions**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35237

FILED: 09/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 328 generated a review of the state's 4 x 10-hour workweek and resulted in a decision to return to a Monday through Friday schedule, effective 09/06/2011. Pursuant to this change, the Division of Occupational and Professional Licensing amended its operational hours to 8:00 am to 5:00 pm, Monday through Friday, beginning 09/06/2011. As a result of this changes, Fridays will be scheduled workdays and thus, Friday no longer needs to be excepted from the computation of time when a filing deadline falls on a Friday.

SUMMARY OF THE RULE OR CHANGE: Subsection R156-78B-4(3) is amended to reflect that Fridays are counted when determining a deadline for filing before a Division prelitigation panel.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 78B-3-416(1)(b)

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 amendment only applies to persons who would be filing a medical malpractice prelitigation request with the Division. As a result, the proposed amendment does not apply to local governments.
- ◆ SMALL BUSINESSES: The proposed amendment only applies to persons who would be filing a medical malpractice prelitigation request with the Division. As a result, the Division anticipates no costs or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendment only applies to persons who would be filing a medical malpractice prelitigation request with the Division. However, the Division anticipates no costs or savings as a result of this proposed amendment which removes Fridays from the list of days not to be counted when calculating the computation of time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendment only applies to persons who would be

filing a medical malpractice prelitigation request with the Division. However, the Division anticipates no costs or savings as a result of this proposed amendment which removes Fridays from the list of days not to be counted when calculating the computation of time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this clarifying rule amendment regarding computation of time.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2011

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-78B. Prelitigation Panel Review Rule.

R156-78B-4. General Provisions.

(1) Purpose.

This rule is intended to secure the just, speedy and economical determination of all issues presented to the Division.

(2) Deviation from Rule.

Except as otherwise required by Title 78B, Chapter 3, the Division may permit a deviation from this rule when it finds compliance to be impractical or unnecessary.

(3) Computation of Time.

The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last, unless the last day is [~~Friday,~~]Saturday, Sunday or a state holiday, and then it is excluded and the period runs until the end of the next day which is a scheduled workday for the Division. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three days shall be added to the prescribed period.

KEY: medical malpractice, prelitigation, certificate of compliance, affidavit of merit
Date of Enactment or Last Substantive Amendment: ~~January 10,~~ 2011
Notice of Continuation: April 9, 2007
Authorizing, and Implemented or Interpreted Law: 78B-3-416(1)(b)

Education, Administration
R277-115
Copyrighting Material Developed with Funds that Flow Through the Board

NOTICE OF PROPOSED RULE
 (Repeal and Reenact)
 DAR FILE NO.: 35241
 FILED: 09/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide simplified standards and procedures for materials developed with public education funds.

SUMMARY OF THE RULE OR CHANGE: The repealed rule focused more on concerns about copyright. The reenacted rule focuses more on local education agency (LEA) ownership of materials produced by LEA employees while on their contract time.

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

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The reenacted rule simplifies standards and procedures which do not result in any costs or savings.
 ♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The reenacted rule simplifies standards and procedures for reprinting or reproducing material developed with state public education funds and does not result in any costs or savings.
 ♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. The reenacted rule provides standards and procedures for requestors to receive permission to reprint or reproduce material developed by the Utah State Board of Education which do not result in any cost or savings to businesses.
 ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The reenacted rule merely simplifies standards and

procedures for reprinting or reproducing material developed with state public education funds which do not result in any costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The reenacted rule simplifies standards and procedures for reprinting or reproducing material developed with state public education funds and does not result in any compliance costs.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY, UT 84111-3272
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2011

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

R277. Education, Administration.
~~**[R277-115. Copyrighting Material Developed with Funds that Flow Through the Board.**~~
R277-115-1. Definitions:
 _____ A. "Board" means the Utah State Board of Education.
 _____ B. "Reprint" means a verbatim copy of the original of any material protected by copyright notices.
 _____ C. "Published" means distribution of a copy of a work by sale, lease, rental, lending, or other transfer of ownership or the offering to distribute copies to anyone for purposes of further distribution.
 _____ D. "Material" means all copyrightable works, including writings, lectures, musical or dramatic compositions, sound recordings, films, videotapes and other pictorial reproductions, computer programs, listings, flow charts, manuals, codes, instructions, and software.
 _____ E. "Formula grant basis" means federal or state funds that are distributed through the Board on the basis of a formula without competitive application for the funds. The Board has no discretion in awarding the funds if the recipient qualifies under the formula and meets other standards of that particular program.

~~_____ F. "Discretionary grant basis" means federal or state funds that are distributed by the Board on the basis of competitive application or contract.~~

~~R277-115-2. Authority and Purpose.~~

~~_____ A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.~~

~~_____ B. The purpose of this rule is to specify an orderly means for regulating copyrighted material.~~

~~R277-115-3. Reprints of Material Copyrighted by the Board.~~

~~_____ A. The Board or its designee may grant permission to reprint published material of the Board that is protected by a copyright notice.~~

~~_____ B. Requests for permission to reprint shall be submitted to the Board in writing and shall describe:~~

- ~~_____ (1) the specific published material to be reprinted;~~
~~_____ (2) the work in which the copyrighted material will appear; and~~
~~_____ (3) the general use to be made of the work.~~

~~_____ C. For permission for a reprint to be granted, full credit shall be given to the Board and the author either on the copyright page or section of the work or immediately preceding each use of the material covered by the permission. This credit shall appear on every copy of the work reproduced.~~

~~_____ D. The Board may make a charge for the right to use substantial portions of published material of the Board if the use substantially enhances the marketability of the work with the potential of substantial profits to the work's author and publisher. Charges shall be negotiated between the Board and the party seeking to use Board materials on a case-by-case basis.~~

~~_____ E. One copy of the work within which the reprinted material appears shall be sent to the Board upon its publication.~~

~~_____ F. The Board or its designee shall develop forms and accounting procedures to carry out the purposes of this section.~~

~~R277-115-4. Copyrighting Materials.~~

~~_____ A. In order to protect the public interest in the cost of the development, distribution, and use of original materials, a local school district may copyright any original material that it develops with formula grant basis funds.~~

~~_____ B. The Board reserves the right to obtain copyrights for original materials developed on projects funded with discretionary grant basis funds which it controls or which it allots to others.~~

~~_____ C. The Board may relinquish its copyright authority by written agreement. If the Board relinquishes its rights, it shall require a written agreement providing an irrevocable, nonexclusive, and royalty-free license to reproduce and publish the copyrighted materials, including the right to sublicense for all Utah school districts and state education institutions. Use of such materials under this exclusion is limited to public institutions in Utah.~~

KEY: copyright, educational policy

Date of Enactment or Last Substantive Amendment: 1987

Notice of Continuation: September 6, 2007

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

R277-115. Material Developed with State Public Education Funds.

R277-115-1. Definitions.

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

_____ B. "LEA" means a local education agency directly responsible for the public education of Utah students, including traditional local school boards and charter school boards.

_____ C. "Material" means all copyrightable works, including writings, lectures, musical or dramatic compositions, sound recordings, films, videotapes and other pictorial reproductions, computer programs, listings, flow charts, manuals, codes, instructions, and software.

_____ D. "Utah Public Employees Ethics Act" means the provisions established in Section 67-16-1-14.

_____ E. "USOE" means the Utah State Office of Education.

R277-115-2. Authority and Purpose.

_____ A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

_____ B. The purpose of this rule is to provide that education materials developed by LEAs or a public education employee using state public education funds are available to Utah educators, that educators licensed by the Board are not personally enriched, consistent with the Utah Public Employees Ethics Act, by developing education materials as part of their public education employment and that the Board receives appropriate and accurate acknowledgment for materials produced or provided or both by the Board for LEAs.

R277-115-3. Reprint or Reproduction of Materials Funded or Provided by the Board.

_____ A. The Board or its designee may grant permission to a requester to reprint or reproduce material that was developed or provided for use by public educators with funds controlled by the Board.

_____ (1) Requests for permission to reprint or reproduce materials shall be submitted to the Board in writing or electronically and shall describe:

- _____ (a) the specific material to be reproduced or reprinted;
_____ (b) the number of copies requested;
_____ (c) the purpose and intended recipient of the materials;
_____ (d) any proposed cost to recipients.

_____ (2) Requests shall be reviewed and granted on a case-by-case basis.

_____ (3) Any authorized use of Board materials shall require the materials to state in a conspicuous place that the materials were produced or distributed or both using public State Board of Education funds and that the material is reprinted or reproduced with permission from the Board.

_____ (4) The Board may request a copy of the reproduction or reprinted material to be sent to the Board.

_____ B. An individual, entity or organization may not expressly assert or imply Board authorization, including use of the Board seal, of the use of materials reprinted or reproduced with

Board funds without express authorization by the Board or its designee.

R277-115-4. Materials Developed or Distributed by LEAs Using Public Education Funds.

A. If an LEA develops education materials with public education funds, the LEA shall make the materials available to Utah educators upon request at a cost not to exceed the LEA's actual cost.

B. An LEA may request that the materials are attributed to the LEA that developed the materials.

C. If a public education employee creates or develops education materials as part of the employee's public education employment, the materials are the property of the employer. Sale or other use of the materials may not personally enrich the public employee, consistent with Section 67-16-4(1)(c).

KEY: copyright, materials

Date of Enactment or Last Substantive Amendment: 2011

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

Education, Administration

R277-419

Pupil Accounting

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35242

FILED: 09/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to add a new Section R277-419-3 to better distinguish schools and programs for data reporting and accountability, to add new language on graduation rates, and to add new definitions to support the new language in the rule.

SUMMARY OF THE RULE OR CHANGE: The amendments add new definitions, add a new Section R277-419-3 to the rule, and add new language on graduation rates.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-402(1)(e)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The amendments to the rule update language on graduation rates reflecting current data collection procedures and clarify language on schools and programs which do not result in any cost or savings.
- ◆ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The amendments to the rule update language on graduation rates reflecting current data collection procedures and clarify language on schools and programs which do not result in any cost or savings.

◆ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. The amendments to the rule apply to public education and do not affect businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small business, businesses, or local government entities. The amendments to the rule update language on graduation rates reflecting current data collection procedures and clarify language on schools and programs which do not result in any cost or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The amendments to the rule update language on graduation rates reflecting current data collection procedures and clarify language on schools and programs which do not result in any compliance costs.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2011

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

R277. Education, Administration.

R277-419. Pupil Accounting.

R277-419-1. Definitions.

A. "Aggregate Membership" means the sum of all days in membership during a school year for the student, program, school, LEA, or state.

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

C. "Charter school" means a school that is authorized and operated under Sections 53A-1a-501.6, 53A-1a-515 and 53A-1a-501.3.

[E]D. "Compulsory school age" means:

(1) a person who is at least five years old and no more than 17 years old on or before September 1;

(2) with respect to special education, a person who is at least three years old and no more than 21 years old on or before September 1;

(3) with respect to YIC, a person who is at least five years old and no more than 21 years old on or before September 1.

[D]E. "Data Clearinghouse" means the electronic data collection system used by the USOE to collect information required by law from LEAs about individual students at certain points throughout the school year to support the allocation of funds and accountability reporting.

[E]E. "Electronic high school" means a rigorous program offering 9-12 grade level courses delivered over the Internet and coordinated by the USOE.

[F]G. "Influenza pandemic (pandemic)" means a global outbreak of serious illness in people. It may be caused by a strain of influenza that most people have no natural immunity to and that is easily spread from person to person.

[G]H. "ISI-1" means a student who receives 1 to 59 minutes of YIC related services during a typical school day.

[H]I. "ISI-2" means a student who receives 60 to 179 minutes of YIC related services during a typical school day.

[I]J. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

[J]K. "Membership" means a public school student is on the current roll of a public school class or public school as of a given date:

(1) A student is a member of a class or school from the date of entrance at the school and is placed on the current roll until official removal from the class or school due to the student having left the school.

(2) Removal from the roll does not mean that the LEA should delete the student's record, only that the student should no longer be counted in membership.

[K]L. "Minimum School Program (MSP)" means public school programs for kindergarten, elementary, and secondary schools described in Section 53A-17a-103(5).

M. "Private school" means an educational institution that is not a charter school but is owned or operated by a private person, firm, association, organization, or corporation, rather than by a public agency.

N. "Program" means an institution within a larger education entity that is designed to accomplish a predetermined curricular objective or set of objectives.

[E]Q. "Resource" means a student who receives 1 to 179 minutes of special education services during a typical school day consistent with the student's IEP provided for under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Sec. 1400 et seq., amended in 2004.

[M]P. "Retained senior" means a student beyond the general compulsory education age who is authorized at the discretion of the LEA to remain in enrollment as a high school senior in the year(s) after the cohort has graduated due to:

- (1) sickness;
- (2) hospitalization;
- (3) pending court investigation or action or both; or
- (4) other extenuating circumstances beyond the control of the student.

[N]Q. "S1" means the record maintained by the USOE containing individual student demographic and school membership data in a Data Clearinghouse file.

[O]R. "S2" means the record maintained by the USOE containing individual student data related to participation in a special education program in a Data Clearinghouse file.

[P]S. "S3" means the record maintained by the USOE containing individual student data related to participation in a YIC program in a Data Clearinghouse file.

T. "School" means an educational entity governed by an LEA that is supported with public funds, includes enrolled or prospectively enrolled full-time students, employs licensed educators as instructors that provide instruction consistent with R277-502-5, has one or more assigned administrators, is accredited consistent with R277-410-3, and administers required statewide assessments to its students.

[Q]U. "School day" means:

(1) a minimum of two hours per day per session in kindergarten and a minimum of four hours per day in grades one through twelve, subject to the following constraints:

(2)(a) All school day calculations shall exclude lunch periods and pass time between classes but may include recess periods that include organization or instruction from school staff.

(b) Each day that satisfies hourly instruction time shall count as a school day, regardless of the number or length of class periods or whether or not particular classes meet.

[R]V. "School membership" means membership other than in a special education or YIC program in the context of the Data Clearinghouse.

W. "School of enrollment" means the school where a student takes a majority of his classes; the school designated to receive the student's weighted pupil unit.

[S]X. "School year" means the 12 month period from July 1 through June 30.

[F]Y. "Self-contained" means a public school student with an IEP or YIC, who receives 180 minutes or more of special education or YIC related services during a typical school day.

[U]Z. "Self-Contained Resource Attendance Management (SCRAM)" means a record that tracks the aggregate membership of public school special education students for state funding purposes.

[V]AA. "SSID" means Statewide Student Identifier.

[W]BB. "UCAT" means any public institution of higher education affiliated with the Utah College of Applied Technology.

[X]CC. "Unexcused absence" means an absence charged to a student when the student was not physically present at school at any of the times attendance checks were made in accordance with Section R277-419-[3]4B(3) and the student's absence could not be accounted for by evidence of a legitimate or valid excuse in accordance with local board policy on truancy as defined in Section 53A-11-101.

[Y]DD. "USOE" means the Utah State Office of Education.

[Z]EE. "Virtual education" means the use of information and communication technologies to offer educational opportunities to students in a manner that transcends traditional limitations of time and space with respect to their relationships with teachers, peers, and instructional materials.

~~[AA]~~~~FF~~. "Year End upload" means the Data Clearinghouse file due annually by July 15 from school districts and charter schools to the USOE for the prior school year.

~~[BB]~~~~GG~~. "Youth in Custody (YIC)" means a person under the age of 21 who is:

- (1) in the custody of the Department of Human Services;
- (2) in the custody of an equivalent agency of a Native American tribe recognized by the United States Bureau of Indian Affairs and whose custodial parent or legal guardian resides within the state; or
- (3) being held in a juvenile detention facility.

R277-419-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the State Board of Education, by Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities, Section 53A-1-402(1)(e) which directs the Board to establish rules and standards regarding cost-effectiveness, school budget formats and financial, statistical, and student accounting requirements, and Section 53A-1-404(2) which directs that local school board auditing standards shall include financial accounting and student accounting. This rule is further authorized by Section 53A-1-301(3)(d) which directs the Superintendent to present to the Governor and the Legislature data on the funds allocated to school districts, and Section 53A-3-404 which requires annual financial reports from all school districts.

B. The purpose of this rule is to specify pupil accounting procedures used in apportioning and distributing state funds for education.

R277-419-3. Schools and Programs.

A. Schools

(1) Each school shall receive the appropriate accountability reports from the USOE and other state-mandated reports for the school type and grade range; and

(2) All schools shall submit a Clearinghouse report per R277-419-3; and

(3) All schools shall employ at least one licensed educator and one administrator.

B. Programs

(1) Students who are enrolled in a program shall remain members of a public school; and

(2) Programs shall not receive separate accountability and other state-mandated reports from the USOE; and

(3) Students reported under a program shall be included in WPU and student enrollment calculations of a school of enrollment; and

(4) Courses taught at programs shall be credited to the appropriate school of enrollment.

C. Private school or program

(1) Private schools or programs shall not be required to submit data to the USOE; and

(2) Private schools or programs shall not receive annual accountability reports.

R277-419-~~[3]~~4. Minimum School Days, LEA Records, and Audits.

A. Minimum standards for school days

(1) LEAs shall conduct school for at least 990 instructional hours and 180 school days each school year; exceptions to the number of school days for individual students and schools are provided for in R277-419-~~[7]~~8.

(2) The required school days and hours may be offered at any time during the school year, consistent with the law.

(3) Health Department Emergency or Pandemic

(a) The Board may waive the school day and hour requirement, following a vote of Board members, pursuant to a directive from the Utah State Health Department or a local health department, that results in the closure of a school in the event of a pandemic or other public health emergency.

(b) In the event that the Board is unable to meet in a timely manner, the State Superintendent of Public Instruction may issue a waiver following consultation with a majority of Board members.

(c) The waiver may be for a designated time period and for specific areas, school districts, or schools in the state, as determined by the health department directive.

(d) The waiver may allow for school districts to continue to receive state funds for pupil services and reimbursements.

(e) The waiver by the Board or State Superintendent of Public Instruction shall direct school districts to provide as much notice to students and parents of the suspension of school services, as is reasonably possible.

(f) The waiver shall direct school districts to comply with health department directives, but to continue to provide any services to students that are not inconsistent with the directive.

(g) The Board may encourage school districts to provide electronic or distance learning services to affected students for the period of the pandemic or other public health emergency to the extent of personnel and funds available.

(4) Minimum standards shall apply to all public schools in all settings unless Utah law or this rule provides for specific exceptions. Local boards are encouraged to provide adequate school days and hours in the school district's yearly calendar to avoid the necessity of a waiver request except in the most extreme circumstances.

B. Official records

(1) To determine student membership, LEAs shall ensure that records of daily student attendance are maintained in each school which clearly and accurately show for each student the:

(a) entry date;

(b) exit date;

(c) exit or high school completion status;

(d) whether or not an absence was excused;

(e) disability status (resource or self-contained, if applicable); and

(f) YIC status (ISI-1, ISI-2 or self-contained, if applicable).

(2)(a) Computerized or manually produced records for Career and Technical Education (CTE) programs shall be kept by teacher, class and Classification of Instructional Program (CIP) code.

(b) These records shall clearly and accurately show for each student in a CTE class the:

(i) entry date;

(ii) exit date; and

(iii) excused or unexcused status of absence.

(3) A minimum of one attendance check shall be made by each public school each school day.

C. Due to school activities requiring schedule and program modification during the first days and last days of the school year:

(1) For the first five school days, an LEA may report aggregate days of membership equal to the number recorded for the second five-day period of the school year.

(2) For the last five-day period, an LEA may report aggregate days of membership equal to the number recorded for the immediately preceding five-day period.

(3) Schools shall continue instructional activities throughout required calendared instruction days.

D. Audits

(1) An independent auditor shall be employed under contract by each LEA to audit its student accounting records annually and report the findings to the LEA board of education and to the Finance and Statistics Section of the USOE;

(2) Reporting dates, forms, and procedures are found in the State of Utah Legal Compliance Audit Guide, provided to LEAs by the USOE in cooperation with the State Auditor's Office and published under the heading of APP C-5;

(3) The USOE shall review student membership and fall enrollment audits as they relate to the allocation of state funds in accordance with the policies and procedures established in R277-484-7 and 8 and may periodically or for cause review LEA records and practices for compliance with the laws and this rule.

R277-419-[4]5. Student Membership.

A. Eligibility

(1) In order to generate membership for funding through the MSP for any clock hour of instruction on any school day, a student shall:

(a) not have previously earned a basic high school diploma or certificate of completion;

(b) not be enrolled in a YIC program with a YIC time code other than ISI-1 or ISI-2;

(c) not have unexcused absences on all of the prior ten consecutive school days;

(d) be a resident of Utah as defined under Sections 53A-2-201 through 213;

(e) be of compulsory school age or a retained senior;

(f)(i) be expected to attend a regular learning facility operated or recognized by the LEA on each regularly scheduled school day; or

(ii) have direct instructional contact with a licensed educator provided by the LEA at an LEA-sponsored center for tutorial assistance or at the student's place of residence or convalescence for at least 120 minutes each week during an expected period of absence, if physically excused from such a facility for an extended period of time, due to:

(A) injury, illness, surgery, suspension, pregnancy, pending court investigation or action; or

(B) an LEA determination that home instruction is necessary.

(2) Students may generate MSP funding by participation in an LEA-sponsored or LEA-supported virtual education program other than the Utah Electronic High School that is consistent with the student's SEOP, has been approved by the student's counselor,

and includes regular face-to-face instruction or facilitation by a designated employee of the LEA.

B. Reporting

(1) LEAs shall report aggregate membership for each student via the School Membership field in the S1 record and special education membership in the SCRAM Membership field in the S2 record and YIC membership in the S3 record of the Year End upload of the Data Clearinghouse file.

(2) In the Data Clearinghouse, aggregate membership shall be expressed in days.

C. Calculations

(1) If a student was enrolled for only part of the school day or only part of the school year, the student's membership shall be prorated according to the number of hours, periods or credits for which the student actually was enrolled in relation to the number of hours, periods or credits for which a full-time student normally would have been enrolled. For example:

(a) If the student was enrolled for 4 periods each day in a 7 period school day for all 180 school days, the student's aggregate membership would be 4/7 of 180 days or 103 days.

(b) If the student was enrolled for 7 periods each day in a 7 period school day for 103 school days, the student's membership would also be 103 days.

(2) For students in grades 2 through 12, days in membership shall be calculated by the LEA using a method equivalent to the following: total clock hours of instruction for which the student was enrolled during the school year divided by 990 hours and then multiplied by 180 days and finally rounded up to the nearest whole day. For example, if a student was enrolled for only 900 hours during the school year, the student's aggregate membership would be $(900/990)*180$, and the LEA would report 164 days.

(3) For students in grade 1, the first term of the formula shall be adjusted to use 810 hours as the denominator.

(4) For students in kindergarten, the first term of the formula shall be adjusted to use 450 hours as the denominator.

D. Constraints

(1) The sum of regular plus self-contained special education and self-contained YIC membership days may not exceed 180 days;

(2) The sum of regular and resource special education membership days may not exceed 360 days;

(3) The sum of regular, ISI-1 and ISI-2 YIC membership days may not exceed 360 days.

E. Exceptions

LEAs may also count a student in membership for the equivalent in hours of up to:

(1) one period each school day, if the student has been:

(a) released by school upon parent's request during the school day for religious instruction or individual learning activity consistent with the student's SEOP; or

(b) exempted from school attendance under 53A-11-102 for home schooling and participates in one or more extracurricular activities under R277-438;

(2) two periods each school day for time spent in bus travel during the regular school day to and from UCAT facilities, if the student is enrolled in CTE instruction consistent with the student's SEOP;

(3) all periods each school day, if the student is enrolled in:

(a) a concurrent enrollment program that satisfies all the criteria of R277-713;

(b) a private school without religious affiliation under a contract initiated by an LEA which directs that the instruction be paid by public funds. Contracts shall be approved by the LEA board in an open meeting.

(c) a foreign exchange student program under 53A-2-206(2)(i)(B).

(d) Electronic High School or UCAT classes for credit which meet curriculum requirements, consistent with the student's SEOP and following written school counselor approval.

(e) a school operated by an LEA under a Utah Schools for the Deaf and the Blind IEP:

(i) students may only be counted in (S1) membership and shall not have an S2 record;

(ii) the S2 record for these students shall only be submitted by the Utah Schools for the Deaf and the Blind.

