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

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Updates to the Medicaid State Plan

The Division of Medicaid and Health Financing (DMHF) is updating the availability of services in the Medicaid State Plan. For this purpose, the State Plan Amendments (SPAs) listed below clarify coverage and limitations for each of the following services:

SPA 14-026-UT Eyeglasses Services;
SPA 14-027-UT Audiology Services;
SPA 14-028-UT Speech Pathology Services;
SPA 14-029-UT Chiropractic Services;
SPA 14-030-UT Optometry Services; and
SPA 14-031-UT Denture Services.

DMHF does not expect any increase or decrease in annual costs to result from these amendments.

The proposed effective date of these amendments is July 1, 2014, and they are pending Centers for Medicare & Medicaid Services approval.

A copy of these changes may be obtained from Craig Devashrayee (801-538-6641), or by writing the Technical Writing Unit, Utah Department of Health, PO Box 143102, Salt Lake City, UT 84114-3102. Comments are welcome at the same address. Copies of the changes are also available at local county health department offices.

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between April 02, 2014, 12:00 a.m., and April 15, 2014, 11:59 p.m. are included in this, the May 01, 2014, 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 (example). Deletions made to existing rules are struck out with brackets surrounding them (~~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 usually printed. If a **PROPOSED RULE** is too long to print, the Division of Administrative Rules may 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 June 2, 2014. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through August 29, 2014, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OR A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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, R15-4-5a, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page

**Administrative Services, Facilities
Construction and Management
R23-29
Across the Board Delegation**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
DAR FILE NO.: 38425
FILED: 04/10/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the changes are to include the Utah Department of Transportation (UDOT) as an additional entity in which this rule provides the procedures for the delegation of construction projects, as well as provide for the use of partnering agreements between the Division of Facilities Construction and Management (DFCM) and state agencies, as well as some additional substantive changes that are discussed in the rule summary.

SUMMARY OF THE RULE OR CHANGE: The substantive provisions that exist in the new rule that did not exist in the old rule are as follows: 1) to include UDOT as an additional entity in which this rule provides the procedures for the delegation of construction projects; 2) to provide for the use of partnering agreements between the DFCM and state agencies; 3) to establish the delegation dollar limitations, which are \$4,000,000 or less for Utah State University, \$10,000,000 or less for the University of Utah, and \$350,000 or less for the UDOT; 4) to establish that projects may not be divided into multiple projects in order to create projects which are small enough to meet the dollar limitations for delegation; 5) to establish when legislative authorization and a program is required; 6) the Board may require that delegation agreements designating the various responsibilities of the parties be executed prior to the commencement of the project under a project-specific delegation referred to in this rule; 7) the entity may not access DFCM's statewide contingency and project reserve authorized in Section 63A-5-209; 8) UDOT shall use the DFCM Building Official, the University of Utah and Utah State University shall use an in-house Building Official or contract for a Building Official, all approved by the DFCM Building Official; 9) any significant deviations from the space standards adopted by the Building Board must be approved in advance by the Board; 10) each entity shall be responsible for retention of record drawings and shall submit a copy of all record drawings of any new facility to DFCM, as well as record drawings for any other project when requested by DFCM; and 11) the Board may modify or repeal the authority delegated under this rule by amending or repealing this rule, as well as by taking action to remove the delegation for a particular project when necessary to protect the interest of the State of Utah, at a Board meeting to which the

applicable entity and DFCM are given an opportunity to provide input. The substantive provisions that existed in the old rule that do not exist in the new rule are as follows: 1) the entities do not need to submit all capital budget requests to DFCM and the Building Board for review and recommendation to the Governor and the Legislature as part of this rule; 2) the entity may determine the extent of programming or scope definition required and supervise the development of these documents, with no DFCM review or approval required; and 3) there are no staffing level requirements on delegated construction projects.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-5-103

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This rule will not affect the state's budget because it provides the procedures for delegation of construction projects to the University of Utah, Utah State University, and UDOT ("entities"). This rule will make state government more efficient.
- ◆ **LOCAL GOVERNMENTS:** Local governments' budget will not be affected since they have never managed these construction projects, so there is no potential loss of revenue.
- ◆ **SMALL BUSINESSES:** Small businesses budget will not be affected, since they have never managed these construction projects, so there is no potential loss of revenue.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule will not affect any other person's budget because it provides the procedures for delegation of construction projects to the University of Utah, Utah State University, and UDOT ("entities"). This rule will make state government more efficient.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule affects the University of Utah, Utah State University, and UDOT's budget. The delegation referred to in this rule is granted to the University of Utah for construction projects less than \$10,000,000, to Utah State University for construction projects less than \$4,000,000, and to UDOT for construction projects less than \$350,000. In most cases, this rule codifies current practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on businesses.