R277-419-[5]6. High School Completion Status.

A. The final status of all students who enter high school (grades 10-12) shall be accounted for, whether they graduate or leave high school for other reasons. LEAs shall use the following decision rules to indicate the high school completion or exit status of each student who leaves the Utah public education system:

~~(1) dropped out, when no other status legitimately represents the reason for departure or absence from school;~~

~~(2) graduated with a high school diploma, by satisfying one of the options specified in R277-705-4B or for an out-of-school youth of school age, completed an adult education secondary diploma or a Utah high school completion diploma as defined in R277-733;~~

~~(3) received a certificate of completion:~~

~~(a) to qualify for a certificate, a student shall be in membership in twelfth grade on the last day of the school year; and~~

~~(b) meet any additional criteria established by the LEA consistent with its authority under R277-705-4C;~~

~~(4) transferred out of state, out of the country, to a private school, to home schooling, or to an adult education program;~~

~~(5) transferred to higher education, without first obtaining either a diploma or certificate of completion;~~

~~(6) aged out of special education;~~

~~(7)(a) U.S. citizen who enrolled in another country as a foreign exchange student;~~

~~(b) non-U.S. citizen who enrolled in a Utah public school as a foreign exchange student under Section 53A-2-206(2)(i)(B) shall be identified by resident status (J for those with a J-1 visa, F for all others), not by an exit code;~~

~~(8) withdrawn due to a situation so serious that educational services cannot be continued even under the conditions of R277-419-4(A)(1)(f)(ii);~~

~~(9) expelled or suspended;~~

~~(10) died.](1) Graduates are students who earn a basic high school diploma by satisfying one of the options consistent with R277-705-4B or out-of-school youths of school age who complete adult education secondary diploma requirements consistent with R277-733.~~

~~(2) Other students are completers who have not satisfied Utah's requirements for graduation but who:~~

~~(a) shall be in membership in twelfth grade on the last day of the school year; and~~

~~(b) meet any additional criteria established by the LEA consistent with its authority under R277-705-4C; or~~

~~(c) meet any criteria established for special education students under Utah State Board of Education Special Education Rules, Revised, August 2007, and available from the USOE, and R277-700-8E; or~~

~~(d) pass a General Educational Development (GED) test with a designated score.~~

~~(3) Continuing students are students who:~~

~~(a) transfer to higher education, without first obtaining a diploma; or~~

~~(b) transfer to the Utah Center for Assistive Technology (UCAT) without first obtaining a diploma; or~~

~~(c) age out of special education.~~

~~(4) Dropouts are students who have no legitimate reason for departure or absence from school or who:~~

~~(a) withdraw due to a situation so serious that educational services cannot be continued even under the conditions of R277-419-5A(1)(f)(ii); or~~

~~(b) are expelled and do not re-enroll in another public education institution; or~~

~~(c) transfer to adult education.~~

~~(5) Students shall be excluded from the cohort calculation if they:~~

~~(a) transfer out of state, out of the country, to a private school, or to home schooling; or~~

~~(b) are U.S. citizens who enrolled in another country as a foreign exchange student; or~~

~~(c) are non-U.S. citizens who enrolled in a Utah public school as a foreign exchange student under Section 53A-2-206 in which case they shall be identified by resident status (J for those with a J-1 visa, F for all others), not by an exit code; or~~

~~(d) died.~~

B. LEAs shall report the high school completion status or exit code of each student to the USOE as specified in Data Clearinghouse documentation.

C. The USOE shall report a graduation rate for each school, LEA, and the state.

(1) The four-year cohort rate shall be reported on the annual state report card, the annual AYP report cards, and the official state graduation report.

(2) The three-year cohort graduation rate shall be reported separately for high schools on the official state graduation report.

R277-419-[6]7. Student Identification and Tracking.

A(1) Pursuant to Section 53A-1-603.5, LEAs shall use the SSID system maintained by the USOE to assign every public school student a unique student identifier; and

(2) shall display the SSID on student transcripts exchanged with LEAs and Utah public institutions of higher education.

B(1) LEAs shall require all students to provide their legal first, middle, and last names at the time of registration to ensure that the correct SSID follows students who transfer among LEAs.

(2)(a) Names shall be transcribed from the student's birth certificate or other reliable proof of the student's identity and age, consistent with Section 53A-11-503;

(b) The direct transcription of student names from birth certificates or other reliable proof of student identity and age shall be the student's legal name for purposes of maintaining school records; and

(c) Schools or school districts may modify the order of student names, provide for nicknames, or allow for different surnames, consistent with court documents or parent preferences, so long as legal names are maintained on student records and used in transmitting student information to the USOE.

C. The USOE and LEAs shall track students and maintain data using students' legal names.

D. If there is a compelling need to protect a student by using an alias, the LEA should exercise discretion in recording the name of the student.

E. The SSID shall be an arbitrary number and may not contain any personally identifying information about the student.

R277-419-[7]8. Variances.

A. An exception for school attendance for public school students may be made at the discretion of the local board, in the length of the school day or year, for students with compelling circumstances. The time an excepted student is required to attend school shall be established by the student's IEP or SEOP.

B. Emergency/activity/weather-related exigency time shall be planned for in an LEA's annual calendaring. If school is closed for any reason, the instructional time missed shall be made up under the emergency/activity time as part of the minimum required time to qualify for full MSP funding.

C. Staff Planning, Professional Development, Student Assessment Time, and Parent-Teacher and Student Education Plan (SEP) Conferences.

(1) To provide planning and professional development time for staff, LEAs may hold school longer some days of the week and shorter other days so long as minimum school day requirements, as provided for in R277-419-1[Q]U, are satisfied.

(2) Schools may conduct parent-teacher and student education plan conferences during the school day.

(3) Such conferences may only be held for a total of the equivalent of three full school days or a maximum of 16.5 hours for the school year. Student membership for professional development or parent-teacher conference days shall be counted as that of the previous school day.

(4) LEAs may designate no more than 12 instructional days at the beginning of the school year or at the end of the school year or both for the assessment of students entering or completing kindergarten. If instruction days are designated for kindergarten assessment:

(a) the days shall be designated by the LEA board in an open meeting;

(b) adequate notice and explanation shall be provided to kindergarten parents well in advance of the assessment period;

(c) assessment shall be conducted by qualified school employees consistent with Section 53A-3-410; and

(d) assessment time per student shall be adequate to justify the forfeited instruction time.

(5) The final decision and approval regarding planning time, parent-teacher and SEP conferences rests with the local board of education, consistent with Utah law and Board administrative rules.

(6) Total instructional time and school calendars shall be approved by local boards in an open meeting.

D. A school using a modified 45-day 15-day year round schedule initiated prior to July 1, 1995 shall be considered to be in compliance with this rule if a school's schedule includes a minimum of 990 hours of instruction time in a minimum of 172 days.

KEY: education finance, school enrollment

Date of Enactment or Last Substantive Amendment: ~~January 10, 2011~~

Notice of Continuation: October 5, 2007

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1-402(1)(e); 53A-1-404(2); 53A-1-301(3)(d); 53A-3-404; 53A-3-410

Education, Administration **R277-487** Public School Student Confidentiality

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 35243

FILED: 09/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to provide standards and procedures related to public school student confidentiality consistent with H.B. 145, 2011 General Session.

SUMMARY OF THE RULE OR CHANGE: This new rule provides responsibilities for the Utah State Board of Education (Board), local education agencies (LEAs), public education employees, and student aides and volunteers.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-13-301(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The rule provides standards and procedures for the State Board of Education to follow to help ensure student confidentiality. Board compliance with the standards and procedures of this new rule does not result in any cost or savings.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. Under the rule, LEAs will provide training to public education employees and volunteers. Many LEAs already provide training to staff on student confidentiality. For those that do not, training could

be provided to the LEA staff by existing staff and within existing budget.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. The amendments to this rule apply to public education and do not affect businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to small businesses, businesses, or local government entities. This rule requires LEA policies and training to ensure compliance with student confidentiality laws.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. LEA staff will be trained on the state and federal laws relating to student confidentiality.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2011

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

R277. Education, Administration.

R277-487. Public School Student Confidentiality.

R277-487-1. Definitions.

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

B. "FERPA" means the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, a federal law designed to protect the privacy of students' education records. The law is hereby incorporated by reference.

C. "LEA" means local education agency, including local school boards/charter school governing board, public school districts and schools, and charter schools.

D. "Student record" means a record in any form, including handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche, that is directly related to a student

and maintained by an educational agency or institution or by a party acting for an agency or institution.

R277-487-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-13-301(3) which requires the Board to make rules to establish standards for public education employees, student aides, and volunteers in public schools regarding the confidentiality of student information and student records, and by Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities.

B. The purpose of this rule is to provide standards and procedures related to public school student confidentiality.

R277-487-3. Board Responsibilities.

A. The Board shall develop resource materials to train employees, student aides, and volunteers of an LEA regarding confidentiality of student information and student records, as defined in FERPA.

B. The Board shall make the materials available to each LEA.

R277-487-4. LEA Responsibilities.

A. LEAs shall establish policies and provide appropriate training for employees regarding the confidentiality of student records including an overview of all federal, state, and local laws that pertain to the privacy of students, their parents, and their families.

B. LEAs shall require password protection for all student records maintained electronically.

C. An LEA may adopt policies related to public school student confidentiality to address the specific needs or priorities of the LEA.

R277-487-4. Public Education Employee and Volunteer Responsibilities.

A. All public education employees, student aides, and volunteers in public schools shall become familiar with federal, state, and local law regarding the confidentiality of student information and student records.

B. All public education employees, student aides, and volunteers shall maintain appropriate confidentiality pursuant to federal, state, and local laws with regard to student records.

C. An employee, student aide, or volunteer shall maintain student records in a secure and appropriate place as designated by policies of an LEA.

D. An employee, student aide, or volunteer accessing student records in electronic format shall comply with policies of an LEA regarding the procedures for maintaining confidentiality of electronic records.

E. An employee, student aide, or volunteer shall not share, disclose, or disseminate passwords for electronic maintenance of student records.

F. Public education employees licensed under Section 53A-6-104 shall access and use student information and records consistent with R277-515, Utah Educator Standards. Violations may result in licensing discipline.

G. All public education employees, student aides and volunteers have a responsibility to protect confidential student information and access records only as necessary for their assignment(s).

KEY: students, records, confidentiality

Date of Enactment or Last Substantive Amendment: 2011

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-13-301(3); 53A-1-401(3)

Education, Administration
R277-531
Public Educator Evaluation
Requirements (PEER)

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 35244

FILED: 09/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule outlines provisions for statewide Public Educator Evaluation Requirements (PEER).

SUMMARY OF THE RULE OR CHANGE: This new rule provides required Utah State Board of Education directed expectations and additional local education agency (LEA) determined components focused on improving instruction and student achievement.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 53A-1-402(1)(a)(i) and (ii)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There may be additional costs to the Utah State Office of Education (USOE) for implementation of PEER, if the rule is implemented as planned. Additional costs will be handled by existing USOE staff and within existing USOE budget.

◆ LOCAL GOVERNMENTS: There may be additional costs to local education agencies (LEAs) for implementation of PEER. Current plans are to handle costs within existing LEA staff and existing LEA budgets.

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

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The rule requires the state and LEAs to implement the PEER program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. LEAs will implement the PEER program consistent with this rule.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2011

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

R277. Education, Administration.

R277-531. Public Educator Evaluation Requirements (PEER).

R277-531-1. Definitions.

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

B. "Educator" means an individual licensed under Section 53A-6-104 and who meets the requirements of R277-501.

C. "Formative evaluation" means evaluations that provide educators with feedback on how to improve their performance.

D. "Instructional quality data" means data acquired through observation of educator's instructional practices.

E. "Joint educator evaluation committee" means the local committee described under Section 53A-10-103 that develops and assesses an LEA evaluation program.

F. "LEA" means a local education agency directly responsible for the public education of Utah students, including traditional local school boards and school districts.

G. "LEA Educator Evaluation Program" means an LEA's process, policies and procedures for evaluating educators' performance according to their various assignments; those policies and procedures shall align with R277-531.

H. "School administrator" means an educator serving in a position that requires a Utah Educator License with an Administrative area of concentration and who supervises Level 2 educators.

I. "Student growth score" means a measurement of a student's achievement towards educational goals in the course of a school year.

J. "Summative evaluation" means evaluations that are used to make annual decisions or ratings of educator performance and may inform decisions on salary, confirmed employment, personnel assignments, transfers, or dismissals.

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

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

M. "Utah Effective Teaching Standards" means the teaching standards identified and adopted in R277-530.

N. "Utah Educational Leadership Standards" means the standards for educational leadership identified and adopted in R277-530.

O. "Valid and reliable measurement tool(s)" means an instrument that has proved consistent over time and uses non-subjective criteria that require minimal interpretation.

R277-531-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Sections 53A-1-402(1)(a)(i) and (ii) which require the Board to establish rules and minimum standards for the qualification and certification of educators and for required school administrative and supervisory services, and Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities.

B. The purpose of this rule is to provide a statewide educator evaluation system framework that includes required Board directed expectations and components and additional LEA determined components and procedures to ensure the availability of data about educator effectiveness are available. The process shall focus on the improvement of high quality instruction and improved student achievement. Additionally, the process shall include common data that can be aggregated and disaggregated to inform Board and LEA decisions about retention, preparation, recruitment, improved professional development practices and ensure LEAs engage in a consistent process statewide of educator evaluation.

R277-531-3. Public Educator Evaluation Framework.

A. The Board shall provide a framework that includes five general evaluation system areas and additional discretionary components of an LEA's educator evaluation system.

B. Alignment with Board expectations and standards and required consistency of LEA policies with evaluation process:

(1) An LEA educator evaluation system shall be based on rigorous performance expectations aligned with R277-530.

(2) An LEA evaluation system shall establish and articulate performance expectations individually for all licensed LEA educators.

(3) An LEA evaluation system shall include valid and reliable measurement tools including, at a minimum:

(a) observations of instructional quality;

(b) evidence of student growth;

(c) parent and student input; and

(d) other indicators as determined by the LEA.

(4) An LEA evaluation system shall provide a summative yearly rating of educator performance using uniform statewide

terminology and definitions. An LEA evaluation system shall include summative and formative components.

(5) An LEA evaluation system shall direct the revision or alignment of all related LEA policies, as necessary, to be consistent with the LEA Educator Evaluation System.

C. Valid and reliable tools:

(1) An LEA evaluation system shall use valid, reliable and research-based measurement tool(s) for all educator evaluations. Such measurements:

(a) employ a variety of measurement tools;

(b) adopt differentiated methodologies for measuring student growth for educators in subject areas for which standardized tests are available and in subject areas for which standardized tests are not available;

(c) provide evaluation for non-instructional licensed educators and administrators;

(2) shall provide for both formative and summative evaluation data;

(3) data gathered from tools may be considered by an LEA to inform decisions about employment and professional development.

D. Discussion, collaboration and protection of confidentiality with educators regarding evaluation process:

(1) An LEA evaluation system shall provide for clear and timely notice to educators of the components, timelines and consequences of the evaluation process.

(2) An LEA evaluation system shall provide for timely discussion with evaluated educators to include professional growth plans as required in R277-501 and evaluation conferences.

(3) An LEA evaluation system shall protect personal data gathered in the evaluation process.

E. Support for instructional improvement:

(1) An LEA evaluation system shall assess professional development needs of educators.

(2) An LEA evaluation system shall identify educators who do not meet expectations for instructional quality and provide support as appropriate at the LEA level which may include providing educators with mentors, coaches, specialists in effective instruction and setting timelines and benchmarks to assist educators toward greater improved instructional effectiveness and student achievement.

F. Records and documentation of required educator evaluation information:

(1) An LEA evaluation system shall include the evaluation of all licensed educators at least once a year.

(2) An LEA evaluation system shall provide at least an annual rating for each licensed educator, including teachers, school administrators and other non-teaching licensed positions, using Board-directed statewide evaluation terminology and definitions.

(3) An LEA evaluation system shall provide for the evaluation of all provisional educators, as defined by the LEA under Section 53A-6-106, at least twice yearly.

(4) An LEA evaluation system shall include the following specific educator performance criteria:

(a) instructional quality measures to be determined by the LEA;

(b) student growth score to be completely phased in by July 1, 2015; and

(c) other measures as determined by the LEA including data gathered from student/parent input.

(5) the Board shall determine weightings for specific educator performance criteria to be used in the LEA's evaluation system.

(6) An LEA evaluation system shall include a plan for recognizing educators who demonstrate exemplary professional effectiveness, at least in part, by student achievement.

(7) An LEA evaluation system shall identify potential employment consequences, including discipline and termination, if an educator fails to meet performance expectations.

(8) An LEA evaluation system shall include a review or appeals process for an educator to challenge the conclusions of a summative evaluation that provides for adequate and timely due process for the educator consistent with Section 53A-10-106.5.

G. An LEA may include additional components in an evaluation system.

H. A local board of education shall review and approve an LEA's proposed evaluation system in an open meeting prior to the local board's submission to the Board for review and approval.

R277-531-4. Board Support and Monitoring of LEA Evaluation Systems.

A. The Board shall establish a state evaluation advisory committee to provide ongoing review and support for LEAs as they develop and implement evaluation systems consistent with the law and this Rule. The Committee shall:

(1) analyze LEA evaluation data for purposes of:

(a) reporting;

(b) assessing instructional improvement; and

(c) assessing student achievement.

(2) review required Board evaluation components regularly and evaluate their usefulness in providing a consistent statewide framework for educator evaluation, instructional improvement and commensurate student achievement;

(3) review LEA educator evaluation plans for alignment with Board requirements.

B. The USOE, under supervision of the Board, shall develop a model educator evaluation system that includes performance expectations consistent with this rule.

C. The USOE shall evaluate and recommend tools and measures for use by LEAs as they develop and initiate their local educator evaluation systems.

D. The USOE shall provide professional development and technical support to LEAs to assist in evaluation procedures and to improve educators' ability to make valid and reliable evaluation judgments.

R277-531-5. Implementation.

A. Each LEA shall have an educator evaluation committee in place by October 2011.

B. Each LEA shall design the required evaluation program, including pilot programs as desired.

C. Each LEA shall continue to report educator effectiveness data to the USOE in the UCA.

D. Implementation shall be in place for the 2013-2014 school year.

E. Board directed student growth measures shall be implemented as part of the LEA evaluation system by the 2014-2015 school year.

KEY: educator, evaluation, requirements

Date of Enactment or Last Substantive Amendment: 2011

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

Education, Administration
R277-603
Autism Awareness Restricted Account
Distribution

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 35245

FILED: 09/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule provides procedures for distributing funds from the Autism Awareness Restricted Account to organizations eligible under Section 53A-1-304.

SUMMARY OF THE RULE OR CHANGE: This new rule provides definitions, procedures, timelines, and accountability for distribution of funds received in the Autism Awareness Restricted Account.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-1-304 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. Qualified organizations may apply for and receive funding from the Autism Awareness Restricted Account to the extent of the legislative appropriation.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. This rule applies to qualifying entities and does not affect local government.

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

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to the state budget. Qualifying entities may apply for and receive funding from the Autism Awareness Restricted Account to the extent of the legislative appropriation.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Qualifying entities may apply for and receive funding from the Autism Awareness Restricted Account to the extent of the legislative appropriation.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2011

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

R277. Education, Administration.

R277-603. Autism Awareness Restricted Account Distribution.

R277-603-1. Definitions.

A. "Autism Awareness Account" means the account established under Section 53A-1-304 and funded under Section 41-1a-418 (1)(d)(xiv).

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

C. "Distribute funds," for purposes of this rule, means a process, including timelines and a standard application, to eligible organizations.

D. "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

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

R277-603-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-1-304 which authorizes the Superintendent to distribute autism awareness funds appropriated by the Legislature, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide procedures, timelines and accountability for distribution of funds received in the Autism Awareness Restricted Account and subsequently appropriated by the Legislature to eligible organizations.

R277-603-3. Procedures.

A. The Superintendent shall provide an application for organizations that meet the qualifications of Section 53A-1-304(4) to apply for available Autism Awareness Account funds to the extent of the legislative appropriation.

B. The Superintendent shall provide for review of applications and selection of qualified recipients.

C. Applications shall include a budget section, a plan for use of the funds by eligible organizations consistent with Section 53A-1-304(5)(b) and other information as requested.

D. The Superintendent shall provide for distribution of funds, to the extent of funds appropriated by the Legislature, beginning July 1, 2011.

R277-603-4. Timelines.

A. The Superintendent shall announce the availability of funds at least annually, by March 15 of each year.

B. Applicants may apply for funds on forms available from the USOE.

C. Applications shall be due June 5 annually.

D. Applicants identified for funding shall be notified no later than July 1 annually.

E. The USOE shall distribute funds annually in July.

F. For FY 2012, following the Board's approval of R277-603, applications shall be available, reviewed, and funds distributed as soon as possible.

R277-603-5. Accountability.

A. The Superintendent shall require funded organizations to complete a year-end report explaining and documenting the use of funds consistent with the law and this rule.

B. The year-end report may require an independent audit or review of a funded program.

KEY: autism awareness, restricted account

Date of Enactment or Last Substantive Amendment: 2011

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-304; 53A-1-401(3)

Education, Administration
R277-610
Released-Time Classes for Religious Instruction

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35246

FILED: 09/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide standards and procedures for released-time for classes consistent with state law.

SUMMARY OF THE RULE OR CHANGE: The amendments provide a new definition, provide changes to the standards and procedures for released-time classes, and provide a new section related specifically to religious released-time programs.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The amendments to the rule provide new and updated language on released-time classes consistent with state and federal law.
- ◆ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The amendments to the rule provide new and updated language on released-time classes consistent with state and federal law.
- ◆ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. This rule applies to public education and does not affect businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The amendments to the rule provide new and updated language on released-time classes consistent with state and federal law.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The amendments to the rule provide new and updated language on released-time classes consistent with state and federal law.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2011

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

R277. Education, Administration.

R277-610. Released-Time Classes~~[-for Religious Instruction].~~

R277-610-1. Definitions.

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

~~B. "Non-entangling criteria" means neutral course instruction and standards that are academic not devotional; promote awareness not acceptance of any religion; expose not impose a particular view; educate about religion; and inform but not seek to make students conform to any religion.~~

~~[B]C. "Released-time" means a period of time during the regular school day when a student attending a public school is excused from the school, at the request of the student's parent~~[-to attend classes in religious instruction given by a regularly organized church].~~~~

R277-610-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1) which directs the Board to adopt minimum standards for public schools, 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 specify standards and procedures for public schools regarding released-time ~~[religious-]~~ classes.

R277-610-3. Standards and Procedures for Released-Time Classes.

~~[-----A. Religious classes shall not be held in school buildings or on school property in any way that permits public money or property to be applied to, or that requires public employees to become entangled with, any religious worship, exercise, or instruction.~~

~~[B]A. Students ~~[shall]~~may attend released-time classes during the regular school day only upon the written request of the student's parent or legal guardian.~~

~~[-----C. A student shall not be excused from school, even upon the written request of a parent or guardian, at a time when that student should be in attendance at a regular class of the school for which credit is normally required for graduation or to complete the required course of study.~~

~~[D]B. A public school shall not ~~[keep]~~maintain records of attendance for released-time classes or use school personnel or ~~[any part of the-]~~school ~~[organization]~~resources to regulate such attendance.~~

~~[-----E. Records of attendance at released-time classes, grades, marks, or other data shall not be included in the reports made by the school to parents.~~

~~[F]C. Teachers of released-time classes are not ~~[to be considered-]~~members of the school faculty ~~[or to]~~and shall not participate as faculty members in any school function. Released-time teachers may participate in school activities as community members.~~

~~[H]D. Public school teachers, administrators, or other officials shall not request teachers of released-time classes to~~

exercise functions or assume responsibilities for the public school program which would result in a commingling of the activities of the two institutions.

[G]E. Schedules of classes for public schools shall not include released-time classes by name. At the convenience of the school, registration forms may contain a space indicating ["released-time[" designation. ~~Scheduling shall be done on forms and supplies furnished by the religious institution and by personnel employed or engaged by the institution and shall occur off the premises of the public school.]~~

[H]E. Public school publications shall not include pictures, reports, or records ~~[of functions]~~ of released-time classes.

[J]G. Public school equipment or personnel shall not be used in any manner to assist in the conduct of released-time classes. ~~[No connection of bells, telephones, or other devices shall be made between public school buildings and institutions offering religious instruction except as a convenience to the public school in the operation of its own program. When any connection of devices is permitted, the pro rata costs shall be borne by the respective institutions.]~~

~~K. Institutions offering religious instruction shall be regarded as private schools completely separate and apart from the public schools. Those relationships that are legitimately exercised between the public school and any private school are considered an appropriate relationship with institutions offering released-time classes, so long as public property, public funds, or other public resources are not used to aid such institutions.]~~

R277-610-4. Additional Conditions for Religious Released-Time Programs.

A. Religious classes shall not be held in school buildings or on school property in any way that permits public money or property to be applied to, or that requires public employees to become entangled with, any religious worship, exercise, or instruction.

B. Religious released-time scheduling shall be done on forms and supplies furnished by the religious institution and by personnel employed or engaged by the institution and shall occur off the premises of the public school.

C. No connection of bells, telephones, computers or other devices shall be made between public school buildings and institutions offering religious instruction except as a convenience to the public school in the operation of its own program. When any connection of devices is permitted, the costs shall be borne by the respective institutions.

D. Records of attendance at religious released-time classes, grades, marks, or other data shall not be included in the correspondence or reports made by the public school to parents.

E. Institutions offering religious instruction are private schools separate and apart from the public schools. Those relationships that are legitimately exercised between the public school and any private school are appropriate with institutions offering released-time classes, so long as public property, public funds, or other public resources are not used to aid such institutions.

F. Public schools may grant elective credit for religious released-time classes if the school district establishes neutral, non-entangling criteria with which to evaluate the courses.

KEY: ~~[religious education]~~released-time classes

Date of Enactment or Last Substantive Amendment: ~~[1987]2011~~

Notice of Continuation: January 8, 2008

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

**Education, Administration
R277-614
Athletes and Students with Head
Injuries**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 35247

FILED: 09/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to provide standards and procedures to direct local education agencies (LEAs) in the development and implementation of traumatic head injury policies consistent with Title 26, Chapter 53.

SUMMARY OF THE RULE OR CHANGE: This new rule provides definitions, Utah State Board of Education (Board) and Utah State Office of Education (USOE) responsibilities, and LEA responsibilities.

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. Responsibilities of the Board and the USOE will be administered by existing staff and within existing budget.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. Although LEAs are required to establish policies and provide training to agents, responsibilities will be administered by existing LEA staff and within existing LEA budgets.

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

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. Parents and students will be advised of an LEAs traumatic head injury policy.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The Board/USOE and LEAs will act consistent with this rule.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2011

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

R277. Education, Administration.

R277-614. Athletes and Students with Head Injuries.

R277-614-1. Definitions.

A. "Agent" means a coach, teacher, school employee, representative or volunteer under Section 26-53-102(1).

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

C. "LEA" means a public school or a public charter school.

D. "Parent" means a parent or legal guardian of student for whom LEA is responsible.

E. "Sporting event" means activities listed under Section 26-53-102(5) and includes games, classes, tryouts and activities that take place during the regular school day of public schools and activities sponsored by the public schools.

F. "Traumatic head injury" means any of the signs, observed or self-reported, listed under Section 26-53-102(6).

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

R277-614-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution X, Section 3 which vests general control and supervision in the Board, by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to direct LEAs under the general control and supervision of the Utah State Board of Education to adopt and enforce a head injury policy for students participating in sporting events as defined in the law, including notification to parents of the policy and receipt from parents of signed statements that parents understand and will support the LEA in the enforcement of the policy.

R277-614-3. Board and USOE Responsibilities.

A. The Board directs all LEAs to develop, pass, post on the LEAs' websites and make available to parents a traumatic head injury policy that meets the requirements of Section 26-53.

B. The USOE shall, in consultation with Utah State Risk Management, provide a model policy for LEAs to use in developing their policies. The model policy shall be available on the USOE website.

C. The USOE shall provide model forms for LEAs to use to inform parents of LEA policies and obtain parent signatures documenting the parents' understanding of and willingness to adhere to LEA policies.

D. The USOE shall provide professional development, as needed and to the extent of funds available, to assist LEAs with training to identify students' traumatic head injuries, to provide notice to parents and to comply with the law.

R277-614-4. LEA Responsibilities.

A. All LEAs are identified as amateur sports organizations for purposes of Section 26-53 and shall meet all requirements of the law.

B. Before September 15, 2011, all LEAs shall adopt a traumatic head injury policy for students:

(1) participating in recess, field days or elementary school activities;

(2) participating in physical education classes offered by the LEA; and

(3) participating in extracurricular activities sponsored by the LEA or statewide athletic associations or both groups jointly.

C. An LEA's policy shall include:

(1) direction to agents to remove a student from a sporting event if the student is suspected of sustaining a concussion or a traumatic head injury;

(2) the prohibition of a student's continued participation until the student is evaluated by a trained qualified health care professional;

(3) a written statement from a trained health care provider clearing the student to resume participation in a sporting event;

(4) adequate training for agents, consistent with their involvement and responsibility for supervising students in sporting events, about traumatic head injuries and response to suspected student injuries, consistent with the law; and

(5) notice at least annually to parents of students who participate in sporting events, including parents' signatures, of an LEA's traumatic head injury policy.

D. An LEA shall post its policy on a district/school or charter school website where the information will be readily accessible to the public and to parents.

KEY: athletes, head injuries

Date of Enactment of Last Substantive Amendment: 2011

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

Education, Administration
R277-701
 Robert C. Byrd Honors Scholarship
 Program

SALT LAKE CITY, UT 84111-3272
 or at the Division of Administrative Rules.

NOTICE OF PROPOSED RULE

(Repeal)
 DAR FILE NO.: 35248
 FILED: 09/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed because the Robert C. Byrd Honors Scholarship Program funding has been discontinued making the rule no longer necessary.

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

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The rule is repealed because funding has been discontinued making the rule no longer necessary.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The rule is repealed because funding has been discontinued making the rule no longer necessary.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This rule applies to public education and does not affect businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The rule is repealed because funding has been discontinued making the rule no longer necessary.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The rule is repealed because funding has been discontinued making the rule no longer necessary.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2011

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

R277. Education, Administration.

~~[R277-701. Robert C. Byrd Honors Scholarship Program.~~

~~**R277-701-1. Definitions.**~~

- ~~_____ A. "ACT score" means the result, expressed numerically, of the ACT college entrance exam.~~
- ~~_____ B. "Full-time student" means a student enrolled at an institution of higher education who is carrying a full-time academic workload, as determined by that institution under standards applicable to all students enrolled in that student's program.~~
- ~~_____ C. "High school graduate" means an individual who has:~~
 - ~~_____ (1) a high school diploma;~~
 - ~~_____ (2) a General Education Development (GED) Certificate;~~
 - ~~or~~
 - ~~_____ (3) any other evidence recognized by the state of Utah as an equivalent of a high school diploma.~~
- ~~_____ D. "Institution of higher education" means any public or private nonprofit institution of higher education, proprietary institution of higher education, or postsecondary vocational institution to prepare students for gainful employment in a recognized occupation, as defined in the 1998 Amendments to Higher Education Act of 1965.~~
- ~~_____ E. "Robert C. Byrd Honors Scholarship (Byrd Scholarship)" means a scholarship grant from the Secretary of Education to the states, in this case, the state of Utah, to provide scholarships for study at institutions of higher education to outstanding high school graduates who show promise of continued excellence in an effort to recognize and promote student excellence and achievement.~~
- ~~_____ F. "USOE" means the Utah State Office of Education.~~

~~**R277-701-2. Authority and Purpose.**~~

- ~~_____ A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and 34 CFR 654 which establishes the Robert C. Byrd Honors Scholarship Program and allows states to participate, in the Program consistent with the regulations of the section, and directs participating states to develop eligibility requirements and procedures for Byrd Scholarship participants.~~

~~B. The purpose of this rule is to provide Utah eligibility requirements and application procedures and timelines for applicants for the Byrd Scholarship.~~

R277-701-3. Student Eligibility Requirements.

~~A. Applicants shall be legal residents of Utah.~~

~~B. Applicants shall be high school graduates in the same year that they seek to receive the Byrd Scholarship and attend a higher education institution.~~

~~C. Applicants shall provide documentation of acceptance to and full-time enrollment, as defined by that institution, in an accredited institution of higher education as defined under R277-701-1D.~~

~~D. Applicants shall have demonstrated outstanding academic achievement and show promise of continued academic excellence.~~

~~(1) Applicants shall have an ACT composite score of 25 or higher.~~

~~(2) Applicants shall have a high school (grades 9-12) grade point average of 3.70 (unweighted on a 4.0 scale) or higher.~~

~~E. Applicants shall sign and submit with the application a Certification of Eligibility for Federal Assistance in Certain Programs form, required under 34 CFR 75.60 through 75.62, hereby incorporated by reference.~~

~~F. Applicants shall have filed a Statement of Selective Service Registration Status with the institution he plans to attend.~~

~~G. Applicants who are enrolled at a military service academy are not eligible for the Byrd Scholarship.~~

R277-701-4. Application Procedures.

~~A. Applications shall be available from school counselors, the USOE, and online through the USOE website by January 30 for the subsequent school year.~~

~~B. Applicants shall submit complete applications, including all required documentation. Incomplete applications shall not be considered.~~

~~C. Applicants shall submit only materials specifically requested in the application. Additional materials will not be reviewed and will be discarded.~~

~~D. Applications shall be delivered by mail or in person to the USOE as required on the application. Applications will not be considered if they are emailed or faxed.~~

R277-701-5. Application and Notification Timelines.

~~A. Applications shall be received by the USOE no later than 5:00 p.m. on the last Friday of March of the year in which the scholarship is sought.~~

~~B. Scholarship recipients shall be notified of their receipt of the scholarship no later than June 30, or upon the USOE receiving grant notification if the USOE receives grant notification later than June 30.~~

~~C. Scholarship recipients shall notify the USOE of their intent to use the scholarship no later than 15 business days following USOE notification in order to retain the scholarship.~~

~~D. Continuing scholarship recipients shall notify the USOE by June 30 of their intent to continue using the scholarship in the subsequent year.~~

R277-701-6. Scholarship Award and Continuing Eligibility.

~~A. A scholarship recipient shall receive \$1,500 for each year of full-time enrollment in an accredited institution of higher education for a maximum of four years of undergraduate study provided the program continues to be funded and all requirements are satisfied by the student.~~

~~B. A scholarship recipient continues to be eligible for scholarship funds as long as the recipient continues to:~~

~~(1) remain a legal resident of Utah;~~

~~(2) remain a U.S. citizen or provide evidence from the U.S. Immigration and Naturalization Service that he is a permanent resident of the United States or is in the United States for other than a temporary purpose with the intention of becoming a citizen/permanent resident.~~

~~(3) remain enrolled as a full-time student in good standing in an institution of higher education.~~

~~C. A scholarship recipient remains eligible for the scholarship as long as the recipient maintains satisfactory progress as determined by the institution of higher education the recipient is attending.~~

~~D. The decision(s) of the USOE for scholarships is the final administrative determination and based on funds available in the given year.~~

R277-701-7. Waivers or Exceptions for Student Requirements.

~~A. A scholarship recipient may be allowed, based on prior approval for unusual circumstances to interrupt or postpone, the recipient's use of the scholarship for a period not to exceed 12 months, after the first full year of college is completed.~~

~~B. A scholarship recipient shall complete and submit a waiver request form, available from the USOE or through the USOE website, with attached required documentation.~~

~~(1) A recipient shall request the postponement or interruption from the USOE in writing at least eight weeks in advance of the beginning of the postponement/interruption.~~

~~(2) The USOE may consider a written request for a postponement/interruption with less than the eight week notice:~~

~~(a) for good cause, and~~

~~(b) so long as the funds are not lost or sacrificed.~~

~~(3) Unusual circumstances shall be limited to:~~

~~(a) military enlistment;~~

~~(b) religious or charitable service;~~

~~(c) a foreign study opportunity; or~~

~~(d) personal or family emergency or significant change of circumstances.~~

~~(4) The USOE may ask the student for a written explanation or documentation or both of the student's unusual circumstances.~~

~~(5) A scholarship recipient who desires to change his enrollment status from full-time to part-time shall satisfy the requirements of a postponement/interruption.~~

~~C. A scholarship recipient may be allowed, based on prior approval for exceptional circumstances, to extend an approved 12-month postponement/interruption of the scholarship award. Exceptional circumstances shall be limited to:~~

~~(1) extended religious or charitable service;~~

~~(2) extended military service; or~~

~~(3) an extended personal or family emergency or health crisis necessitating the recipient's extended delay of his education.~~

~~(4) There shall be a presumption that personal and family emergencies can be resolved in less than 12 months; scholarship recipients shall be required to provide written justification and documentation of compelling circumstances to justify a scholarship postponement/interruption of longer than 12 months.~~

~~(5) All long term postponement/interruptions shall be requested in writing from the USOE at least eight weeks in advance of the beginning of the postponement/interruption and shall include documentation of the necessity for the extended delay.~~

~~D. A recipient who is denied a postponement/interruption for unusual or exceptional circumstances may appeal the decision to the USOE Assistant Superintendent for Curriculum. The decision of the Assistant Superintendent is the final administrative decision.~~

~~KEY: scholarships~~

~~Date of Enactment or Last Substantive Amendment: April 21, 2009~~

~~Authorizing, and Implemented or Interpreted Laws: Art X, Sec 3; 53A-1-401(3); 34 CFR 654]~~

**Education, Administration
R277-746**

**Driver Education Programs for Utah
Schools**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 35249
FILED: 09/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Driver Education for Utah High Schools Organization, Administration and Standards manual was revised. This rule is amended to update the revision date of the manual referenced in the rule.

SUMMARY OF THE RULE OR CHANGE: The amendments in the rule change the revision date of the manual from December 2006 to August 2011.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-13-201(4)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The amendments only change the revision date of the Utah High Schools Organization, Administration and Standards manual.

♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The amendments only

change the revision date of the Utah High Schools Organization, Administration and Standards manual.

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

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The amendments only change the revision date of the Utah High Schools Organization, Administration and Standards manual.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The amendments only change the revision date of the Utah High Schools Organization, Administration and Standards manual.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2011

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

R277. Education, Administration.

R277-746. Driver Education Programs for Utah Schools.

R277-746-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "USOE" means the Utah State Office of Education.

R277-746-2. 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-13-201(4) which directs the Board to prescribe rules for driver education classes in the public schools and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards and procedures for local school districts conducting automobile driver education.

R277-746-3. Standards and Procedures.

A. Local school boards and school districts shall comply with DRIVER EDUCATION FOR UTAH HIGH SCHOOLS ORGANIZATION, ADMINISTRATION, AND STANDARDS, Revised, [December, 2006]August, 2011, as required by R277-100-5C, and available from the USOE Driver Education Specialist and at all school district offices.

B. The Board shall act in accordance with DRIVER EDUCATION FOR UTAH HIGH SCHOOLS ORGANIZATION, ADMINISTRATION, AND STANDARDS, Utah State Office of Education, Revised, [December, 2006]August, 2011, to determine and evaluate standards and operating procedures for automobile driver education programs conducted by local school districts.

KEY: driver education

Date of Enactment or Last Substantive Amendment: [May 9, 2007]2011

Notice of Continuation: March 3, 2008

Authorizing, and Implemented or Interpreted Law: 53A-13-201(4); 53A-1-401(3)

Education, Administration
R277-747
Private School Student Driver
Education

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 35250

FILED: 09/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed because the Utah State Board of Education determined that it is no longer necessary.

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-13-203 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or changes to the state budget. The Utah State Board of Education determined that it is no longer necessary. Statutory language provides necessary provisions.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The Utah State Board of

Education determined that it is no longer necessary. Statutory language provides necessary provisions.

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

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The Utah State Board of Education determined that it is no longer necessary. Statutory language provides necessary provisions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The Utah State Board of Education determined that it is no longer necessary. Statutory language provides necessary provisions.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2011

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

R277. Education, Administration.

~~[R277-747. Private School Student Driver Education.~~

~~**R277-747-1. Definitions.**~~

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

~~**R277-747-2. 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-13-203 which allows local school districts maintaining automobile driver education classes to enroll pupils attending private schools located within the district in those classes under the terms and conditions which apply to students in the public schools and Section 53A-1-401(3) which~~

~~allows the Board to adopt rules in accordance with its responsibilities.~~

~~B. The purpose of this rule is to specify standards and procedures for local school districts operating automobile driver education classes attended by private school students.~~

~~**R277-747-3. Standards.**~~

~~A. The requirements of Section 53A-13-203 shall govern the eligibility of private school students for local school district automobile driver education classes.~~

~~B. The standards and procedures of R277-746, Driver Education Programs for Utah Schools, shall apply to private school students taking automobile driver education classes in local school districts.~~

~~C. Local school districts that provide classroom instruction to private school students may generate weighted pupil units under the State Supported Minimum School Program for those students. The weighted pupil units are determined as follows: Total Clock Hours of Membership / 990 = ADM = WPU's.~~

~~D. The allocation of funds covering private school driver education to local school districts is included with the fund transfer specified in R277-423, Standards for the Delivery of Flow Through Money.~~

~~E. Local school districts may claim indirect costs not to exceed the district restricted amount.~~

~~**KEY: driver education, private schools**~~

~~**Date of Enactment or Last Substantive Amendment: 1987**~~

~~**Notice of Continuation: March 3, 2008**~~

~~**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-13-203; 53A-1-401(3)**~~

**Environmental Quality, Air Quality
R307-121**

**General Requirements: Clean Air and
Efficient Vehicle Tax Credit**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 35222
FILED: 09/06/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Legislature revised the statutes governing the Clean Fuel Tax Credit, Sections 59-7-605 and 59-10-1009, during the 2011 General Session. S.B. 226 amended the eligibility requirements for cleaner burning fuels tax credits available under the Individual Income Tax Act and the Corporate Franchise and Income Taxes chapter, and made technical and conforming changes. Additionally, during the 01/06/2010 Air Quality Board meeting, the Board requested that DAQ staff review and clarify the proof of certification requirements found in Rule R307-121.

SUMMARY OF THE RULE OR CHANGE: The Utah Legislature revised the statutes governing the Clean Fuel Tax Credit, Sections 59-7-605 and 59-10-1009, during the 2011 General Session. S.B. 226 amended the eligibility requirements for cleaner burning fuels tax credits available under the Individual Income Tax Act and the Corporate Franchise and Income Taxes chapter, and made technical and conforming changes. These amendments included: amending the definition of "air quality standards" found in Sections 59-7-605 and 59-10-1009 to include plug-in electric drive motor vehicles that meet Tier II Bin 4 standards, and changing the tax credit amount associated with vehicles that meet the air quality and fuel economy standards. S.B. 226 did not provide a fuel economy standard for plug-in electric drive motor vehicles. A definition of a plug-in electric drive motor vehicle and a fuel economy standard was added to Rule R307-121 for these vehicles. This amendment would apply to all vehicles purchased as of 01/01/2011 to be consistent with the retrospective operation provision of the bill. During the 01/06/2010 Air Quality Board meeting, the Board requested that DAQ staff review and clarify the proof of certification requirements found in Rule R307-121. In response to this, DAQ staff worked with EPA to streamline and expand its process to allow for intermediate and out-of-useful-life vehicles to be converted to run on alternative fuels, such as Compressed Natural Gas. EPA finalized its rulemaking on 04/08/2011. Language was added that helps clarify the proof of certification requirements found in Rule R307-121. This amendment would apply to all conversions as of 04/08/2011. Finally, the following amendments were made to Rule R307-121 for clarification purposes: The term "Manufacturer Statement of Origin" is replaced with "motor vehicles window sticker, which includes its VIN" to help identify what was installed on the vehicle from the factory to determine if the vehicle is a qualified Original Equipment Manufacturer (OEM) vehicle. The term "window sticker" is defined as "the label required by United States Code Title 15 Sections 1231 and 1232, as effective 02/01/2010." In circumstances where the applicant is required to provide certification by an ASE technician, the ASE technician's number must be included with the required signed statements. The requirement that the taxpayer claiming the tax credit provide a signed statement that the motor vehicle was acquired as the original purchase (found in Subsection R307-121-4(2)), is replaced with a requirement for an odometer disclosure statement.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-1-402 and Section 19-2-104 and Section 59-10-1009 and Section 59-7-605

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** The Legislature considered cost when it passed the bill related to plug-in electric drive motor vehicles, which this rule amendment incorporates. It is anticipated that the other amendments to this rule will bring additional costs to the state budget, because it expands the potential vehicles that can qualify for the tax credit. However, DAQ is not able to determine the exact costs due to data

limitations on likely vehicle availability and consumer demand.

◆ LOCAL GOVERNMENTS: No cost or savings are anticipated for local government budgets, because local governments do not pay taxes.

◆ SMALL BUSINESSES: Because this amendment expands the number of potential vehicles that could be eligible for the tax credit, small business that take advantage of the tax credit could see savings if they buy or convert these types of vehicles; however, DAQ cannot determine the exact savings as it depends greatly on the cost to convert or purchase the vehicle.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because this amendment expands the eligibility criteria, persons other than small businesses, businesses, or local government entities may be able to receive tax credits that they were not eligible to receive prior to this amendment. However, DAQ cannot determine exact savings as it depends greatly on the cost to convert or purchase the vehicle.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs are anticipated for individuals applying for the Clean Air and Efficient Vehicle Tax Credit. It is anticipated that some amendments to this rule will bring additional costs to the state budget, because it expands the potential vehicles that can qualify for the tax credit. However, DAQ is not able to determine the exact costs due to data limitations on likely vehicle availability and consumer demand.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is a potential that businesses could see some savings if they take advantage of the expanded list of vehicles that could qualify for the tax credit. However, it is difficult to determine the exact amount of these savings due to data limitations.

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

ENVIRONMENTAL QUALITY
AIR QUALITY
FOURTH FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Mark Berger by phone at 801-536-4000, by FAX at 801-536-4099, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 10/25/2011 02:00 PM, DEQ, Four Corners Conference Room, 195 N 1950 W, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2012

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.

R307-121. General Requirements: Clean Air and Efficient Vehicle Tax Credit.

R307-121-1. Authorization and Purpose.

This rule is authorized by Sections 59-7-605 and 59-10-1009. These statutes establish criteria and definitions used to determine eligibility for an income tax credit. R307-121 establishes procedures to provide proof of purchase, in accordance with 59-7-605(3) or 59-10-1009(3), to the executive secretary~~[Board]~~ for an OEM vehicle or the conversion of a motor vehicle for which an income tax credit is allowed under Sections 59-7-605 ~~[and]~~or 59-10-1009.

R307-121-2. Definitions.

Definitions. The following additional definitions apply to R307-121.

"Air quality standards" means air quality standards as defined in Subsection 59-7-605(1)(a) and 59-10-1009(1)(a).

"Clean fuel" means clean fuel as defined in Subsection 19-1-402(1).

"Clean fuel vehicle" means clean fuel vehicle as defined in Subsection 19-1-402(2).

"Conversion equipment" means a package which may include fuel, ignition, emissions control, and engine components that are modified, removed, or added to a motor vehicle or special mobile equipment to make that motor vehicle or equipment eligible for the tax credit.

"Fuel economy standards" means fuel economy standards as defined in Subsection 59-7-605(1)(f) and 59-10-1009(1)(f) or 31 miles per gallon equivalent for a plug-in electric drive motor vehicle.~~[~~

~~"Manufacturer's Statement of Origin" means a certificate showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser.]~~

"Miles per gallon equivalent" means the miles a vehicle can drive with the energy equivalent of one gallon of gasoline.

"Motor Vehicle" means a motor vehicle as defined in 41-1a-102.

"Original equipment manufacturer(OEM) vehicle" means original equipment manufacturer(OEM) as defined in Subsection 19-1-402(8).

"Original purchase" means original purchase as defined in Subsection 59-7-605(1)(i) and 59-10-1009(1)(i).

"Plug-in Electric Drive Motor Vehicle" means plug-in electric drive motor vehicle as defined in Subsection 59-7-605(1)(a)(ii) or 59-10-1009(1)(a)(ii).

"Window Sticker" means the label required by United States Code Title 15 Sections 1231 and 1232, as effective February 1, 2010.

R307-121-3. Proof of Purchase to Demonstrate~~[ion—of]~~ Eligibility for OEM Compressed Natural Gas Vehicles.

To demonstrate that an OEM Compressed Natural Gas motor vehicle is eligible for the tax credit, proof of purchase shall

be made in accordance with 59-7-605(3) or 59-10-1009(3), by submitting the following documents to the executive secretary:

(1)(a) a copy of the motor vehicle's window sticker, which includes its Vehicle Identification Number (VIN), [Manufacturer's Statement of Origin] or equivalent manufacturer's documentation showing that the motor vehicle is an OEM Compressed Natural Gas vehicle, or

(b) a signed statement by an Automotive Service Excellence (ASE)-certified technician that includes the vehicle identification number (VIN), the technician's ASE certification number, and states that the motor vehicle is an eligible OEM vehicle;

(2) an original or copy of the purchase order, customer invoice, or receipt including the VIN, purchase date, and price of the motor vehicle; and

(3) a copy of the current Utah vehicle registration.

R307-121-4. Proof of Purchase to Demonstrate~~ion~~ of Eligibility for Motor Vehicles that meet Air Quality and Fuel Economy Standards.

To demonstrate that a motor vehicle is eligible for the tax credit based on air quality and fuel economy standards, proof of purchase shall be made, in accordance with 59-7-605(3) or 59-10-1009(3), by submitting the following documents to the executive secretary:

(1) a copy of the motor vehicle's window sticker, which includes its VIN, [Manufacturer's Statement of Origin] or equivalent manufacturer's documentation;

(2) an original or copy of the odometer disclosure statement required in Utah Code Annotated Title 41 Chapter 1a Section 902 for the motor vehicle that was acquired as an original purchase~~[a signed statement from the taxpayer claiming the tax credit, stating that the motor vehicle was acquired as the original purchase]~~;

(3) an original or copy of the purchase order, customer invoice, or receipt including the VIN, purchase date, and price of the motor vehicle;

(4) the underhood identification number or engine group of the motor vehicle; and

(5) a copy of the current Utah vehicle registration.

R307-121-5. Proof of Purchase to Demonstrate~~ion~~ of Eligibility for Motor Vehicles Converted to Natural Gas or Propane.

To demonstrate that a conversion of a motor vehicle to be fueled by natural gas or propane is eligible for the tax credit, proof of purchase shall be made, in accordance with 59-7-605(3) or 59-10-1009(3), by submitting the following documentation to the executive secretary:

(1) the VIN;

(2) the fuel type before conversion;

(3) the fuel type after conversion;

(4)(a) a copy of the motor vehicle inspection report from an approved county inspection and maintenance station showing that the converted motor vehicle meets all county emissions requirements for all installed fuel systems if the motor vehicle is registered within a county with an inspection and maintenance (I/M) program, or

(b) in all other areas of the State, a signed statement by an ASE-certified technician that includes the VIN, the technician's ASE certification number, and states that the conversion is functional;

(5) each of the following:

(a) the conversion equipment manufacturer,

(b) the conversion equipment model number,

(c) the date of the conversion, and

(d) the name, address, and phone number of the person that converted the motor vehicle;

(6) the EPA Certificate of Conformity, or equivalent documentation that is consistent with requirements outlined in 40 CFR Part 85 and 40 CFR Part 86, as published in Federal Register Volume 76 Page 19830 on April 8, 2011, or an Executive Order from the California Air Resources Board showing that the conversion will meet the proof of certification requirements~~[d]~~ in 59-10-1009(1)(c)(i)(C)~~[(b)]~~ or 59-7-605(1)(c)(i)(C)~~[(b)]~~;

(7) an original or copy of the purchase order, customer invoice, or receipt; and

(8) a copy of the current Utah vehicle registration.

R307-121-6. Proof of Purchase to Demonstrate~~ion~~ of Eligibility for Motor Vehicles Converted to Electricity.

(1) To demonstrate that a conversion of a motor vehicle to be powered by electricity is eligible for the tax credit, proof of purchase shall be made, in accordance with 59-7-605(3) or 59-10-1009(3), by submitting the following documentation to the executive secretary:

(a) the VIN;

(b) the fuel type before conversion;

(c) the fuel type after conversion;

(d) each of the following:

(i) the conversion equipment manufacturer,

(ii) the conversion equipment model number,

(iii) the date of the conversion, and

(iv) the name, address, and phone number of the person that converted the motor vehicle;

(e) an original or copy of the purchase order, customer invoice, or receipt; and

(f) a copy of the current Utah vehicle registration.

(2) If the converted motor vehicle does not have any auxiliary sources of combustion emissions, then the applicant shall submit a signed statement by an ASE-certified technician that includes the VIN, the technician's ASE certification number, and states that the conversion is functional, and that the converted motor vehicle does not have any auxiliary source of combustion emissions.

(3) If the converted motor vehicle has an auxiliary source of combustion emissions, then the applicant shall submit:

(a) a copy of the vehicle inspection report from an approved county inspection and maintenance station showing that the converted motor vehicle meets all county emissions requirements for all installed fuel systems if the motor vehicle is registered within a county with an I/M program, or

(b) in all other areas of the State, a signed statement by an ASE-certified technician that includes the VIN, the technician's ASE certification number, and states that the conversion is functional, and

(c) Provide the EPA Certificate of Conformity or equivalent documentation that is consistent with requirements outlined in 76 FR 19830 April 8, 2011, or an Executive Order from the California Air Resources Board showing that the conversion will meet the proof of certification requirements[d] in 59-10-1009(1)(c)(i)(C)[(b)] or 59-7-605(1)(c)(i)(C)[(b)].

R307-121-7. Proof of Purchase to Demonstrate Eligibility for Special Mobile Equipment Converted to Clean Fuels.

To demonstrate that a conversion of special mobile equipment to be fueled by clean fuel is eligible for the tax credit, proof of purchase shall be made, in accordance with 59-7-605(3) or 59-10-1009(3), by submitting the following documentation to the executive secretary:

- (1) a description, including serial number, of the special mobile equipment for which credit is to be claimed;
- (2) the fuel type before conversion;
- (3) the fuel type after conversion;
- (4) the conversion equipment manufacturer and model number;
- (5) the date of the conversion;
- (6) the name, address and phone number of the person that converted the special mobile equipment; and
- (7) an original or copy of the purchase order, customer invoice, or receipt; and
- (8) the EPA Certificate of Conformity, or an Executive Order from the California Resource Board showing that the conversion will meet the proof of certification requirements[d] in 59-10-1009(1)(c)(i)(C)[(b)] or 59-7-605(1)(c)(i)(C)[(b)].

R307-121-8. Applicability.

- (1) The definitions of plug-in electric drive motor vehicle and fuel economy standards in R307-121-2 shall apply to all purchases as of January 1, 2011.
- (2) Provisions found in sections R307-121-5(6) and R307-121-6(3)(c) shall apply to all conversions as of April 8, 2011.

KEY: air pollution, alternative fuels, tax credits, motor vehicles
Date of Enactment or Last Substantive Amendment: ~~January 1, 2009~~ 2012
Notice of Continuation: January 6, 2009
Authorizing, and Implemented or Interpreted Law: 19-2-104; 19-1-402; 59-7-605; 59-10-1009

Environmental Quality, Drinking Water
R309-105-14
 Operational Reports

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 35240
 FILED: 09/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment authorizes the Executive Secretary to order an operational report for a water system that is not properly operated.

SUMMARY OF THE RULE OR CHANGE: Insertion of language in the section that gives the Executive Secretary the authority to order an operational report for non-compliant systems, and determine if submitted operational reports are satisfactory.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104 and Section 63G-4-202

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Division does not anticipate any cost or savings because the change will not affect compliance actions or training requirements for staff or for public water systems.
- ◆ **LOCAL GOVERNMENTS:** The Division does not anticipate any cost or savings because the change will not affect compliance actions or training requirements for staff or for public water systems.
- ◆ **SMALL BUSINESSES:** The Division does not anticipate any cost or savings because the change will not affect compliance actions or training requirements for staff or for public water systems.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Division does not anticipate any cost or savings because the change will not affect compliance actions or training requirements for staff or for public water systems.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The change will not affect compliance cost because operational reports are already required for applicable public water systems.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is the opinion of the Department of Environmental Quality that this change will have no impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 DRINKING WATER
 THIRD FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ J.J. Trussell by phone at 801-536-4198, by FAX at 801-536-4211, or by Internet E-mail at jtrussell@utah.gov
- ◆ Patti Fauver by phone at 801-536-4196, by FAX at 801-536-4211, or by Internet E-mail at pfauver@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2011

AUTHORIZED BY: Ken Bousfield, Director

Environmental Quality, Water Quality **R317-8** Utah Pollutant Discharge Elimination System (UPDES)

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 35238
FILED: 09/15/2011

R309. Environmental Quality, Drinking Water.
R309-105. Administration: General Responsibilities of Public Water Systems.
R309-105-14. Operational Reports.

(1) Written Operational Reports.

(a) If, in the opinion of the Executive Secretary, a water system is not properly operated, the Executive Secretary may require a public water system to submit a written operational report covering the operation of the whole or a part of the water system's infrastructure.

(b) The Executive Secretary may require revisions to the submitted operational report to ensure satisfactory operation, and may order the water system to follow the operational report.

(c) If the water system fails to implement the provisions of the operational report, as evidenced by unsatisfactory delivery of a safe and/or reliable supply of drinking water, the Executive Secretary may order further remedies as deemed necessary.

~~(+)~~(2) Treatment techniques for acrylamide and epichlorohydrin.

(a) Each public water system shall certify annually in writing to the Executive Secretary (using third party or manufacturer's certification) that when acrylamide and epichlorohydrin are used in drinking water systems, the combination (or product) of dose and monomer level does not exceed the levels specified in R309-215-8(2)(c).

(b) Certifications may rely on manufacturer's data.

~~(2)~~(3)(a) All water systems using chemical addition or specialized equipment for the treatment of drinking water shall regularly complete operational reports. This information shall be evaluated to confirm that the treatment process is being done properly, resulting in successful treatment.

(b) The information to be provided, and the frequency at which it is to be gathered and reported, will be determined by the Executive Secretary.

KEY: drinking water, watershed management
Date of Enactment or Last Substantive Amendment:
~~[September 24, 2009]2011~~
Notice of Continuation: March 22, 2010
Authorizing, and Implemented or Interpreted Law: 19-4-104;
63G-4-202

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment is required to administer a new program to permit the application of pesticides in Utah under the Utah Pollutant Discharge Elimination System (UPDES). This is a new permit, mandated by the EPA as a result of a court ruling that found that certain classes of pesticide operators must obtain a UPDES permit prior to applying pesticides for control of: Mosquito and Other Insect Pests; Weed and Algae Control; Aquatic Nuisance Animal Control; and Forest Canopy Pest Control.

SUMMARY OF THE RULE OR CHANGE: The rule outlines the requirements needed for a pesticide operator to obtain coverage under a Pesticide General Permit (PGP) under the state UPDES program. The rule outlines four classes of pesticide operators which are required to file a Notice of Intent (NOI) under the new rule. The rule also outlines treatment area thresholds which dictate whether or not an NOI for certain classes of operators is required to obtain coverage under the PGP.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-5-105

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** No cost impacts are anticipated. The proposed rule amendment will be administered with existing resources.

◆ **LOCAL GOVERNMENTS:** Any government agency that is primarily engaged in pesticide applications, or applies pesticides as a significant part of the agency uses, i.e., Mosquito Abatement Districts, the BLM (cricket control), DNR and the USFS (primarily for undesirable fish species). The Central Utah Project and maybe a few others may also need to obtain a permit for aquatic weed control. These entities will need to file a two-page application, and prepare a pesticide discharge management plan, and keep annual reports on file

on visual monitoring and any adverse affects caused by the discharge. Estimated costs are assumed to be accrued on an hourly basis and the estimate is 40 to 60 hours depending on the number of discharges. The people filing the applications, preparing the plan, and keeping records would be managers. Estimated costs would be \$1,750 per entity annually. Additionally, the Division of Water Quality will be seeking approval during the 2012 General Session to levy permit fees for pesticide NOIs. If approved, the costs would range from about \$200 (small), \$650 (medium), \$1,000 (large) per operator, annually for PGP coverage.

◆ **SMALL BUSINESSES:** Very few small businesses will be affected by the proposed rule because they will not trigger the area thresholds that require filing an NOI (e.g., individual homeowners, wholesale or retail nursery outlets). Pesticide applicators and operators that are required to file a NOI under the proposed rule will need to file a two-page application, prepare a pesticide discharge management plan, and keep annual reports on file that detail visual monitoring and any adverse affects caused by the discharge. Estimated costs would be accrued by the hour and the estimate is 40 to 60 hours depending on the number of discharges. The people filing the applications, preparing the plan, and keeping records would be managers. Estimated costs would be \$1,750 per entity annually. Additionally, the Division of Water Quality will be seeking approval during the 2012 General Session to levy permit fees for pesticide NOIs. If approved, the costs would range from about \$200 (small), \$650 (medium), \$1,000 (large) per applicator, annually.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Water Quality does not anticipate that the proposed rule will impact persons other than small businesses, businesses, or local governmental entities. Therefore, no fiscal impacts are anticipated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Pesticide operators that are required to file a NOI under the proposed rule will need to file a two-page application, prepare a pesticide discharge management plan, and keep annual reports on file that detail visual monitoring for any adverse affects caused by the discharge. Estimated costs would be by the hour and the estimate is 40 to 60 hours depending on the number of discharges. The people filing the applications, preparing the plan, and keeping records would be managers. Estimated costs would be \$1,750 per entity annually. Additionally, the Division of Water Quality will be seeking approval during the 2012 General Session to levy permit fees for pesticide NOIs. If approved, the costs would range from about \$200 (small), \$650 (medium), \$1,000 (large) per applicator, annually.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses that are required to file a NOI under the proposed rule will need to file a two-page application, prepare a pesticide discharge management plan, and keep annual reports on file that detail visual monitoring for any adverse affects caused by the discharge. Estimated costs would be

by the hour and the estimate is 40 to 60 hours depending on the number of discharges. The people filing the applications, preparing the plan, and keeping records would be managers. Estimated costs would be \$1,750 per entity annually. Additionally, the Division of Water Quality will be seeking approval during the 2012 General Session to levy permit fees for pesticide NOIs. If approved, the costs would range from about \$200 (small), \$650 (medium), \$1,000 (large) per applicator, annually.

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:

◆ John Kennington by phone at 801-536-4380, by FAX at 801-536-4301, or by Internet E-mail at jkennington@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/08/2011

AUTHORIZED BY: Walter Baker, Director

R317. Environmental Quality, Water Quality.

R317-8. Utah Pollutant Discharge Elimination System (UPDES).

R317-8-2. Scope and Applicability.

2.1 **APPLICABILITY OF THE UPDES REQUIREMENTS.** The UPDES program requires permits for the discharge of pollutants from any point source into waters of the State. The program also applies to owners or operators of any treatment works treating domestic sewage, whether or not the treatment works is otherwise required to obtain a UPDES permit in accordance with R317-8-8. Prior to promulgation of State rules for sewage sludge use and disposal, the Executive Secretary shall impose interim conditions in permits issued for publicly owned treatment works or take such other measures as the Executive Secretary deems appropriate to protect public health and the environment from any adverse affects which may occur from toxic pollutants in sewage sludge.

(1) Specific inclusions. The following are examples of specific categories of point sources requiring UPDES permits for discharges. These terms are further defined in R317-8-3.5 through R317-8-~~8-10~~9.2.

- (a) Concentrated animal feeding operations;
- (b) Concentrated aquatic animal production facilities;
- (c) Discharges into aquaculture projects;
- (d) Storm water discharges;~~[-and]~~
- (e) Silvicultural point sources~~[-]; and~~
- (f) Pesticide discharges.

(2) Specific exclusions. The following discharges do not require UPDES permits:

(a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to storage facility or a seafood processing facility, or when secured in waters of the state for the purpose of mineral or oil exploration or development.

(b) Discharges of dredged or fill material into waters of the State which are regulated under Section 404 of CWA.

(c) The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the State are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by the State, a municipality, or other party not leading to treatment works.

(d) Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

(e) Any introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, rangelands, and forest lands, but not discharges from concentrated animal feeding operations as defined in 40 CFR 122.23, discharges from concentrated aquatic animal production facilities as defined in R317-8-3.7, discharges to aquaculture projects as defined in R317-8-3.8, and discharges from silvicultural point sources as defined in R317-8-3.10.

(f) Return flows from irrigated agriculture.

(g) Discharges into a privately owned treatment works, except as the Executive Secretary may otherwise require under R317-8-4.2(12).

(h) Authorizations by permit or by rule which are prepared to assure that underground injection will not endanger drinking water supplies, and which are issued under the state's Underground Injection Control program; and underground injections and disposal wells which are permitted by the Utah Water Quality Board pursuant to Part VII of the Utah Wastewater Disposal Regulations or the Board of Oil, Gas and Mining, Class II.

(i) Discharges which are not regulated by the U.S. EPA under Section 402 of the Clean Water Act.

(3) Requirements for permits on a case-by-case basis.

(a) Various sections of R317-8 allow the Executive Secretary to determine, on a case-by-case basis, that certain concentrated animal feeding operations, concentrated aquatic animal production facilities, separate storm sewers and certain other facilities covered by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(b) Whenever the Executive Secretary decides that an individual permit is required as specified in R317-8-2.1(3)(a), the Executive Secretary shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger shall apply for a permit within 60 days of receipt of notice, unless permission for a later date is granted by the Executive Secretary. The question whether the determination was proper will remain open for consideration during the public comment period and in any subsequent adjudicative proceeding.

(c) Prior to a case-by-case determination that an individual permit is required for a storm water discharge, the Executive Secretary may require the discharger to submit a permit application or other information regarding the discharge. In requiring such information, the Executive Secretary shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless permission for a later date is granted by the Executive Secretary. The question whether the determination was proper will remain open for consideration during the public comment period and in any subsequent adjudicative proceeding.

2.2 PROHIBITIONS. No permit may be issued by the Executive Secretary:

(1) When the conditions of the permit do not provide for compliance with the applicable requirements of the Utah Water Quality Act, as amended, or rules promulgated pursuant thereto;

(2) When the Regional Administrator has objected to issuance of the permit in writing under the procedures specified in 40 CFR 123.44;

(3) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of Utah and all affected states;

(4) When, in the judgment of the Secretary of the U.S. Army, acting through the Chief of Engineers, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

(5) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

(6) For any discharge inconsistent with a plan or plan amendment approved under Section 208(b) of CWA.

(7) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet Utah water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the UPDES regulations and for which the Executive Secretary has performed a wasteload allocation for the pollutants to be discharged, must demonstrate, before the close of the public comment period, that:

(a) There are sufficient remaining wasteload allocations to allow for the discharge; and

(b) The existing dischargers into the segment are subject to schedules of compliance designed to bring the segment into compliance with Utah Water Quality Standards. (See R317-2.)

2.3 VARIANCE REQUESTS BY NON-POTW'S. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent

limitations under any of the following statutory or regulatory provisions within the time period specified in this section:

(1) Fundamentally different factors.

(a) A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based shall be filed as follows:

1. For a request for a variance from best practicable control technology currently available (BPT) by the close of the public comment period under R317-8-6.5.

2. For a request for a variance from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT) by no later than:

a. July 3, 1989, for a request on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989 is not later than that provided under previously promulgated regulations: or

b. 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

3. Requests should be filed with the Executive Secretary. A request filed with EPA shall be considered to be a request filed under the UPDES program.

(b) The request shall explain how the requirements of the applicable regulatory and statutory criteria have been met.

(2) Non-conventional pollutants. A request for a variance from the BAT requirements for CWA section 301(b)(2)(F) pollutants (commonly called "non-conventional" pollutants) pursuant to Section 301(c) of CWA because of the economic capability of the owner or operator, or pursuant to section 301(g) of the CWA (provided, however, that 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (4AAP) (when determined by the Executive Secretary to be a pollutant covered by section 301(b)(2)(F)) and any other pollutant listed by the Administrator under Section 301((g)(4) of the CWA) must be filed as follows:

(a) For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

1. Filing an initial request with the Executive Secretary stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and the nature of the modification being requested. This request must have been filed not later than:

a. September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977: or

b. 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977: and

2. Submitting a completed request no later than the close of the public comment period under R317-8-6.5 demonstrating that the requirements of R317-8-6.8 and the applicable requirements of R317-8-8.8 have been met. Notwithstanding this provision, the complete application for a request shall be filed 180 days before the Executive Secretary must make a decision (unless the Executive Secretary establishes a shorter or longer period). For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with R317-8-

2.3(2)(a)(2) and need not be preceded by an initial request under R317-8-2.3(2)(a)(2).

3. Requests should be filed with the Executive Secretary. A request filed with EPA shall be considered to be a request filed under the UPDES program.

(3) Delay in construction of POTW. An extension of the Federal statutory deadlines based on delay in completion of a POTW into which the source is to discharge must have been requested on or before June 26, 1978 or 180 days after the relevant POTW requested an extension under R317-8-2.7, whichever is later, but in no event may this date have been later than January 30, 1988. The request shall explain how the requirements of 40 CFR Part 125, Subpart J have been met.

(4) Innovative technology. An extension from the Federal statutory deadline for best available technology, or for best conventional pollutant control technology, based on the use of innovative technology may be requested no later than the close of the public comment period under Section R317-8-6.5 for the discharger's initial permit requiring compliance with best available technology or best conventional pollutant control technology. The request shall demonstrate that the requirements of Section R317-8-6.8 and 8-5.6 have been met.

(5) Thermal discharges. A variance for the thermal component of any discharge must be filed with a timely application for a permit under R317-8-3 except that if thermal effluent limitations are established by EPA or are based on water quality standards the request for a variance may be filed by the close of the public comment period under R317-8-6.5.

(6) Water Quality Related Effluent Limitations. A modification of requirements for achieving water quality-related effluent limitations may be requested no later than the close of the public comment period under R317-8-6.5 on the permit from which the modification is sought.

2.4 EXPEDITED VARIANCE PROCEDURES AND TIME EXTENSIONS. Notwithstanding the time requirements in R317-8-2.3, the Executive Secretary may notify a permit applicant before a draft permit is issued under R317-8-6.3 that the draft permit will likely contain limitations which are eligible for variances.

(1) In the notice the Executive Secretary may require that the applicant, as a condition of consideration of any potential variance request, submit a request explaining how the requirements of R317-8-7 applicable to the variance have been met. The Executive Secretary may require the submittal within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

(2) A discharger who cannot file a timely complete request required under R317-8-2.3(2) may request an extension. The extension may be granted or denied at the discretion of the Executive Secretary. Extensions will be no more than six months in duration.

2.5 GENERAL PERMITS

(1) Coverage. The Executive Secretary may issue a general permit in accordance with the following:

(a) Area. The general permit will be written to cover a category of discharges or sludge use or disposal practices or facilities described in the permit under paragraph (b) of this

subsection, except those covered by individual permits, within a geographic area. The area will correspond to existing geographic or political boundaries, such as:

1. Designated planning areas under Sections 208 and 303 of CWA;
2. City, county, or state political boundaries;
3. State highway systems;
4. Standard metropolitan statistical areas as defined by the U.S. Office of Management and Budget;
5. Urbanized areas as designated by the U.S. Bureau of the Census, consistent with the U.S. Office of Management and Budget;
6. Any other appropriate division or combination of boundaries as determined by the Executive Secretary.

(b) Sources. The general permit will be written to regulate, within the area described in R317-8-2.5(a), either;

1. Storm water point sources; or
2. A category of point sources other than storm water point sources, or a category of treatment works, treating domestic sewage, if the sources or treatment works treating domestic sewage all:
 - a. Involve the same or substantially similar types of operations;
 - b. Discharge the same types of wastes or engage in the same types of sludge use or disposal practices.
 - c. Require the same effluent limitations, operating conditions, or standards for sludge use or disposal;
 - d. Require the same or similar monitoring; and
 - e. In the opinion of the Executive Secretary, are more appropriately controlled under a general permit than under individual permits.

(2) Administration.

(a) General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of R317-8-6.

(b) Authorization to discharge, or authorization to engage in sludge use and disposal practices.

1. Except as provided in paragraphs (2)(b)5. and (2)(b)6. of this section, discharges (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the Executive Secretary a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with paragraph (2)(b)5. of this section, contains a provision that a notice of intent is not required or the Executive Secretary notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with paragraph (2)(b)6. of this section. A complete and timely, notice of intent (NOI), to be covered in accordance with general permit requirements, fulfills the requirements for permit applications for purposes of R-317-8-3.

2. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility of discharges, and the receiving stream(s). General permits for storm water discharges

associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfill occurring on Federal lands where an operator cannot be identified may contain alternative notice of intent requirements. Notices of intent for coverage under a general permit for concentrated animal feeding operations must include the information specified in R317-8-3.6(2), including a topographic map. All notices of intent shall be signed in accordance with R317-8-3.3.

3. General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit;

4. General permits shall specify whether a discharger (or treatment works treating domestic sewage) that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use for disposal practice), in accordance with the permit either upon receipt of the notice of intent by the Executive Secretary, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the Executive Secretary. Coverage may be terminated or revoked in accordance with paragraph (2)(c) of this section.

5. Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Executive Secretary, be authorized to discharge under a general permit without submitting a notice of intent where the Executive Secretary finds that a notice of intent requirement would be inappropriate. In making such a finding, the Executive Secretary shall consider: the type of discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Executive Secretary shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

6. The Executive Secretary may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under paragraph R317-8-2.5(2)(c).

(c) Requiring an individual permit.

1. The Executive Secretary may require any person authorized by a general permit to apply for and obtain an individual UPDES permit. Any interested person may petition the Executive Secretary to take action under R317-8-2.4. Cases where an individual UPDES permit may be required include the following:

a. The discharge(s) is a significant contributor of pollutants. In making this determination, the Executive Secretary may consider the following factors:

i. The location of the discharge with respect to waters of the State;

ii. The size of the discharge;

iii. The quantity and nature of the pollutants discharged to waters of the State; and

iv. Other relevant factors;

b. The discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general UPDES permit;

c. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

d. Effluent limitation guidelines are promulgated for point sources covered by the general UPDES permit;

e. A Utah Water Quality Management Plan containing requirements applicable to such point sources is approved;

f. Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practices covered by the general UPDES permit; or

2. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under R317-8-3.1 to the Executive Secretary with reasons supporting the request. The request shall be submitted no later than ninety (90) days after the notice by the Executive Secretary in accordance with R317-8-6.5. If the reasons cited by the owner or operator are adequate to support the request, the Executive Secretary may issue an individual permit.

3. When an individual UPDES permit is issued to an owner or operator otherwise subject to a general UPDES permit, the applicability of the general permit to the individual UPDES permittee is automatically terminated on the effective date of the individual permit.

4. A source excluded from a general permit solely because he already has an individual permit may request that the individual permit be revoked. The permittee shall then request to be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

2.6 DISPOSAL OF POLLUTANTS INTO WELLS, INTO POTWS OR BY LAND APPLICATION.

(1) The Executive Secretary may issue UPDES permits to control the disposal of pollutants into wells when necessary to protect the public health and welfare, and to prevent the pollution of ground and surface waters.

(2) When part of a discharger's process wastewater is not being discharged into waters of the State (including groundwater) because it is disposed of into a well, into a POTW, or by land application, thereby reducing the flow or level of pollutants being discharged into waters of the State, applicable effluent standards and limitations for the discharge in a UPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

(a) If none of the waste from a particular process is discharged into waters of the State and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

(b) In all cases other than those described in R317-8-2.6(2)(a), effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater to be treated and discharged into waters of the State and dividing the result by the total wastewater flow. Effluent limitations and standards so

calculated may be further adjusted under R317-8-7.3 to make them more or less stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters.

This method may be algebraically expressed as: $P = E \times N/T$

Where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the State and T is the total wastewater flow.

(3) R317-8-2.6(2) shall not apply to the extent that promulgated effluent limitations guidelines:

(a) Control concentrations of pollutants discharged but not mass; or

(b) Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

(4) R317-8-2.6(2) does not alter a dischargers obligation to meet any more stringent requirements established under R317-8-4.

2.7 VARIANCE REQUESTS BY POTWS. A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under the following provision:

(1) Water Quality Based Effluent Limitation. A permit modification of the requirements for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period under R317-8-6.5 on the permit for which the modification is sought.

(2) Delay in construction. An extension of a Federal statutory deadline based on delay in the construction of the POTW must have been requested on or before August 3, 1987.

2.8 DECISION ON VARIANCES

(1) The Executive Secretary may deny or forward to the Administrator (or his delegate) with a written concurrence, a completed request for:

(a) Extensions under CWA section 301(i) based on delay in completion of a publicly owned treatment works;

(b) After consultation with the Regional Administrator, extensions based on the use of innovative technology; or

(c) Variances under R317-8-2.3(4) for thermal pollution.

(2) The Executive Secretary may deny or forward to the Regional Administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

(a) A variance based on the presence of "fundamentally different factors" from those on which an effluent limitations guideline was based;

(b) A variance based on the economic capability of the applicant;

(c) A variance based upon certain water quality factors (See CWA section 301(g)); or

(d) A variance based on water quality related effluent limitations.

(e) Except for information required by R317-8-3.1(4)(c) which shall be retained for a period of at least five years from the date the application is signed, applicants shall keep records of all data used to complete permit applications and any supplemental information for a period of at least three years from the date the application is signed.

R317-8-9. Pesticide Discharge Permit.**9.1 APPLICABILITY.**

(1) This section applies to qualified groups of operators who discharge on or near surface waters of the State from the application of (1) biological pesticides or (2) chemical pesticides (hereinafter collectively "pesticides"), when the pesticide application is for one of the following pesticide use patterns:

(a) Mosquito and Other Insect Pests - to control public health/nuisance and other insect pests that may be present on or near standing or flowing surface water. Public health/nuisance and other insect pests in this use category include but are not limited to mosquitoes and black flies.

(b) Weed and Algae Control - to control invasive or other nuisance weeds and algae in water and at water's edge, including irrigation ditches and/or irrigation canals.

(c) Aquatic Nuisance Animal Control - to control invasive or other nuisance animals in water and at water's edge. Aquatic nuisance animals in this use category include, but are not limited to fish, lampreys, and mollusks.

(d) Forest Canopy Pest Control - application of a pesticide to a forest canopy to control the population of a pest species (e.g., insect or pathogen) where to target the pests effectively a portion of the pesticide unavoidably will be applied over and deposited to water.

(2) Qualified Operator Groups. Certain types of entities (operators), engaged in the above pesticide use patterns, will be required to submit a NOI and obtain coverage under a Pesticide General Permit (PGP) as detailed below:

Operator Group 1 - All Operators involved with any discharges to Category 1 (R317-2-12) waters of the State. All operators involved in the discharge of pesticides on or near surface waters of State, which have been determined by the Water Quality Board to be Category 1 waters of the State must submit a NOI to obtain coverage under the PGP. The NOI must detail each area and watershed where a discharge is to occur. Only pesticide applications which are made to restore or maintain water quality or to protect public health or the environment would be covered under the PGP for discharges on or near Category 1 surface waters of the State.

Operator Group 2 - All Government or Quasi-Governmental Agencies or Special Service Districts. All government agency operators (federal, state, county or local agencies and special service districts) involved in the discharge of pesticides under the conditions described above, as a primary purpose or as a significant activity in their operations, must submit a NOI describing each area and watershed where a discharge is to occur to obtain PGP coverage regardless of the size of the area to be treated.

Operator Group 3 - Other Operators. Other operators engaged in the discharge of pesticides for the conditions described above as a primary purpose or as a significant activity in their operations, like private pest control companies, water supply or canal companies or other large operators whose discharges exceed the treatment area thresholds detailed in Table 2 below must apply for a NOI to obtain coverage under the PGP as detailed in Table 1 below.

Operator Group 4 - Operators involved in a "Declared Pest Emergency Situation". All operators that otherwise aren't required to obtain a NOI, but become involved in a "declared pest emergency situation", as defined below, and will exceed any of the

treatment area thresholds in Table 2 must submit a NOI to obtain PGP coverage as detailed in Table 1 below.

9.2 DEFINITIONS. The following definitions specifically pertain to aspects of pesticide discharge permitting in the UPDES program and should be used in conjunction with the definitions shown in R317-1-1 and R317-8-1.5.

(1) "Biological Pesticides" (also called biopesticides) means microbial pesticides, biochemical pesticides and plant-incorporated protectants (PIP). Microbial pesticide means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, that (a) is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi; (b) is a prokaryotic microorganism, including, but not limited to, Eubacteria and Archaeobacteria; or (c) is a parasitically replicating microscopic element, including but not limited to, viruses (40 CFR 158.2100(b)).

(2) "Biochemical pesticide" means a pesticide that (a) is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; (b) has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticide, is equivalent to a naturally-occurring substance that has such a history; and (c) Has a non-toxic mode of action to the target pest(s) (40 CFR 158.2000(a)(1)). Plant-incorporated protectant means a pesticidal substance that is intended to be produced and used in a living plant, or in the production thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant, or production thereof (40 CFR 174.3).

(3) "Chemical Pesticides" means all pesticides not otherwise classified as biological pesticides.

(4) "Declared Pest Emergency Situation" means an event defined by a public declaration by a federal agency, state, or local government of a pest problem determined to require control through application of a pesticide beginning less than ten days after identification of the need for pest control. This public declaration may be based on a: significant risk to human health; significant economic loss; or significant risk to Endangered species, Threatened species, Beneficial organisms, or the environment.

(5) "NOI" means "Notice of Intent", the formal document submitted by an operator to the Division of Water Quality (DWO) to request coverage under the Pesticide General Permit.

(6) "Operator" means any entity involved in the application of a pesticide which may result in a discharge to waters of the State that meets either or both of the following two criteria:

(a) The entity has control over the financing for, or the decision to perform pesticide applications that result in discharges, including the ability to modify those decisions or;

(b) The entity has day-to-day control of, or performs activities that are necessary to ensure compliance with the permit (e.g., they are authorized to direct workers to carry out activities required by the permit or perform such activities themselves).

(7) "surface waters of the State" means waterbodies, waterways, streams, lakes or rivers that contain standing or flowing water at the time of pesticide application.

(8) "Treatment Area" means the entire area, whether over land or water, where the pesticide application is intended to provide pesticidal benefits or may have an environmental impact. In some

instances, the treatment area will be larger than the area where pesticides are actually applied.

9.3 ADMINISTRATIVE REQUIREMENTS.

(1) All operators who are included in the use patterns specified in R317-8-9.1, and discharge to active surface waters of the State as a result of the application of a pesticide must be covered by a UPDES permit, beginning October 31, 2011, by submitting a NOI to obtain coverage under the Pesticide General Permit (PGP). In the event that a discharge occurs prior to submitting a NOI, you must comply with all other requirements of the PGP immediately. All operators will automatically be covered under the PGP for the first five-year permit term of October 31, 2011 to October 30, 2016 if they submit a NOI by February 15, 2012. To obtain PGP coverage for the second and all succeeding PGP five-year terms, all operators must submit a NOI prior to the expiration date (October 30) of the PGP every five years. Each NOI submission will secure permit coverage for the full five-year term of the PGP.

(2) New, qualified operators, who require PGP coverage after February 15, 2012 must submit a NOI in accordance with Table 1 below. The NOI will secure PGP coverage for the remainder of the five-year term of the PGP in effect at that time. For continued PGP coverage during the next five-year permit cycle, a new NOI must be submitted before the expiration of the present PGP, as detailed above.

Table 1. Discharge Authorization Date (a/)

Category	NOI Submittal Deadline	Discharge Authorization Date
Operators who know or should have reasonably known, prior to commencement of discharge, that they will exceed an annual treatment area threshold identified in R317-8-9.3 (4).	At least 10 days prior to commencement of discharge	No earlier than 10 days after the complete and accurate NOI is mailed and postmarked.
Operators who do not know or would have reasonably not known until after commencement of discharge, that they will exceed an annual treatment area threshold identified in R317-8-9.3(4).	At least 10 days prior to exceeding an annual treatment area threshold.	Original authorization terminates when annual treatment area threshold is exceeded. Operator is reauthorized no earlier than 10 days after complete and accurate NOI is mailed and postmarked.
Operators commencing discharge in response to a declared pest emergency situation.	No later than 30 days after commencement of discharge.	Immediately, for activities conducted in response to a declared pest emergency situation.

a/ In the event that a discharge occurs prior to your submitting a NOI, you must comply with all other requirements of the PGP immediately.

(3) PGP Coverage Termination. PGP coverage may be terminated by non-submission of a NOI at the end of the present PGP five-year term, or by submission of a signed Notice of Termination (NOT) form to the DWQ.

(4) Annual Treatment Area Thresholds.

Table 2. Annual Treatment Area Thresholds

Rule Section	Pesticide Use Class	Annual Threshold
R317-8-9.1(1)(a)	Mosquitoes and Other Insect Pests	6,400 acres of Treatment Area
R317-8-9.1(1)(b)	Weed and Algae Control	
	-In Water	80 acres of treatment area a/
	-At Water's Edge	100 linear miles of treatment area at water's edge b/
R317-8-9.1(1)(c)	Aquatic Nuisance Animal Control	
	-In Water	80 acres of treatment area a/
	-At Water's Edge	100 linear miles of treatment area at water's edge b/
R317-8-9.1(1)(d)	Forest Canopy Pest Control	6,400 acres of treatment area

a/ Calculations should include the area of the applications made to active surface waters of the State at the time of pesticide application. For calculating annual treatment area totals, count each pesticide application activity as a separate activity. For example, applying pesticides twice a year to a ten acre site should be counted as twenty acres of treatment area.

b/ Calculations should include the linear extent of the application made at water's edge adjacent to active surface waters of the State and at the time of pesticide application. For calculating annual treatment totals, count each pesticide application activity and each side of a linear water body as a separate activity or area. For example, treating both sides of a ten mile ditch is equal to twenty miles of water treatment area.

(5) All applicators or operators, whether or not falling into the use categories, or required to obtain PGP coverage, or whether or not meeting the minimum annual treatment area thresholds shown in R317-8-9.3(4) must conform to the Technology Based Effluent limitations in the PGP and to all applicable rules and regulations of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The permittee is expected to familiarize himself with the PGP and conform to its requirements, if he discharges any pesticides prior to obtaining a NOI. After February 15, 2012 the permittee is authorized to discharge under the terms and conditions of the PGP only with submission of a completed electronic NOI in accordance with Table 1 above.

(6) Based on a review of the NOI or other information, the DWQ may delay authorization to discharge under the PGP or may determine that additional technology-based and/or water quality-based effluent limitations are necessary; or may deny coverage under this PGP and require submission of an application for an individual UPDES permit in accordance with this rule. If the Executive Secretary determines an individual UPDES permit is required, that permitting process will proceed independently.

KEY: water pollution, discharge permits

Date of Enactment or Last Substantive Amendment: [April 7, 2009]2011

Notice of Continuation: October 4, 2007

Authorizing, and Implemented or Interpreted Law: 19-5; 19-5-104; 40 CFR 503

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-1-5

Incorporations by Reference

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35225

FILED: 09/09/2011

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). The purpose of this change, therefore, is to incorporate the most current Medicaid State Plan by reference and to implement by rule both the definitions and the attachment for the Private Duty Nursing Acuity Grid found in the Home Health Agencies Provider Manual, and to implement by rule ongoing Medicaid policy for services described in the Utah Medicaid Provider Manual, Medical Supplies Manual and List; Hospital Services Provider Manual; Speech-Language Services Provider Manual; Audiology Services Provider Manual; Hospice Care Provider Manual; Long Term Care Services in Nursing Facilities Provider Manual; Personal Care Provider Manual; Utah Home and Community-Based Waiver Services for Individuals 65 or Older Provider Manual; Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Provider Manual; Utah Home and Community-Based Waiver Services for Individuals with Developmental Disabilities and Mental Retardation Provider Manual; Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Provider Manual; Utah Home and Community-Based Waiver Services New Choices Waiver Provider Manual; and Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals (HCBWS) Provider Manual.

SUMMARY OF THE RULE OR CHANGE: Section R414-1-5 is changed to update the incorporation of the State Plan by reference to 10/01/2011. It also incorporates by reference State Plan Amendments (SPAs) that become effective no later than 10/01/. Four SPAs became effective since the last incorporation of the State Plan. These include SPA 11-001-UT Peer Support Services, which assists in the rehabilitation and recovery of individuals with serious and persistent mental illness or serious emotional disturbance; SPA 11-003-UT Exclusion of State Income Tax Returns from Countable Resources, which implements a resource exclusion under the Medicaid program to exclude a state tax refund for 12 months after receipt when an individual receives the refund between

04/01/2011, and 12/31/2012; SPA 11-004-UT Medicaid Prohibition on Payments to Institutions or Entities Located Outside of the United States, which implements Section 6505 of the Affordable Care Act to prohibit payments to entities located outside of the United States that provide items or services under the State Plan or a waiver; and SPA 11-007-UT, which updates the direct graduate medical education payment pool and modifies the supplemental state teaching hospital payments calculation. This amendment also incorporates by reference the Medical Supplies Manual and List and the hospital services provider manual, effective 10/01/2011; incorporates by reference both the definitions and the attachment for the Private Duty Nursing Acuity Grid found in the Home Health Agencies Provider Manual, effective 10/01/2011; incorporates by reference the Speech-Language Services Provider Manual, effective 10/01/2011; incorporates by reference the Audiology Services Provider Manual, effective 10/01/2011; incorporates by reference the Hospice Care Provider Manual, effective 10/01/2011; incorporates by reference the Long Term Care Services in Nursing Facilities Provider Manual, with its attachments, effective 10/01/2011; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals 65 or Older Provider Manual, effective 10/01/2011; incorporates by reference the Personal Care Provider Manual, with its attachments, effective 10/01/2011; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Provider Manual, effective 10/01/2011; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Developmental Disabilities and Mental Retardation Provider Manual, effective 10/01/2011; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Provider Manual, effective 10/01/2011; incorporates by reference the Utah Home and Community-Based Waiver Services New Choices Waiver Provider Manual, effective 10/01/2011; and incorporates by reference the Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals (HCBWS) Provider Manual, effective 10/01/2011.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds Hospice Care Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2011
- ◆ Adds Speech-Language Services Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2011
- ◆ Updates Utah Medicaid State Plan, published by Division of Medicaid and Health Financing, 10/01/2011
- ◆ Adds Utah Home and Community-Based Waiver Services for Individuals with Developmental Disabilities and Mental Retardation Provider Manual,

published by Division of Medicaid and Health Financing, 10/01/2011

- ◆ Updates Utah Medicaid Provider Manual, Medical Supplies Manual and List, published by Division of Medicaid and Health Financing, 10/01/2011
- ◆ Adds Definitions and the Attachment for the Private Duty Nursing Acuity Grid in the Home Health Agencies Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2011
- ◆ Updates Hospital Services Provider Manual, with its attachments, published by Division of Medicaid and Health Financing, 10/01/2011
- ◆ Adds Long Term Care Services in Nursing Facilities Provider Manual, with its attachments, published by Division of Medicaid and Health Financing, 10/01/2011
- ◆ Adds Personal Care Provider Manual, with its attachments, published by Division of Medicaid and Health Financing, 10/01/2011
- ◆ Adds Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2011
- ◆ Adds Audiology Services Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2011
- ◆ Adds Utah Home and Community-Based Waiver Services New Choices Waiver Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2011
- ◆ Adds Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2011
- ◆ Adds Utah Home and Community-Based Waiver Services for Individuals 65 or Older Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2011
- ◆ Adds Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals (HCBWS) Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2011

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 provider manuals does not create costs or savings to the Department or other state agencies.
- ◆ **LOCAL GOVERNMENTS:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described

in the provider manuals does not create costs or savings to local governments.

- ◆ **SMALL BUSINESSES:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals does not create costs or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals 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 provider manuals does not create costs or savings to a single Medicaid recipient 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 10/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2011

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 ~~July~~October 1, 2011. It also incorporates by reference State Plan Amendments that become effective no later than ~~July~~October 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, ~~July~~effective October 1, 2011, as applied in Rule R414-70.

(3) The Department incorporates by reference the Hospital Services Provider Manual, with its attachments, effective ~~July~~October 1, 2011.

(4) The Department incorporates by reference both the definitions and the attachment for the Private Duty Nursing Acuity Grid found in the Home Health Agencies Provider Manual, effective October 1, 2011.

(5) The Department incorporates by reference the Speech-Language Services Provider Manual, effective October 1, 2011.

(6) The Department incorporates by reference the Audiology Services Provider Manual, effective October 1, 2011.

(7) The Department incorporates by reference the Hospice Care Provider Manual, effective October 1, 2011.

(8) The Department incorporates by reference the Long Term Care Services in Nursing Facilities Provider Manual, with its attachments, effective October 1, 2011.

(9) The Department incorporates by reference the Personal Care Provider Manual, with its attachments, effective October 1, 2011.

(10) The Department incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals 65 or Older Provider Manual, effective October 1, 2011.

(11) The Department incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Provider Manual, effective October 1, 2011.

(12) The Department incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Developmental Disabilities and Mental Retardation Provider Manual, effective October 1, 2011.

(13) The Department incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Provider Manual, effective October 1, 2011.

(14) The Department incorporates by reference the Utah Home and Community-Based Waiver Services New Choices Waiver Provider Manual, effective October 1, 2011.

(15) The Department incorporates by reference the Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals (HCBWS) Provider Manual, effective October 1, 2011.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment:
~~September 1,~~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 **R414-14-2** Definitions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35227

FILED: 09/09/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to remove language that incorporates by reference definitions from the Home Health Agencies Provider Manual, and to incorporate them by reference in Section R414-1-5 instead. (DAR NOTE: The proposed amendment for Section R414-1-5 is under DAR No. 35225 in this issue, October 1, 2011, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This change removes language that incorporates by reference definitions from the Home Health Agencies Provider Manual, and incorporates them by reference in Section R414-1-5 instead.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Removes Home Health Agency Provider Manual, Definitions, published by Utah Department of Health, 07/01/2011

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because this amendment simply removes language from the text and places it in another administrative rule.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide home health services to Medicaid recipients.
- ◆ **SMALL BUSINESSES:** There is no impact to small businesses because this amendment simply removes language from the text and places it in another administrative rule.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid recipients and to Medicaid providers because this amendment simply removes language from the text and places it in another administrative rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid recipient or to a Medicaid provider because this amendment simply removes language from the text and places it in another administrative rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Moving the incorporation references from this rule into Section R414-1-5 will make compliance simpler for providers and have no 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 10/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-14. 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 July 1, 2011~~] adopts the definitions in the Home Health Agencies Provider Manual and incorporates them by reference in Section R414-1-5.

(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: [August 22, 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
R414-54-3
Services**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35228

FILED: 09/09/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to remove language that incorporates the Speech-Language Services Provider Manual by reference, and to incorporate the manual by reference in Section R414-1-5 instead. (DAR NOTE: The proposed amendment for Section R414-1-5 is under DAR No. 35225 in this issue, October 1, 2011, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This change removes language that incorporates the Speech-Language Services Provider Manual by reference, and incorporates the manual by reference in Section R414-1-5 instead.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Removes Speech-Language Services Provider Manual, published by Utah Department of Health, 07/01/2011

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because this amendment simply removes language from the text and places it in another administrative rule.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide speech-language services to Medicaid recipients.
- ◆ **SMALL BUSINESSES:** There is no impact to small businesses because this amendment simply removes language from the text and places it in another administrative rule.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid recipients and to Medicaid providers because this amendment simply removes language from the text and places it in another administrative rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid recipient or to a Medicaid provider because this amendment simply removes language from the text and places it in another administrative rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Moving the incorporation references from this rule into Section R414-1-5 will make compliance simpler for providers and have no 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 10/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2011

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 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: [August 22, 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
R414-59-4
Client Eligibility Requirements**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 35229
FILED: 09/09/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to remove language that incorporates the Audiology Services Provider Manual by reference, and to incorporate the manual by reference in Section R414-1-5 instead. (DAR NOTE: The proposed amendment for Section R414-1-5 is under DAR No. 35225 in this issue, October 1, 2011, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This change removes language that incorporates the Audiology Services Provider Manual by reference, and incorporates the manual by reference in Section R414-1-5 instead.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Removes Audiology Services Provider Manual, published by Utah Department of Health, 07/01/2011

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because this amendment simply removes language from the text and places it in another administrative rule.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide audiology-hearing services to Medicaid recipients.
- ◆ **SMALL BUSINESSES:** There is no impact to small businesses because this amendment simply removes language from the text and places it in another administrative rule.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid recipients and to Medicaid providers because this amendment simply removes language from the text and places it in another administrative rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid recipient or to a Medicaid provider because this amendment simply removes language from the text and places it in another administrative rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Moving the incorporation references from this rule into Section R414-1-5 will make compliance simpler for providers and have no 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 10/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2011

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 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: [August 22, 2011

Notice of Continuation: October 13, 2010

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

**Human Resource Management,
Administration
R477-4-2
Career Service Exempt Positions**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35251

FILED: 09/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment requires Schedule AB, AC, AD, and AR appointees to complete disclosure statements and undergo reference and background checks.

SUMMARY OF THE RULE OR CHANGE: This amendment adds language requiring Schedule AB, AC, AD, and AR appointees to complete disclosure statements and undergo reference and background checks.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6 and Section 67-20-8

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There may be minimal costs associated with the newly required checks. These costs will be primarily absorbed by the Department of Human Resource Management (DHRM).

♦ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.

♦ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government. No significant cost impact is expected on other persons. This rule does not directly impact costs or savings to state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Minimal cost associated with processing increased volume of the required checks will be absorbed by DHRM. No other compliance costs are expected.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by 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 10/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2011

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.

R477-4. Filling Positions.

R477-4-2. Career Service Exempt Positions.

(1) The Executive Director, DHRM, may approve the creation and filling of career service exempt positions, as defined in Section 67-19-15.

(2) Agencies may use any pre-approved process to select an employee for a career service exempt position. Appointments may be made without competitive examination, provided job requirements are met.

(3) Appointments to fill an employee's position who is on approved leave shall only be made temporarily.

(4) Appointments made on a temporary basis shall be career service exempt and:

(a) be Schedule IN, in which the employee:

(i) is hired to work part time indefinitely;

(ii) may not work more than 30 hours per week; and

(iii) shall have a temporary agreement signed by both the hiring official and the employee on an annual basis; or

(b) be Schedule TL, in which the employee:

(i) is hired to work on a time limited basis; and

(ii) shall have a temporary agreement signed by both the hiring official and the employee at least every three years.

(c) may, at the discretion of management, be offered benefits if working a minimum of 20 hours per week.

(d) if the required work hours of the position exceed the 30 hours per week maximum for Schedule IN or if the position

exceeds anticipated time limits for Schedule TL, agency management shall consult with DHRM to review possible alternative options.

(5) Only Schedule A, IN or TL appointments made from a hiring list under Subsection R477-4-8 may be considered for conversion to career service.

(6) Disclosure statements shall be obtained and reference and background checks shall be conducted for all Schedule AB, AC, AD and AR new hire appointees.

KEY: employment, fair employment practices, hiring practices
Date of Enactment or Last Substantive Amendment: [July 1,] 2011

Notice of Continuation: June 9, 2007

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-20-8

**Human Resource Management,
 Administration
 R477-8-4
 Overtime**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35252

FILED: 09/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These amendments establish new standards for on-call time for greater consistency and documentation across agencies.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-8-4(8)(c) is amended to address FLSA exempt and nonexempt employees separately. Clarification is added that on-call time is not to be paid when an employee is on leave or on duty. Agencies are required to have a written policy regarding on-call time consistent with this rule and finance policy. On-call status is required to be in writing and recorded in the Utah Performance Management system. A calculation formula is iterated for on-call pay. In Subsections R477-8-4(9) and R477-8-4(10), the phrase designation "exempt and nonexempt" is removed since this includes all employees and is therefore superfluous.

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 are administrative and should not directly impact state budgets, except to prevent abuses of on-call overpayments.

◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.

◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule does not directly impact costs or savings to state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ J.J. Acker by phone at 801-538-4297, 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 10/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2011

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.

R477-8. Working Conditions.

R477-8-4. Overtime.

The state's policy for overtime is adopted and incorporated from the Fair Labor Standards Act, 29 CFR Parts 500 to 899(2002) and Section 67-19-6.7.

(1) Management may direct an employee to work overtime. Each agency shall develop internal rules and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:

(a) prior supervisory approval for all overtime worked;

(b) recordkeeping guidelines for all overtime worked;

(c) verification that there are sufficient funds in the budget to compensate for overtime worked.

(2) Overtime compensation standards are identified for each job title in HRE as either FLSA nonexempt, or FLSA exempt.

(a) An employee may appeal the FLSA designation to the agency human resource field office. Further appeals may be filed directly with the United States Department of Labor, Wage and Hour Division. Sections 67-19-31, 67-19a-301 and Title 63G, Chapter 4 may not be applied for FLSA appeals purposes.

(3) An FLSA nonexempt employee may not work more than 40 hours a week without management approval. Overtime shall accrue when the employee actually works more than 40 hours a week. Leave and holiday time taken within the work period may not be counted as hours worked when calculating overtime accrual. Hours worked over two or more weeks may not be averaged with the exception of certain types of law enforcement, fire protection, and correctional employees.

(a) An FLSA nonexempt employee shall sign a prior overtime agreement authorizing management to compensate the employee for overtime worked by actual payment or time off at time and one half.

(b) An FLSA nonexempt employee may receive compensatory time for overtime up to a maximum of 80 hours. Only with prior approval of the Executive Director, DHRM, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace or correctional officers, emergency or seasonal employees. Once an employee reaches the maximum, additional overtime shall be paid on the payday for the period in which it was earned.

(4) An FLSA exempt employee may not work more than 80 hours in a pay period without management approval. Compensatory time shall accrue when the employee actually works more than 80 hours in a work period. Leave and holiday time taken within the work period may not count as hours worked when calculating compensatory time. Each agency shall compensate an FLSA exempt employee who works overtime by granting time off. For each hour of overtime worked, an FLSA exempt employee shall accrue an hour of compensatory time.

(a) Agencies shall establish in written policy a uniform overtime year either for the agency as a whole or by unit number and communicate it to employees. Overtime years shall be set at one of the following pay periods: Five, Ten, Fifteen, Twenty, or the

last pay period of the calendar year. If an agency fails to establish a uniform overtime year, the Executive Director, DHRM, and the Director of Finance, Department of Administrative Services, will establish the date for the agency at the last pay period of the calendar year. An agency may change the established overtime year only after the current overtime year has lapsed, unless justifiable reasons exist and the Executive Director, DHRM, has granted a written exception.

(b) Any compensatory time earned by an FLSA exempt employee is not an entitlement, a benefit, nor a vested right.

(c) Any compensatory time earned by an FLSA exempt employee shall lapse upon occurrence of any one of the following events:

- (i) at the end of the employee's established overtime year;
- (ii) upon assignment to another agency; or
- (iii) when an employee terminates, retires, or otherwise does not return to work before the end of the overtime year.

(d) If an FLSA exempt employee's status changes to nonexempt, that employee's compensatory time earned while in exempt status shall lapse if not used by the end of the current overtime year.

(e) The agency head may approve overtime for career service exempt deputy and division directors, but overtime may not be compensated with actual payment. Schedule AB employees may not be compensated for compensatory time except with time off.

(5) Law enforcement, correctional and fire protection employees

(a) To be considered for overtime compensation under this rule, a law enforcement or correctional officer shall meet the following criteria:

- (i) be a uniformed or plainclothes sworn officer;
- (ii) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accident or willful injury, and to prevent and detect crimes;

(iii) have the power to arrest;

(iv) be POST certified or scheduled for POST training;

and

- (v) perform over 80% law enforcement duties.

(b) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to law enforcement or correctional officers designated FLSA nonexempt and covered under this rule.

- (i) 171 hours in a work period of 28 consecutive days; or

- (ii) 86 hours in a work period of 14 consecutive days.

(c) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to fire protection employees.

- (i) 212 hours in a work period of 28 consecutive days; or

- (ii) 106 hours in a work period of 14 consecutive days.

(d) Agencies may designate a lesser threshold in a 14 day or 28 day consecutive work period as long as it conforms to the following:

- (i) the Fair Labor Standards Act, Section 207(k);

- (ii) 29 CFR 553.230;

- (iii) the state's payroll period;

- (iv) the approval of the Executive Director, DHRM.

- (6) Compensatory Time

(a) Agency management shall arrange for an employee's use of compensatory time as soon as possible without unduly disrupting agency operations or endangering public health, safety or property.

(b) Compensatory time balances for an FLSA nonexempt employee shall be paid down to zero in the same pay period that the employee is transferred from one agency to a different agency, promoted, reclassified, reassigned, or transferred to an FLSA exempt position. The pay down for unused compensatory time balances shall be based on the employee's hourly rate of pay in the old position.

(7) Time Reporting

(a) Employees shall complete and submit a state approved biweekly time record that accurately reflects the hours actually worked, including:

- (i) approved and unapproved overtime;

- (ii) on-call time;

- (iii) stand-by time;

(iv) meal periods of public safety and correctional officers who are on duty more than 24 consecutive hours; and

- (v) approved leave time.

(b) An employee who fails to accurately record time may be disciplined.

(c) Time records developed by the agency shall have the same elements of the state approved time record and be approved by the Department of Administrative Services, Division of Finance.

(d) A Supervisor who directs an employee to submit an inaccurate time record or knowingly approves an inaccurate time record may be disciplined.

(e) A Non-exempt employee who believes FLSA rights have been violated may submit a complaint directly to the Executive Director, or designee, of the Department of Human Resource Management.

(8) Hours Worked: An FLSA nonexempt employee shall be compensated for all hours worked. An employee who works unauthorized overtime may be disciplined.

(a) All time that an FLSA nonexempt employee is required to wait for an assignment while on duty, before reporting to duty, or before performing activities is counted towards hours worked.

(b) Time spent waiting after being relieved from duty is not counted as hours worked if one or more of the following conditions apply:

- (i) the employee arrives voluntarily before their scheduled shift and waits before starting duties;

- (ii) the employee is completely relieved from duty and allowed to leave the job;

- (iii) the employee is relieved until a definite specified time; or

- (iv) the relief period is long enough for the employee to use as the employee sees fit.

(c) On-call time: A[~~†~~] FLSA nonexempt employee required by agency management to be available for on-call work shall be compensated for on-call time at a rate of one hour for every 12 hours the employee is on-call. A FLSA exempt employee required by agency management to be available for on-call work may be compensated at agency discretion, not to exceed a rate of one hour for every 12 hours the employee is on-call.

(i) Time is considered on-call time when the employee has freedom of movement in personal matters as long as the employee is available for a call to duty. An employee may not be in on-call status while using leave or while otherwise unable to respond to a call to duty.

(ii) Agencies who enter into on-call agreements with employees shall have an agency policy consistent with this rule and finance policy.

(iii) On-call status shall be designated by a supervisor[~~either verbally or~~] and shall be in writing and documented in the Utah Performance Management system on an annual basis[~~for a specified time period~~]. Carrying a pager or cell phone shall not constitute on-call time without this written agreement[~~a specific directive from a supervisor~~].

(i[~~ii~~]) The employee shall record the hours spent in on-call status, and any actual hours worked, on the official time record, for the specific date the hours were incurred, in order to be paid.

(v) An employee may not record on-call hours and actual hours worked for the same period of time. On-call hours, actual hours worked, and leave hours cannot exceed 24 hours in a day.

(vi) An employee shall round on-call hours to the nearest two decimal places. Hours of on-call pay shall be calculated by subtracting the number of hours worked in the on-call period from the number of hours in the on-call period then dividing the result by 12.

(d) Stand-by time: An employee restricted to stand-by at a specified location ready for work shall be paid full-time or overtime, as appropriate. An employee shall be paid for stand-by time if required to stand by the post ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shutdowns.

(e) The meal periods of guards, police, and other public safety or correctional officers and firefighters who are on duty more than 24 consecutive hours shall be counted as working time, unless an express agreement excludes the time.

(9) Commuting and Travel Time[~~for FLSA exempt and nonexempt employees~~]:

(a) Normal commuting time from home to work and back may not count towards hours worked.

(b) Time an employee spends traveling from one job site to another during the normal work schedule shall count towards hours worked.

(c) Time an employee spends traveling on a special one day assignment shall count towards hours worked except meal time and ordinary home to work travel.

(d) Travel that keeps an employee away from home overnight does not count towards hours worked if it is time spent outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

(e) Travel as a passenger counts toward hours worked if it is time spent during regular working hours. This applies to nonworking days, as well as regular working days. However, regular meal period time is not counted.

(10) Excess Hours[~~for FLSA exempt and nonexempt employees~~]: An employee may use excess hours the same way as annual leave.

(a) Agency management shall approve excess hours before the work is performed.

(b) Agency management may deny the use of any leave time, other than holiday leave, that results in an employee accruing excess hours.

(c) An employee may not accumulate more than 80 excess hours.

(d) Agency management may pay out excess hours under one of the following:

(i) paid off automatically in the same pay period accrued;

(ii) paid off at any time during the year as determined appropriate by a state agency or division;

(iii) all hours accrued above the limit set by DHRM;

(iv) upon request of the employee and approval by the agency head; or

(v) upon assignment from one agency to another.

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

Human Services, Substance Abuse and Mental Health **R523-23**

On-Premise Alcohol Training and Education Seminar Rules of Administration

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35223

FILED: 09/06/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add fraud prevention measures for the providers.

SUMMARY OF THE RULE OR CHANGE: The division has received input regarding the potential for fraud in the On-Premise Retailer Training and Seminar certification process. As a result, the division has sought out input from a steering committee and is now amending this rule to include requirements for fraud prevention measures.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-15-401 and Section 63G-4-203 and Subsection 62A-15-105(5)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There will not be any cost or savings to state budget. This is because the fraud prevention measures being added to the rule on impact those who

conduct the trainings. The state agencies do not conduct the trainings, therefore, no state agency will incur a cost.

◆ LOCAL GOVERNMENTS: There will be minimal cost to local governments for them to program some changes into their trainings. It is anticipated that these minimal costs will be passed to the customer in the form of a minimally increased cost to take the classes.

◆ SMALL BUSINESSES: There will be minimal cost to small businesses for them to program some changes into their trainings. It is anticipated that these minimal costs will be passed to the customer in the form of a minimally increased cost to take the classes.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be minimal cost to other persons for them to program some changes into their trainings. It is anticipated that these minimal costs will be passed to the customer in the form of a minimally increased cost to take the classes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be minimal cost to affected persons for them to program some changes into their trainings. It is anticipated that these minimal costs will be passed to the customer in the form of a minimally increased cost to take the classes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The change to this rule will have a minimal fiscal impact on businesses that will ultimately be passed to the customer. The benefits of the change to increase fraud prevention outweigh any minimal costs that will be incurred.

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

HUMAN SERVICES
 SUBSTANCE ABUSE AND MENTAL HEALTH
 195 N 1950 W
 SALT LAKE CITY, UT 84116
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov
 ◆ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at raywinger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2011

AUTHORIZED BY: Lana Stohl, Director

**R523. Human Services, Substance Abuse and Mental Health.
 R523-23. On-Premise Alcohol Training and Education Seminar
 Rules of Administration.**

R523-23-4. Provider Responsibilities.

(1) For each person completing the seminar, the provider shall electronically submit to the Division the name, last four digits of the person's social security number~~[- expiration date and test results indicating pass or fail,]~~ and the required fee, within 30 days of the completion of the seminar.

(2) Each person who has completed the seminar and passed the provider-administered and Division-approved examination shall be approved as a server for a period which begins at the completion of the seminar and expires three years from this date. Recertification requires the server to complete a new seminar every three years.

(3) The provider shall issue a certification card to the server. The card shall contain at least the name of the server and the expiration date. The provider shall be responsible for issuing any duplicates ~~[f]or~~ lost cards.

(4) The Provider shall implement at least three of the following measures to prevent fraud:

(a) Authentication that the an individual accurately identifies the individual as taking the online course or test;

(b) Measures to ensure that an individual taking the online course or test is focused on training material throughout the entire training period;

(c) Measures to track the actual time an individual taking the online course or test is actively engaged online;

(d) A seminar provider to provide technical support, such as requiring a telephone number, email, or other method of communication that allows an individual taking the online course or test to receive assistance if the individual is unable to participate online because of technical difficulties;

(e) A test to meet quality standards, including randomization of test questions and maximum time limits to take a test;

(f) A seminar provider to have a system to reduce fraud as to who completes an online course or test, such as requiring a distinct online certificate with information printed on the certificate that identifies the person taking the online course or test, or requiring measures to inhibit duplication of a certificate;

(g) Measures to allow an individual taking an online course or test to provide an evaluation of the online course or test;

(h) A seminar provider to track the Internet protocol address or similar electronic location of an individual who takes an online course or test;

(i) An individual who takes an online course or test to use an e-signature; or

(j) A seminar provider to invalidate a certificate if the seminar provider learns that the certificate does not accurately reflect the individual who took the online course or test.

R523-23-6. Division Responsibilities.

The Division shall maintain the ~~[list]~~database of servers who have completed the seminar~~[- and make this information available to the public for compliance reviews].~~

R523-23-7. Approved Curriculum.

(1) Each provider must have a curriculum approved by the Division. This curriculum must provide at least three hours of [classroom] instruction both for original certification and for any and all recertifications. The contents of an approved curriculum shall include the following components:

(a) Alcohol as a drug and its effect on the body and behavior:

- (i) facts about alcohol;
- (ii) what alcohol is; and
- (iii) alcohol's path through the body.

(b) Factors influencing the effect of alcohol including:

- (i) food and digestive factors;
- (ii) weight, physical fitness and gender factors;
- (iii) psychological factors;
- (iv) tolerance; and
- (v) alcohol used in combination with other drugs.

(c) Recognizing drinking levels:

(i) explanation of behavioral signs and indications of impairment;

(ii) classification of behavioral signs; and

(iii) defining intoxication.

(d) Recognizing the problem drinker and techniques for servers to help control consumption:

- (i) use of classification system;
- (ii) use of alcohol facts;
- (iii) continuity of service; and
- (iv) drink counting.

(e) Overview of state alcohol laws:

- (i) Utah liquor distribution and control;
- (ii) legal age;
- (iii) prohibited sales;
- (iv) third party liability and the Dram Shop Law;
- (v) legal definition of intoxication; and
- (vi) legal responsibilities of servers.

(f) Techniques for dealing with the problem customer including rehearsal and practice of these techniques.

(g) Intervention techniques:

- (i) slowing down service;
- (ii) offering food or nonalcoholic beverages;
- (iii) serving water with drinks;
- (iv) not encouraging reorders; and
- (v) cutting off service.

(h) Establishing house rules for regulating alcoholic beverages:

- (i) management and co-workers' support; and
- (ii) dealing with minors; and

(i) Alternative means of transportation and getting the customer home safely:

- (i) ask customer to arrange alternative transportation;
- (ii) call a taxi [f]or transportation service;
- (iii) accommodations for the night; and
- (iv) telephone the police.

R523-23-9. Alcohol Training and Education Seminar Provider Standards.

(1) The Division may certify an applicant who has a program course that:

(a) does not have a history of liquor law violations or any convictions showing disregard for laws related to being a responsible liquor provider;

(b) identifies all program instructors and instructor trainers and certifies in writing that they have been trained to present the course material and that they have not been convicted of a felony or of any violation of the laws or ordinances concerning alcoholic beverages, within the last five years;

(c) agrees to notify the Division in writing of any changes in instructors and submit the assurances called for in Subsection R523-23-9(1)(b) for all new instructors;

~~[(d) can show adequate facilities, instructional equipment and materials, personnel, and financial resources to provide a successful program for the length of time the license is in effect; and~~

[(e)d] will establish and maintain course completion records.

(2) All online training courses shall be provided on a secure website.

R523-23-10. Grounds [F]for Denial, Corrective Action, Suspension, and Revocation.

(1) The Division may deny, suspend or revoke certification if:

(a) the provider or applicant violates these rules, as provided in Section 62A-15-401; or

(b) the applicant fails to correctly complete all required steps of the application process as determined by these rules or other rules or statutes referenced in these rules; or

(c) a provider whose certification has been previously denied, suspended or revoked has reapplied without taking the previously required corrective action.

R523-23-13. Procedure for Denial, Suspension, or Revocation.

(1) If the Division has grounds for action under these rules, referenced rules, or as required by law, and intends to deny, suspend or revoke certification of a provider, the steps governing the action are as follows:

(a) The Division shall notify the applicant or provider by personal service or by certified mail, return receipt requested, of the action to be taken. The notice shall contain reasons for the action, to include all statutory or rule violations, and a date when the action shall become effective.

(b) The provider may request an informal hearing with the Director within ten calendar days. The request shall be in writing. Within ten days following the close of the hearing, the Director or designee shall inform the provider or applicant in writing as required under Section 63G-4-203. The provider may appeal to the Department of Human Services Office of Administrative Hearing as provided for under Section 63G-4-203.

KEY: substance abuse, server training, on-premise

Date of Enactment or Last Substantive Amendment:
[September 10, 2009]2011

Notice of Continuation: June 22, 2007

Authorizing, and Implemented or Interpreted Law: 62A-15-105(5); 62A-15-401

**Public Service Commission,
Administration
R746-409-1
General Provisions**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35236

FILED: 09/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule amendment is to change the "as amended" date of a federal regulation that is incorporated by reference in the rule.

SUMMARY OF THE RULE OR CHANGE: The rule adopts and incorporates by reference Parts 190, 191, 192, 198, and 199 of Title 49 of the Code of Federal Regulations (CFR) relating to pipeline and hazardous materials safety. Currently, the rule incorporates these Parts "as amended October 1, 2006." The proposed rule change will incorporate these Parts "as amended October 1, 2010," the latest published update.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-13-3 and Section 54-13-5 and Section 54-13-6

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 49 CFR Parts 186 to 199, published by Government Printing Office, 10/01/2010

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The additional cost depends on usage level. The increase will be approximately \$1 for every 88 decatherms of natural gas usage. (An average residential customer uses about 80 decatherms per year.)
- ◆ **LOCAL GOVERNMENTS:** The additional cost depends on usage level. The increase will be approximately \$1 for every 88 decatherms of natural gas usage. (An average residential customer uses about 80 decatherms per year.)
- ◆ **SMALL BUSINESSES:** The additional cost depends on usage level. The increase will be approximately \$1 for every 88 decatherms of natural gas usage. (An average residential customer uses about 80 decatherms per year.)
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The additional cost depends on usage level. The increase will be approximately \$1 for every 88 decatherms of natural gas usage. (An average residential customer uses about 80 decatherms per year.)

COMPLIANCE COSTS FOR AFFECTED PERSONS: The natural gas distribution utility in this state will have increased annual operating costs to comply with new gas distribution integrity management system requirements. The annual operating cost increase is estimated at \$1,024,600. The increased costs noted above are the increased gas rates necessary to recover the increased operating costs for the gas distribution utility.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Public Service Commission rules are being updated to reflect the most recent federal natural gas pipeline safety requirements. The natural gas distribution utility serving Utah will recover its compliance costs through usage-based rates, as described under "Aggregate anticipated cost or savings" above.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ David Clark by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at drexclark@utah.gov
- ◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2011

AUTHORIZED BY: David Clark, Legal Counsel

R746. Public Service Commission, Administration.

R746-409. Pipeline Safety.

R746-409-1. General Provisions.

A. Scope and Applicability -- To enable the Commission to carry out its duties regarding pipeline safety under Chapter 13, Title 54, the following rules shall apply to persons owning or operating an intrastate pipeline facility as defined in that chapter, or a segment of that chapter including, but not limited to, master meter systems, as well as persons engaged in the transportation of gas.

B. Adoption of Parts 190, 191, 192, 198, and 199 -- The Commission hereby adopts, and incorporates by this reference, CFR Title 49, Parts 190, 191, 192, 198, and 199, as amended, October 1, 2010[~~October 1, 2006~~]. Persons owning or operating an intrastate

pipeline facility in Utah, or a segment thereof, as well as persons engaged in the transportation of gas, shall comply with the minimum safety standards specified in those Parts of CFR Title 49.

Notice of Continuation: November 29, 2006
Authorizing, and Implemented or Interpreted Law: 54-13-3; 54-13-5; 54-13-6

KEY: rules and procedures, safety, pipelines

Date of Enactment or Last Substantive Amendment: [~~March 27, 2007~~2011]

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 October 31, 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 January 29, 2012, an agency may notify the Division of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303; Rule R15-2; and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page

Commerce, Real Estate
R162-2g
Real Estate Appraiser Licensing and
Certification Administrative Rules

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 34917
 FILED: 09/12/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to respond to public comments submitted by Barry Conover, Executive Director of the Utah State Tax Commission.

SUMMARY OF THE RULE OR CHANGE: In Subsections R162-2g-304d(5)(e), (f), and (g), clarify that the rule applies to "assignments" performed by mass appraisers and does not contemplate that these individuals are performing full appraisals. In Subsection R162-2g-304d(5)(i), clarify internal reference. In Subsection R162-2g-307c(2)(a)(i), remove requirement for continuing education providers to have their courses approved by the Appraisal Qualifications Board (AQB). In Subsection R162-2g-307c(3)(d), remove language stating that the Division will not award credit for a continuing education (CE) class taught outside of Utah if it was marketed to Utah licensees; specify that any class taught in Utah must be certified with the Division prior to its being taught. In Subsection R162-2g-307e(5), specify six-month reinstatement period with regard to an expired instructor certification. In Subsection R162-2g-504, identify the tables as appendices and add a space between two words in Appendix 3(f)(iv). (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the July 1, 2011, issue of the Utah State Bulletin, on page 16. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These changes are for clarification and correction only. They do not impose any new or additional requirements for the state to oversee or enforce. Therefore, no impact to the state budget is anticipated.
- ◆ **LOCAL GOVERNMENTS:** Local governments are not subject to the appraiser rules. Therefore, no fiscal impact to local governments is anticipated from these corrections and clarifications.

◆ **SMALL BUSINESSES:** Small businesses that offer continuing education courses will not be required to bear the costs of obtaining AQB approval for their courses, as originally proposed. This change eliminates a cost that would otherwise be borne by small businesses. The other corrections and clarifications are not anticipated to have a fiscal impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** A person who allows a continuing education certification to expire will have six months to reinstate the certification, which will cost less than reapplying as a new applicant. Otherwise, the corrections and clarifications proposed are not anticipated to have a fiscal impact to affected persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance is accomplished through an affected person acting properly in logging and submitting experience hours and in certifying educational offerings and instructors. No costs are associated beyond those that are currently in place within the industry.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule summary, these amendments are largely clarifying in nature, and the substantive changes may result in cost savings to licensees and to the industry. No fiscal impact to businesses is anticipated from these changes.

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

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2011

AUTHORIZED BY: Thad LeVar, Deputy Director

R162. Commerce, Real Estate.
R162-2g. Real Estate Appraiser Licensing and Certification Administrative Rules.

.....

R162-2g-304d. Experience Hours.

(1)(a) Except as provided in this Subsection (1)(b), appraisal experience shall be measured in hours according to the appraisal experience hours schedules found in Appendices 1 through 3.

(b)(i) An applicant who has experience in categories other than those shown on the appraisal experience hours schedules, or who believes the schedules do not adequately reflect the applicant's experience or the complexity or time spent on an appraisal, may petition the board on an individual basis for evaluation and approval of the experience as being substantially equivalent to that required for licensure or certification.

(ii) Upon a finding that an applicant's experience is substantially equivalent to that required for licensure or certification, the board may award the applicant an appropriate number of hours for the alternate experience.

(2) General restrictions.

(a) An applicant may not accrue more than 2,000 experience hours in any 12-month period.

(b) The board may not award credit:

(i) for appraisal experience earned more than five years prior to the date of application;

(ii) for appraisals that were performed in violation of:

(A) Utah law;

(B) the law of another jurisdiction; or

(C) the administrative rules adopted by the division and the board;

(iii) for appraisals that fail to comply with USPAP;

(iv) for appraisals of the value of a business as distinguished from the appraisal of commercial real estate; or

(v) for personal property appraisals.

(c) At least 50% of the appraisals submitted for experience credit shall be appraisals of properties located in Utah.

(d) With regard to experience hours claimed from the schedules found in Appendices 1 and 2:

(i) appraisals where only an exterior inspection of the subject property is performed shall be granted 25% of the credit awarded an appraisal that includes an interior inspection of the subject property; and

(ii) no 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.

(e) A maximum of 250 experience hours may be earned from appraisal of vacant land.

(f) Appraisals on commercial or multi-unit form reports shall be awarded 75% of the credit normally awarded for the appraisal.

(g)(i) 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:

(A) complete all additional education, as required under the AQB standards;

(B) pass the required examination applicable to the license or certification being sought by the individual; and

(C) submit a complete application to the division.

(ii) An applicant who fails to comply with the December 31, 2011 deadline established in this Subsection (2)(g)(i) shall:

(A) complete all additional education as required under the AQB standards;

(B) pass the required examination applicable to the license or certification sought by the individual;

(C) submit recent appraisals that meet the requirements of all applicable statutes and rules for review by the experience review committee; and

(D) submit a complete application to the division according to deadlines established in Subsection R162-2g-304f(1).

(3) Specific restrictions applicable to trainees applying for licensure.

(a) A trainee and the trainee's supervisor who signs the experience log shall document on the log the specific duties that the trainee performs for each appraisal.

(b) For each duty performed, the trainee shall be awarded a percentage of the total experience hours that may be awarded for the property type being appraised:

(i) pursuant to the appraisal experience hour schedules found in Appendices 1 through 3; and

(ii) with the following limitations:

(A) participation in highest and best use analysis: 10% of total hours;

(B) participation in neighborhood description and analysis: 10% of total hours;

(C) property inspection: 20% of total hours, pursuant to this Subsection (3)(c);

(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; and

(I) participation in report preparation: 20% of total hours.

(c) In order for a trainee to claim credit for an inspection pursuant to this Subsection (3)(b)(ii)(C):

(i) as to the first 100 residential appraisals or first 20 non-residential appraisals completed, as applicable to the license or certification being sought, the inspection must include:

(A) measurement of the exterior of a property that is the subject of an appraisal; and

(B) inspection of the exterior of a property that is used as a comparable in an appraisal; and

(ii) as to appraisals after the first 100 residential appraisals or first 20 non-residential appraisals completed, as applicable to the license or certification being sought, the inspection must satisfy all scope of work requirements.

(d) No more than one-third of the experience hours submitted toward licensure may come from any one of the categories identified in this Subsection (3)(b)(ii).

(4) Specific restrictions applicable to applicants for certification.

(a) An individual who obtained a license from the division through reciprocity shall provide to the division all records necessary for the division to verify that the individual satisfies the experience requirements outlined in these rules.

(b) The board may not award credit:

(i) for any appraisal where the applicant cannot prove more than 50% participation in the:

(A) data collection;

(B) verification of data;

(C) reconciliation;

- (D) analysis;
- (E) identification of property and property interests;
- (F) compliance with USPAP standards; and
- (G) preparation and development of the appraisal report;

or

- (ii) to more than one licensed appraiser per completed appraisal, except as provided in this Subsection (5).

(c)(i) An individual applying for certification as a state-certified residential appraiser shall document at least 75% of the hours submitted from:

(A) the residential experience hours schedule found in Appendix 1; or

(B) the residential portion of the mass appraisal hours schedule found in Appendix 3.

(ii) No more than 25% of the total hours submitted may be from:

(A) the general experience hours schedule found in Appendix 2; or

(B) properties other than 1- to 4-unit residential properties identified in the mass appraisal hours schedule found in Appendix 3.

(d) An individual applying for certification as a state-certified general appraiser shall document at least 1,500 experience hours as having been earned from:

(i) the general experience hours schedule found in Appendix 2; or

(ii) properties other than 1- to 4-unit residential properties identified in the mass appraisal hours schedule found in Appendix 3.

(5) Specific restrictions applicable to mass appraisers.

(a) Single-property appraisals performed under USPAP Standards 1 and 2 by mass appraisers shall be awarded full credit pursuant to Appendices 1 and 2.

(b) Review and supervision of appraisals by mass appraisers shall be awarded credit pursuant to this Subsection (6) (b)-(c).

(c)(i) Mass appraisers and mass appraiser trainees who perform 60% or more of the appraisal work shall be awarded full credit pursuant to Appendix 3.

(ii) Mass appraisers and mass appraiser trainees who perform between 25% and 59% of the appraisal work shall be awarded 50% credit pursuant to Appendix 3.

(iii) Mass appraisers and mass appraisal trainees who perform less than 25% of the appraisal work shall be awarded no credit for the appraisal assignment.

(d) In addition to submitting proof of required experience and samples, randomly selected from the experience log, of work conforming to USPAP Standard 6:

(i) a state-licensed appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least five appraisals conforming to USPAP Standards 1 and 2;

(ii) a state-certified residential appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least eight one-unit residential appraisals conforming to USPAP Standards 1 and 2; and

(iii) a state-certified general appraiser applicant whose experience is earned primarily through mass appraisal shall submit

proof of having performed at least eight appraisals from Appendix 2 conforming to USPAP Standards 1 and 2.

(e) No more than 60% of the total hours submitted for licensure or certification may be earned from any combination of ~~appraisals of~~ appraisal assignments related to:

- (i) property types identified in Appendix 3(a)(i) and (ii);
- (ii) property types identified in Appendix 3 (b)(i) and (ii);
- (iii) property types identified in Appendix 3 (c)(i) and

(ii);

- (iv) property types identified in Appendix 3 (d)(i) and

(ii);

- (v) property types identified in Appendix 3 (e)(i) and (ii),

and

- (vi) property types identified in Appendix 3 (f)(i).

(f) No more than 25% of the total hours submitted for licensure or certification may be earned from ~~appraisals of~~ appraisal assignments related to property types identified in Appendix 3(f)(iii) and (iv) combined.

(g) No more than 20% of the total hours submitted for licensure or certification may have been earned from ~~appraisals of~~ appraisal assignments related to property types identified in Appendix 3(g).

(h)(i) Mass appraisal of property with a personal property component of less than 50% of value shall be awarded full credit pursuant to Appendix 3 for the type of property appraised.

(ii) Mass appraisal of property with a personal property component of 50% to 85% of value shall be awarded 50% credit pursuant to Appendix 3 for the type of property appraised.

(iii) Mass appraisal of property with a personal property component greater than 85% shall be awarded no credit.

(i) The appraisals submitted for review pursuant to this Subsection (5)(d) shall be selected from the applicant's most recent work.

(6) Special circumstances - condemnation appraisals, review appraisals, supervision of appraisers, other real estate experience, and government agency experience.

(a) Condemnation appraisals. A condemnation appraisal shall be awarded an additional 50% of the hours normally awarded for the appraisal if the condemnation appraisal includes a before-and-after appraisal because of a partial taking of the property.

(b) Review appraisals.

(i) Review appraisals shall be awarded experience credit when the appraiser performs technical reviews of appraisals prepared by employees, associates, or others, provided the appraiser complies with USPAP Standards Rule 3 when the appraiser is required to comply with the rule.

(ii) Except as provided in this Subsection (6)(e)(i), the following credit shall be awarded for review of appraisals:

(A) desk review: 30% of the hours that would be awarded if a separate written review appraisal report were prepared, up to a maximum of 500 hours; and

(B) field review: 50% of the hours that would be awarded if a separate written review appraisal report were prepared, up to a maximum of 500 hours.

(c) Supervision of appraisers. Except as provided in this Subsection (6)(e)(i), supervision of appraisers shall be awarded 20% of the hours that would be awarded to the appraisal, up to a maximum of 500 hours.

(d) Other real estate experience acceptable for certification.

(i) Provided that an applicant demonstrates to the satisfaction of the board that the applicant has the ability to arrive at a fair market value of property and to properly document value conclusions, the following activities may be used to satisfy up to 50% of the experience required for certification:

- (A) preliminary valuation estimates;
- (B) range of value estimates or similar studies;
- (C) other real estate-related experience gained by:
 - (I) bankers;
 - (II) builders;
 - (III) city planners and managers; or
 - (IV) other individuals.

(ii) A comparative market analysis by an individual licensed under Section 61-2f et seq. may be granted up to 100% experience credit toward certification if:

(A) the analysis conforms with USPAP Standards Rules 1 and 2; and

(B) the individual demonstrates to the board that the individual uses similar techniques as appraisers to value properties and effectively utilize the appraisal process.

(iii) The following activities, if performed in accordance with USPAP Standards Rules 4 and 5, may be used to satisfy up to 50% of the experience required for certification:

- (A) appraisal analysis;
- (B) real estate counseling or consulting services; and
- (C) feasibility analysis/study.

(iv) Except as provided in this Subsection (6)(e)(i), no more than 50% of the total experience required for certification may be earned through any combination of experience described in this Subsection (6)(b)-(d).

(e) Government agency experience.

(i) An individual who obtains experience hours in conjunction with investigation by a government agency is not subject to the hour limitations of this Subsection (6).

(ii) In addition to submitting proof of required experience, an applicant whose experience is earned primarily in conjunction with investigations by government agencies and through review of appraisals, with no opinion of value developed, shall submit proof of having complied with USPAP Standards 1 and 2 in performing appraisals as follows:

(A) if applying for state-licensed appraiser with experience reviewing residential appraisals, five appraisals of one-unit dwellings;

(B) if applying for state-certified residential appraiser with experience reviewing residential appraisals, eight appraisals of one-unit dwellings; and

(C) if applying for state-certified general appraiser with experience reviewing appraisals of property types listed in Appendix 2, at least eight appraisals of property types identified in Appendix 2.

(7) The board, at its discretion, may request the division to verify the claimed experience by any of the following methods:

- (a) verification with the clients;
- (b) submission of selected reports to the board; and
- (c) field inspection of reports identified by the applicant at the applicant's office during normal business hours.

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R162-2g-306a. Renewal and Reinstatement of a Registration, License, or Certification.

(1)(a) A registration, license, or certification is valid for two years and expires unless it is renewed according to this Subsection R162-2g-306a before the expiration date printed on the registration, license, or certificate.

(b) It shall be grounds for disciplinary sanction if, after an individual's registration, license, or certification has expired, the individual continues to perform work for which the individual is required to be registered, licensed, or certified.

(2) To timely renew a registration, license, or certification, an applicant shall, prior to the expiration date of the registration, license, or certification, submit to the division:

(a) a completed renewal application as provided by the division;

(b) proof of completion of the following continuing education taken during the preceding two years:

(i)(A) the 7-hour National USPAP Update Course, taught by 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 AQB; or

(B) equivalent education, as determined through the course approval program of the AQB; and

(ii)(A) 21 additional hours of continuing education:

(I) certified by the division for the appraisal industry at the time the courses are taught; or

(II) not required to be certified, pursuant to Subsection R162-2g-307c(3); or

(B) if the renewal applicant is also working toward certification, 21 hours of pre-licensing education credit applicable to the certification being sought; and

(c) the applicable nonrefundable renewal fee.

(3)(a) In order to renew on time, an applicant shall complete continuing education hours by the 15th day of the month in which the registration, license, or certification expires.

(b) An applicant who complies with this Subsection (3) (a), but whose credits are not banked by the education provider pursuant to Subsection R162-2g-502a(5)(c), may obtain credit for the course(s) taken by:

(i) submitting to the division the original course completion certificates; and

(ii) filing a complaint against the provider.

(4) 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 this Subsection (2).

(5)(a) After the 30-day period described in this Subsection (4) and until six months after the expiration date, an individual may reinstate an expired license, certification, or registration by:

(i) complying with this Subsection (2);

(ii) paying a late fee; and

(iii) paying a reinstatement fee.

(b) After the six-month period described in this Subsection (5)(a) and until one year after the expiration date, an individual may reinstate an expired license, certification, or registration by:

- (i) complying with this Subsection (2);
- (ii) paying a late fee;
- (iii) paying a reinstatement fee; and
- (iv) completing 24 hours of additional continuing education as approved by the division.
- (c)(i) An individual who does not reinstate an expired license, certification, or registration within 12 months of the expiration date shall:
 - (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 this Subsection (4)(c) (i) shall receive credit for previously credited pre-licensing education if:
 - (A) it was completed within the five-year period prior to the date of reapplication; and
 - (B) it was either:
 - (I) completed after January 1, 2008; or
 - (II) certified by the division and the AQB prior to January 1, 2008, as approved, qualified pre-licensing education.
- (6) If the division receives 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.
- (7) Renewal while on active military service.
- (a) An appraiser or trainee who is unable to renew a registration, license, or certification because active military service has prevented the completion of the appraiser's or trainee's required continuing education may:
 - (i) submit a timely application for renewal that is complete, except for proof of continuing education; and
 - (ii) request that the application for renewal be held in suspense pending the completion of the continuing education requirement.
- (b) 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.
- (c) An individual may not act as an appraiser or trainee in Utah:
 - (i) after the expiration of the registration, license, or certification; or
 - (ii) while the individual'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.

.....

R162-2g-307c. Continuing Education Course Certification.

- (1) The division and the board may not award continuing education credit for a course that is taught in Utah to registered, licensed, or certified appraisers unless the course is certified prior to its being taught.
- ~~_____~~ [(+)](2) To certify a continuing education course, an applicant shall, at least 30 days prior to the course being taught, submit a completed application as required by the division, including:

- (a) name and contact information of the course sponsor and the entity through which the course will be provided;
- (b) description of the physical facility where the course will be taught;
- (c) the proposed number of credit hours for the course;
- (d) identification of whether the method of instruction will be traditional education or distance education;
- (e) title of the course;
- (f) 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) course outline including:
 - (i) a description of the subject matter covered in each 15-minute segment; and
 - (ii) a minimum of one learning objective for every hour of class time;
 - (h) the name and certification number of each certified instructor who will teach the course;
 - (i) copies of all materials that will be distributed to the participants;
 - (j) the procedure for pre-registration;
 - (k) 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;
 - (m) sample of the completion certificate;
 - (n) signed statement agreeing that the course provider will, within 10 business days of completing the class, upload to the division the following information:
 - (i) course name;
 - (ii) course certificate number assigned by the division;
 - (iii) date the course was taught;
 - (iv) number of credit hours; and
 - (v) names and license numbers of all students receiving continuing education credit;
 - (o) signed statement agreeing not to market personal sales products; and
 - (p) other information the division might require.
- (2) Standards for approval.
 - (a)(i) A distance education course shall:
 - (A) provide interaction between the student and instructor; and
 - (B) include a written examination that requires a student to demonstrate mastery and fluency; ~~and~~
 - ~~_____~~ (C) ~~meet the requirements established by the AQB~~.
 - (ii) The division may approve a distance education course offered by a college or university if the college or university:
 - (A) offers distance education programs in other disciplines; and
 - (B)(I) is accredited by the Commission on Colleges or a regional accreditation association; or
 - (II) is approved by the International Distance Education Certification Center.
 - (b) The course topic must be AQB-approved.
 - (c) The procedure for taking and maintaining control of attendance shall be more extensive than having the students sign a class roll.

- (d) The completion certificate shall allow for entry of:
 - (i) licensee's name;
 - (ii) type of license;
 - (iii) license number;
 - (iv) date of course;
 - (v) name of the course provider;
 - (vi) course title;
 - (viii) course certification number and expiration date;
 - (ix) credit hours awarded; and
 - (x) signatures of the course sponsor and the licensee.

(e) A real estate appraisal-related field trip that is submitted for continuing education credit may not include transit time to or from the field trip location as part of the credit hours awarded.

~~[(3)](4)~~ Non-certified continuing education credit. ~~[The]Except as provided in Subsection R162-2f-307c(1), the~~ board may award continuing education credit on a case-by-case basis for the following:

- (a) participation, other than as a student, in an appraisal practicum course;
- (b) teaching, program development, authorship of textbooks, or similar activities that are determined by the board to be equivalent to obtaining continuing education, up to one-half of an individual's continuing education credit requirement;
- (c) service as a member of the experience review committee, or the technical advisory panel, if approved by the board and offered in accordance with AQB standards as a:
 - (i) practicum course under this Subsection (3)(a); or
 - (ii) course under this Subsection (3)(b); and
 - (d) completion of any course that:
 - (i) meets the continuing education objectives of increasing the licensee's knowledge, professionalism, and ability to protect and serve the public; and
 - (ii) is taught outside the state of Utah; ~~and~~
 - (iii) ~~is not marketed to appraisers or appraiser trainees in Utah~~.

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R162-2g-307e. Instructor Certification for Continuing Education.

- (1) A continuing education course that is required to be certified shall be taught by a certified instructor.
- (2) To obtain a continuing education instructor certification, and individual shall, at least 30 days prior to the date on which instruction is proposed to begin:
 - (a) evidence that the applicant meets the character and competency requirements outlined in Subsection R162-2g-302(2)-(3);
 - (b) submit a completed application form, as provided by the division;
 - (c) evidence:
 - (i) at least three years of full-time experience in the course subject;
 - (ii) college-level education related to the course subject;
 - or
 - (iii) a combination of experience and education acceptable to the division;
 - (d) evidence:

- (i) at least 12 months of full-time teaching experience;
 - (ii) part-time teaching experience equivalent to 12 months of full-time teaching experience; or
 - (iii) attendance at the division's Instructor Development Workshop;
 - (e) provide a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;
 - (f) provide a signed statement agreeing not to market personal sales products;
 - (g) provide any other information the division requires;
- and
- (h) pay a nonrefundable application fee.

(3) A continuing education instructor certification is valid for two years.

(4) To renew a continuing education instructor certification, an individual shall, prior to the date of expiration:

- (a) submit a completed renewal application, as provided by the division;
- (b)(i) evidence having taught a minimum of 12 continuing education credit hours during the past term of certification; or
- (ii) provide a written explanation outlining the reason for not meeting the requirement having taught 12 continuing education credit hours and provide evidence satisfactory to the division that the applicant maintains an appropriate level of expertise; and
- (c) pay a nonrefundable renewal fee.
- (5)(a) To reinstate an expired continuing instructor certification within 30 days following the expiration date, an individual shall:
 - (i) comply with ~~[this]~~Subsection (4); and
 - (ii) pay a nonrefundable late fee.
 - (b) To reinstate an expired continuing instructor certification after 30 days and within six months following the expiration date, an individual shall:
 - (i) comply with ~~[this]~~Subsection (4); and
 - (ii) pay a nonrefundable reinstatement fee;
 - (c) After a continuing instructor certification has been expired for ~~[three]~~six months, an individual is required to apply as an original applicant and obtain a new certification.

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R162-2g-504. Administrative Proceedings.

- (1) Formal adjudicative proceedings. An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order or other emergency 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 Appraiser Licensing and Certification Act or by these rules.
 - (3)(a) A hearing before the board will be held in:
 - (i) a proceeding conducted subsequent to the issuance of a cease and desist order or other emergency order;

(ii) a case where the division seeks to deny an application for original or renewed registration, licensure, or certification for failure of the applicant to meet the criteria of good moral character, honesty, integrity or truthfulness;

(iii) a case where the division seeks disciplinary action pursuant to Sections 61-2g-501 and 502 against a trainee or an appraiser; and

(iv) an appeal from an automatic revocation under Section 61-2g-302(2)(d), if the appellant requests a hearing.

(b) If properly requested by the applicant, a hearing will be held before the board to consider an application:

(i) that is denied by the division on the grounds that the instructor's attestation to upstanding moral character is false;

(ii) for an initial appraiser license or certification that is denied by the board on the recommendation of the experience review committee; and

(iii) for a temporary permit that is denied by the division for any reason.

(c) A hearing is not required and will not be held in the following informal adjudicative proceedings:

(i) the issuance, renewal, or reinstatement of a trainee registration or an appraiser license or certification by the division;

(ii) the issuance or renewal of an appraisal course, school, or instructor certification;

(iii) 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; and

(iv) the denial of renewal or reinstatement of a trainee registration or an appraiser license or certification for failure to complete any continuing education required by statute or rule; and

(v) 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.

(4)(a) Request for agency action. The following applications shall be deemed a request for agency action:

(i) registration as an expert witness;

(ii) registration as a trainee;

(iii) licensure or certification as an appraiser;

(iv) certification of a course, school, or instructor; and

(v) issuance of a temporary permit.

(b) Any other request for agency action shall be in writing, signed by the requestor, and shall contain the following:

(i) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(ii) the agency's file number or other reference number, if known;

(iii) the date of mailing of the request for agency action;

(iv) a statement of the legal authority and jurisdiction under which the agency action is requested, if known;

(v) a statement of the relief or action sought from the division; and

(vi) a statement of the facts and reasons forming the basis for relief or agency action.

(c) A complaint against a trainee, 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.

(5) Procedures for hearings in informal adjudicative proceedings.

(a) 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 et seq.; and

(iii) the rules promulgated by the division.

(b) Except as provided in this Subsection (6)(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.

(c) In any proceeding under this Subsection R162-2g-504, the board and division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the board and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(d)(i) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first class postage-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing, to the respondent at the address last provided to the division pursuant to Subsection R162-2g-306b.

(ii) The notice shall set forth the matters to be addressed in the hearing.

(e) Formal discovery is prohibited.

(f) The division may issue subpoenas or other orders to compel production of necessary 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.

(g) 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.

(h) Intervention is prohibited.

(i) 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.

(j) 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.

(6) 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 no later than 30 days following the mailing date of the notice of agency action pursuant to this Subsection (6)(a).

(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 agency action.

(ii) 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.

(iii) 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.

[Table]Appendix 1. Residential Experience Hours Schedule. The hours shown in the following schedule shall be awarded to form appraisals. Fifteen hours may be added to the hours shown if the appraisal is a narrative appraisal instead of a form appraisal.

[TABLE]APPENDIX 1

Property Type	Hours that may be earned
(a) one-unit dwelling, above-grade:	
(i) living area less than 4,000 square feet, including a site	5 hours
(ii) 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 dwellings are substantially similar:	
(i) 1-25 dwellings	5 hours per dwelling, up to a maximum of 30 hours
(ii) over 25 dwellings	50 hours maximum
(c) two to four-unit dwelling	20 hours
(d) employee relocation counsel reports completed on currently accepted Employee Relocation Counsel form	10 hours
(e) residential lot, 1-4 unit	5 hours
(f) multiple lots in the same subdivision, which lots are substantially similar	
(i) 1-25 lots	5 hours per lot, up to a maximum of 30 hours
(ii) Over 25 lots	50 hours maximum
(g) small parcel up to 5 acres	5 hours
(h) vacant land, 20-500 acres	20-40 hours, per board decision
(i) recreational, farm, or timber acreage suitable for a house site:	
(i) up to 10 acres	10 hours

(ii) over 10 acres	15 hours
(j) all other unusual structures or acreage which are much larger or more complex than typical properties	5-35 hours, per board decision
(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

[Table]Appendix 2. General Experience Hours Schedule.

All appraisal reports claimed for property types identified in sections (a) through (k) of the following schedule shall be narrative appraisal reports. Experience hours listed in this schedule 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 if the applicant maintains in the workfile for the appraisal an explanation as to why the extra hours are claimed.

[TABLE]APPENDIX 2

Property Type	Hours that may be earned
(a) Apartment buildings:	
(i) 5-100 units	40 hours
(ii) over 100 units	50 hours
(b) hotel or motels:	
(i) 50 units or fewer	30 hours
(ii) 51-150 units	40 hours
(iii) over 150 units	50 hours
(c) nursing home, rest home, care facilities:	
(i) fewer than 80 beds	40 hours
(ii) over 80 beds	50 hours
(d) industrial or warehouse building:	
(i) smaller than 20,000 square feet	30 hours
(ii) larger than 20,000 square feet, single tenant	40 hours
(iii) larger than 20,000 square feet, multiple tenants	50 hours
(e) office buildings:	
(i) smaller than 10,000 square feet	30 hours
(ii) larger than 10,000 square feet, single tenant	40 hours
(iii) larger than 10,000 square feet, multiple tenants	50 hours
(f) entire condominium projects, using income approach to value:	
(i) 5- to 30-unit project	30 hours
(ii) 31- or more-unit project	50 hours
(g) retail buildings:	
(i) smaller than 10,000 square feet	30 hours
(ii) larger than 10,000 square feet, single tenant	40 hours
(iii) larger than 10,000 square feet, multiple tenants	50 hours
(h) commercial, multi-unit, industrial, or other nonresidential use acreage:	
(i) 1 to 99 acres	20-40 hours
(ii) 100 acres or more, income approach to value	50-60 hours
(i) all other unusual structures or assignments that are much larger or more complex than the properties described in (a) to (h) herein.	5 to 100 hours per board decision
(j)entire subdivisions or planned unit developments (PUDs):	
(i) 1- to 25-unit subdivision or PUD	30 hours
(ii) over 25-unit subdivision or PUD	50 hours
(k) feasibility or market analysis	5 to 100 hours, each per board decision, up to a maximum of 500 hours

	Form	Narrative	
(l) farm and ranch appraisals:			(iii) inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report 5 hours
(i) separate grazing privileges or permits	20 hours	25 hours	
(ii) irrigated cropland, pasture other than rangeland:			(c) two to four unit dwelling:
(A) 1 to 10 acres	10 hours	15 hours	(i) exterior inspection, highest and best use analysis, data collection only 1.5 hours
(B) 11-50 acres	12.5 hours	20 hours	(ii) interior and exterior inspection, highest and best use analysis, data collection only 3 hours
(C) 51-200 acres	15 hours	25 hours	(iii) inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report 15 hours
(D) 201-1000 acres	25 hours	40 hours	(d) commercial and industrial buildings, depending on complexity:
(E) more than 1000 acres	40 hours	50 hours	(i) exterior inspection, highest and best use analysis, data collection only 1-5 hours
(iii) dry farm:			(ii) interior and exterior inspection, highest and best use analysis, data collection only 2-10 hours
(A) 1 to 1000 acres	15 hours	25 hours	(iii) inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report 3-37.5 hours
(B) more than 1000 acres	20 hours	40 hours	(e) agricultural and other improvements, depending on complexity:
(m) Improvements on properties other than a rural residence, maximum 10 hours:			(i) exterior inspection, highest and best use analysis, data collection only 0.5-2.5 hours
(i) dwelling	5 hours	5 hours	(ii) interior and exterior inspection, highest and best use analysis, data collection only 1-5 hours
(ii) shed	2.5 hours	2.5 hours	(iii) inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report 3-37.5 hours
(n) cattle ranches			(f) vacant land, depending on complexity:
(i) 0-200 head	15 hours	20 hours	(i) inspection, highest and best use analysis, data collection only 0.5-2.5 hours
(ii) 201-500 head	25 hours	30 hours	(ii) inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report 2.5-25 hours
(iii) 501-1000 head	30 hours	40 hours	(iii) land segregation (division) analysis and processing, no field inspection 0.25 hours
(iv) more than 1000 head	40 hours	50 hours	(iv) land segregation (division) analysis and processing, field inspection 0.5 hours
(o) sheep ranches			(g) data input and review for experience hours claimed under property types(a) through (f) 0.25 hours
(i) 0-2000 head	25 hours	30 hours	(h) land valuation guideline:
(ii) more than 2000 head	35 hours	45 hours	(i) 25 or fewer parcels 10 hours
(p) dairy, including all improvements except a dwelling			(ii) 26 to 500 parcels 30 hours
(i) 1-100 head	20 hours	25 hours	(iii) over 500 parcels 25 additional hours for each 500 parcels, up to a maximum of 125 hours
(ii) 101-300 head	25 hours	30 hours	
(iii) more than 300 head	30 hours	35 hours	(i) assessment/sales ratio study, data collection, verification, sample inspection, analysis, conclusion, and implementation:
(q) orchards			(i) base study of 100 reviewed sales 125 hours
(i) 5-50 acres	30 hours	40 hours	(ii) additional increments of 100 sales 25 additional hours for each 100 additional sales, up to a maximum of 375 hours
(ii) more than 50 acres	40 hours	50 hours	(j) multiple regression model, development and implementation:
(r) rangeland/timber			(i) fewer than 5,000 parcels 100 hours
(i) 0-640 acres	20 hours	25 hours	(ii) additional increments of 500 parcels 5 additional hours for each additional 500 parcels, up to a maximum of 375 hours
(ii) more than 640 acres	30 hours	35 hours	(k) depreciation study and analysis
(s) poultry			(l) reviews of "land value in use" in accordance with U.C.A. Section 59-2-505:
(i) 0-100,000 birds	30 hours	40 hours	(i) office review only 0.25 hours
(ii) more than 100,000 birds	40 hours	50 hours	(ii) field review 0.5 hours
(t) mink			(m) natural resource properties, depending on complexity:
(i) 0-5000 cages	30 hours	35 hours	
(ii) more than 5000 cages	40 hours	50 hours	
(u) fish farm	40 hours	50 hours	
(v) hog farm	40 hours	50 hours	
(w) review of appendix 2 appraisals with no opinion of value developed as part of the review, performed in conjunction with investigations by government agencies	20-100 hours		

[Table] Appendix 3. Mass Appraisal Experience Hours Schedule.

[TABLE] APPENDIX 3

Property Type	Hours that may be earned	
(a) one-unit dwelling, above-grade living area less than 4,000 square feet:		
(i) exterior inspection, highest and best use analysis, data collection only	0.5 hours	
(ii) interior and exterior inspection, highest and best use analysis, data collection only	1 hour	
(iii) 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:		
(i) exterior inspection, highest and best use analysis, data collection only	0.75 hours	
(ii) interior and exterior inspection, highest and best use analysis, data collection only	1.5 hours	

(i) sand and gravel	7.5-20 hours per site	(r) capitalization rate study	80 hours
(ii) mine	7.5-110 hours		
(iii) oil and gas	1.65-50 hours per site		
(n) pipelines and gas distribution properties, depending on complexity	10-40 hours	KEY: real estate appraisals, trainee registration, licensing and certification, enforcement	
(o) telephone and electric properties, depending on complexity	5-80 hours	Date of Enactment or Last Substantive Amendment: 2011	
(p) airline and railroad properties, depending on complexity	10-80 hours	Authorizing, and Implemented or Interpreted Law: 61-2g- 201(2)(h); 61-2g-202(1); 61-2g-205(5)(c)	
(q) appraisal review/audit, depending on complexity	2.5-125 hours		

End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to remove obsolete rules from the Utah Administrative Code. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **NOTICE**. By filing a Notice, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. **NOTICES** are effective upon filing.

NOTICES are governed by Section 63G-3-305.

Community and Culture, Home Energy Assistance Target (HEAT)

R195-1

Energy Assistance: General Provisions

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35226
FILED: 09/09/2011

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: Sections 9-12-101 to 9-12-204 authorize rules including eligibility rules for the Home Energy Assistance Target (HEAT) Program and the Utility Moratorium Program for low-income households.

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 were no written comments, positive or negative, received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule must continue through the life of the HEAT Program in order to continue to provide energy assistance for low-income households of Utah.

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

AUTHORIZED BY: Julie Fisher, Executive Director

EFFECTIVE: 09/09/2011

Health, Administration

R380-200

Patient Safety Sentinel Event Reporting

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35234
FILED: 09/14/2011

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 authorized by Subsections 26-1-30(2)(a), (b), (d), (e), and (g) which govern the reporting of data to the Utah Department of Health for promotion, protection, detection, reporting, and control of diseases and health hazards. Section 26-3-8 protects the disclosure of reported data by restricting its use at the discretion of the Utah Department of Health.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR

OPPOSING THE RULE: Efforts are underway to harmonize the required events to be reported with national standards and measures. These revisions are done in partnership with Health Insight, Utah Hospital Association, Utah Medical Associations and in consultation with industry representatives.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This program is a viable program and has grown to include work with perinatal outcomes, neonatal blood screening, trauma, and the reporting of infections by Ambulatory Surgical Centers. Therefore, this rule should be continued. Efforts are underway to harmonize the required events to be reported with national standards and measures. These revisions are done in partnership with Health Insight, Utah Hospital Association, Utah Medical Associations and in consultation with industry representatives. The rule provides public accountability in terms of sentinel event reports at the state level. Data collected as a result of this rule also serves to inform the industry of alarming trends and the opportunity for improvement. The rule standardizes definitions across the industry and sets up the reporting infrastructure.

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

HEALTH
ADMINISTRATION
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Iona Thraen by phone at 801-273-6643, by FAX at 801-273-4150, or by Internet E-mail at ithraen@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 09/14/2011

Health, Administration
R380-210
Health Care Facility Patient Safety Program

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35235
FILED: 09/14/2011

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 authorized by Subsections 26-1-30(2)(a), (b), (d), (e), and (g) which govern the reporting of data to the Utah Department of Health for promotion, protection, detection, reporting, and control of diseases and health hazards. Section 26-3-8 protects the disclosure of reported data by restricting its use at the discretion of the Utah Department of Health.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None 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 program is a viable program and has grown to include work with perinatal outcomes, neonatal blood screening, trauma, and the reporting of infections by Ambulatory Surgical Centers. Therefore, this rule should be continued. Efforts are underway to harmonize the required events to be reported with national standards and measures. These revision are done in partnership with Health Insight, Utah Hospital Association, Utah Medical Associations and in consultation with industry representatives. The rule provides public accountability in terms of sentinel event reports at the state level. Data collected as a result of this rule also serves to inform the industry of alarming trends and the opportunity for improvement. The rule standardizes definitions across the industry and sets up the reporting infrastructure.

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

HEALTH
ADMINISTRATION
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Iona Thraen by phone at 801-273-6643, by FAX at 801-273-4150, or by Internet E-mail at ithraen@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 09/14/2011

**School and Institutional Trust Lands,
Administration
R850-140
Development Property**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35233
FILED: 09/14/2011

**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 53C-1-302(1)(a) authorizes the director to manage the agency in fulfillment of its purpose and establish fees, procedures, and rules consistent with general policies prescribed by the board of trustees. Section 53C-4-101 authorizes the director to establish criteria by rule for the sale, exchange, lease, or other disposition or conveyance of trust lands. This rule allows the Trust Lands Administration to designate certain trust lands for development activities and establishes the guidelines that will facilitate development to generate optimum revenue for the Trust.

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 for this rule since the previous five-year review which occurred in 2006.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule allows the Trust Lands Administration to designate lands that have development potential to generate optimum revenue for the Trust as development properties. Development transactions are very complex and the guidelines provided in this rule allow the agency to proceed in a more traditional, business-like approach rather than a governmental-like approach. Because real estate transactions are time sensitive, the agency needs to be able to take advantage of opportunities as they arise and respond accordingly. Therefore, this rule should be continued.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
ROOM 500
675 E 500 S
SALT LAKE CITY, UT 84102-2818
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Douglas Buchi by phone at 801-538-5170, by FAX at 801-328-9452, or by Internet E-mail at douglasbuchi@utah.gov

AUTHORIZED BY: Kevin Carter, Director

EFFECTIVE: 09/14/2011

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a Notice of Effective Date within 120 days from the publication of a Proposed Rule or a related Change in Proposed Rule the rule lapses and the agency must start the rulemaking process over.

Notices of Effective Date are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

Administrative Services

Fleet Operations, Surplus Property

No. 34780 (REP): R28-1. State Surplus Property Disposal

Published: 06/01/2011

Effective: 09/13/2011

No. 34781 (REP): R28-2. Surplus Firearms

Published: 06/01/2011

Effective: 09/13/2011

No. 34782 (REP): R28-3. Utah State Agency for Surplus Property Adjudicative Proceedings

Published: 06/01/2011

Effective: 09/13/2011

No. 34783 (REP): R28-7. Surplus Property Rate Schedule

Published: 06/01/2011

Effective: 09/13/2011

Purchasing and General Services

No. 34884 (NEW): R33-11. State Surplus Property Disposal

Published: 06/15/2011

Effective: 09/13/2011

Commerce

Administration

No. 35018 (AMD): R151-4-708. Standard of Proof

Published: 08/01/2011

Effective: 09/07/2011

Occupational and Professional Licensing

No. 35034 (AMD): R156-3a. Architect Licensing Act Rule

Published: 08/01/2011

Effective: 09/08/2011

No. 35017 (NEW): R156-15A. State Construction Code Administration and Adoption of Approved State Construction Code Rule

Published: 08/01/2011

Effective: 09/12/2011

No. 35035 (AMD): R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rule

Published: 08/01/2011

Effective: 09/08/2011

No. 35013 (AMD): R156-55a. Utah Construction Trades Licensing Act Rule

Published: 08/01/2011

Effective: 09/12/2011

No. 35014 (AMD): R156-55b. Electricians Licensing Rule

Published: 08/01/2011

Effective: 09/12/2011

No. 35015 (AMD): R156-55c. Plumber Licensing Rule

Published: 08/01/2011

Effective: 09/12/2011

No. 35016 (AMD): R156-56. Utah Uniform Building Standard Act Rule

Published: 08/01/2011

Effective: 09/12/2011

Community and Culture

Home Energy Assistance Target (HEAT)

No. 35005 (AMD): R195-2. Energy Assistance Programs Standards

Published: 07/15/2011

Effective: 10/01/2011

No. 35004 (AMD): R195-8. Energy Assistance: Special State Programs

Published: 07/15/2011

Effective: 10/01/2011

NOTICES OF RULE EFFECTIVE DATES

Insurance

Administration

No. 35006 (AMD): R590-172-4. Rule

Published: 08/01/2011

Effective: 09/15/2011

No. 35067 (AMD): R657-54. Taking Wild Turkey

Published: 08/01/2011

Effective: 09/12/2011

Natural Resources

Water Rights

No. 34961 (AMD): R655-10. Dam Safety Classifications, Approval Procedures and Independent Reviews

Published: 07/15/2011

Effective: 09/12/2011

Transportation Commission

Administration

No. 34810 (NEW): R940-5. Approval of Highway Facilities on Sovereign Lands

Published: 06/01/2011

Effective: 09/15/2011

No. 34960 (AMD): R655-11. Requirement for the Design, Construction and Abandonment of Dams

Published: 07/15/2011

Effective: 09/12/2011

Workforce Services

Employment Development

No. 34933 (AMD): R986-100. Employment Support Programs

Published: 07/01/2011

Effective: 09/07/2011

No. 34959 (AMD): R655-12. Requirements for Operational Dams

Published: 07/15/2011

Effective: 09/12/2011

No. 35081 (AMD): R986-200-215. Family Employment Program Two Parent Household (FEPTP)

Published: 08/01/2011

Effective: 09/07/2011

Wildlife Resources

No. 35068 (AMD): R657-6. Taking Upland Game

Published: 08/01/2011

Effective: 09/12/2011

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 September 15, 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).

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
R23-23	Health Reform - Health Insurance Coverage in State Contracts - Implementation	34803	AMD	07/11/2011	2011-11/6
R23-25	Administrative Rules Adjudicative Proceedings	35157	5YR	08/15/2011	2011-17/89
R23-31	Executive Residence Commission	34802	NEW	07/11/2011	2011-11/8
<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
R27-3-4	Authorized and Unauthorized Use of State Vehicles	34786	AMD	07/12/2011	2011-11/10
R27-4-11	Capital Credit or Reservation of Vehicle Allocation for Surrendered Vehicles	34257	AMD	01/25/2011	2010-24/7
<u>Fleet Operations, Surplus Property</u>					
R28-1	State Surplus Property Disposal	34780	REP	09/13/2011	2011-11/12
R28-2	Surplus Firearms	34781	REP	09/13/2011	2011-11/15
R28-3	Utah State Agency for Surplus Property Adjudicative Proceedings	34782	REP	09/13/2011	2011-11/16
R28-7	Surplus Property Rate Schedule	34783	REP	09/13/2011	2011-11/18
<u>Purchasing and General Services</u>					
R33-11	State Surplus Property Disposal	34884	NEW	09/13/2011	2011-12/8
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	2011-14/135

R58-4	Use of Animal Drugs and Biologicals in the State of Utah	34976	5YR	06/23/2011	2011-14/135
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	2011-14/136
R58-20	Domesticated Elk Hunting Park	34906	EMR	06/07/2011	2011-13/79
R58-24	Community Spay and Neuter Grants	34957	NEW	08/26/2011	2011-14/4

Horse Racing Commission (Utah)

R52-7	Horse Racing	35192	EXT	08/29/2011	2011-18/91
R52-7	Horse Racing	35193	5YR	08/30/2011	2011-18/85

Marketing and Development

R65-8	Management of the Junior Livestock Show Appropriation	34489	5YR	03/03/2011	2011-7/44
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Plant Industry

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

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ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

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	34242	R710-9	AMD	01/09/2011	2010-23/58	
	34836	R710-9	AMD	07/08/2011	2011-11/92	
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	34505	R710-10	EMR	03/14/2011	2011-7/37	
	34502	R710-10	NEW	05/11/2011	2011-7/18	
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	34835	R710-2	EMR	05/17/2011	2011-11/109	
	34809	R710-2	AMD	07/08/2011	2011-11/86	
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	34168	R657-58	AMD	01/04/2011	2010-22/105	
	34379	R657-58	AMD	04/04/2011	2011-4/29	
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	34379	R657-58	AMD	04/04/2011	2011-4/29	
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	34572	R392-101	NSC	05/03/2011	Not Printed

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Human Services, Substance Abuse and Mental Health, State Hospital	34720	R525-8	5YR	04/26/2011	2011-10/118
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	34736	R151-35-3	NSC	05/25/2011	Not Printed
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	34966	R865-13G-15	AMD	08/25/2011	2011-14/87	
	34872	R865-13G-16	AMD	08/11/2011	2011-12/70	
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	34373	R708-44	NSC	02/14/2011	Not Printed	
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Public Safety, Highway Patrol	34285	R714-160	NEW	02/09/2011	2011-1/37	
	34286	R714-161	NEW	02/09/2011	2011-1/53	
	34287	R714-162	NEW	02/08/2011	2011-1/59	

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	34735	R151-14-3	NSC	05/25/2011	Not Printed	
Public Safety, Driver License	34401	R708-20	5YR	01/31/2011	2011-4/47	
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	34877	R873-22M-31	AMD	08/11/2011	2011-12/76	
	34878	R873-22M-37	AMD	08/11/2011	2011-12/77	
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	34534	R212-6	AMD	08/11/2011	2011-8/16	
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<u>newborn screening</u>						
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	34763	R652-150	NEW	06/21/2011	2011-10/95	
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	34594	R406-200	NSC	05/03/2011	Not Printed	
	34595	R406-201	NSC	05/03/2011	Not Printed	
	34596	R406-202	NSC	05/03/2011	Not Printed	
	34597	R406-301	NSC	05/03/2011	Not Printed	
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	35096	R156-1	NSC	08/16/2011	Not Printed	
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	35013	R156-55a	AMD	09/12/2011	2011-15/57
	35014	R156-55b	AMD	09/12/2011	2011-15/60
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	34338	R156-55c-102	AMD	02/24/2011	2011-2/10
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	34240	R313-25-8	CPR	04/04/2011	2011-5/102	
	34963	R313-25-8	NSC	07/13/2011	Not Printed	
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	34452	R930-5-13	AMD	04/21/2011	2011-6/90	
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Administrative Services, Purchasing and General Services	34884	R33-11	NEW	09/13/2011	2011-12/8	
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	34911	R162-2f-403	AMD	08/10/2011	2011-13/14	
	34738	R162-2f-407	NSC	08/17/2011	Not Printed	
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	34576	R392-301	NSC	05/03/2011	Not Printed	
	34580	R392-401	NSC	05/03/2011	Not Printed	
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	34763	R652-150	NEW	06/21/2011	2011-10/95	
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	34757	R865-19S-103	AMD	06/23/2011	2011-10/112	
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	34268	R865-19S-78	AMD	01/27/2011	2010-24/68
	34688	R865-19S-78	NSC	04/27/2011	Not Printed
	34756	R865-19S-92	AMD	06/23/2011	2011-10/110
	34757	R865-19S-103	AMD	06/23/2011	2011-10/112
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	34758	R861-1A-13	NSC	05/25/2011	Not Printed
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	34964	R865-4D-19	AMD	08/25/2011	2011-14/82
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	34755	R865-6F-40	AMD	06/23/2011	2011-10/109
	34967	R865-7H-1	AMD	08/25/2011	2011-14/83
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