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
ROOM 4110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
- ◆ Cecilia Niederhauser by phone at 801-538-3261, by FAX at 801-538-9694, or by Internet E-mail at cniederhauser@utah.gov
- ◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
- ◆ Priscilla Anderson by phone at 801-538-9595, by FAX at 801-538-3378, or by Internet E-mail at phanderson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/02/2014

THIS RULE MAY BECOME EFFECTIVE ON: 06/09/2014

AUTHORIZED BY: Joshua Haines, Director

R23. Administrative Services, Facilities Construction and Management.

[R23-29. Across the Board Delegation.

R23-29-1. Purpose.

~~This rule provides the procedures for delegation of construction projects to the University of Utah and Utah State University.~~

R23-29-2. Authority.

~~This rule is authorized under Subsection 63A-5-103, which directs the Building Board to make rules necessary for the discharge of its duties and the duties of the Division of Facilities Construction and Management.~~

R23-29-3. Authority and Extent of Delegation.

~~(1) As permitted by subsection 63A-5-206(3)(a)(ii)(B), authority is delegated to the University of Utah and Utah State University, "the Institutions," to exercise direct supervision over the design and construction of all alterations, repairs, and improvements to existing facilities on their respective campuses up to the dollar amounts stated below.~~

~~(2) As permitted by subsection 63A-5-206(5)(c), the Board expresses its intent to authorize the delegation of the design and construction of new facilities on a project-by-project basis up to the dollar amounts stated below. New facilities means the addition of new space costing more than \$100,000.~~

~~(3) This delegation is granted to Utah State University for projects having a total budget for design and construction of less than \$2,000,000.~~

~~(4)(a) This delegation is granted to the University of Utah for the design and construction of all alteration, repair and improvement projects unless the Utah State Building Board, after consultation with the University of Utah, determines that the project should be managed by DFCM.~~

~~(b) For projects having a total budget for design and construction greater than \$5,000,000, the University of Utah shall provide the following in writing to the Director of DFCM prior to initiating a project under this delegation:~~

~~(i) a notice of the University's desire to manage the project under this delegation authorization; and~~

~~(ii) a project management and staffing plan for the project.~~

~~(5) Projects may not be subdivided into multiple projects in order to arrive at projects which are small enough to meet the dollar limits for delegation.~~

~~(6) Substantial benefit and justification must be demonstrated before consideration will be given to any delegation requests from these institutions for projects larger than the above limits.~~

~~(7) When applicable, this delegation authority shall not take effect for a specific project until the following requirements are met:~~

~~(a) Legislative authorization for design and construction has been obtained for the construction of all new space costing more than \$100,000.~~

~~(b) The requirements of section R23-29-17 regarding the completion of a DFCM administered architectural program have been satisfied.~~

R23-29-4. Fiduciary Control.

~~The Institutions shall assume fiduciary control over project finances and shall assume all responsibility for project budgets and expenditures. The Institutions shall be responsible for ensuring compliance with all applicable laws, rules, and building codes.~~

R23-29-5. Building Official.

~~Each Institution is designated as the Building Official for projects delegated. Institutions shall comply with all requirements of the Uniform Building Standards Act, Chapter 58-56. If an Institution does not have the internal staff to comply with this requirement, it must contract for the appropriate service.~~

R23-29-6. Procurement.

~~Each Institution shall comply with the state Procurement Code, Chapter 63G-6-102, and its procurement rules. Any aspect of the Institution's rules for the procurement of architect/engineer services or construction which is less restrictive than the procurement rules adopted by the Building Board must be approved by the Board.~~

R23-29-7. Contract Documents.

~~The Institutions shall utilize substantially the same standard Contract Documents as used by DFCM. Any substantive differences must be approved by the Board.~~

R23-29-8. Transfer of State Funds.

~~(1) To the extent possible, all state funds appropriated to DFCM for projects delegated to the Institutions shall be transferred to the respective Institution immediately upon their receipt by DFCM.~~

~~(2) State funds provided from state issued bonds, or from other sources containing similar restrictions, shall be transferred to the Institutions on a reimbursement basis. Such reimbursements shall be made on a monthly basis upon receipt of a reimbursement request from the Institution detailing the expenditures made on each project.~~

~~(3) Upon completion of a project, any remaining statewide funds like roofing, paving shall remain with the Institution to be used for a similar need on its campus. This activity shall be noted in the monthly report to the Building Board.~~

R23-29-9. Contingencies.

The Institutions shall be subject to the same laws and rules regarding contingency funds as is DFCM. The only difference is that contingency funds for delegated projects shall be segregated from the contingency funds held by DFCM for non-delegated projects.

R23-29-10. Space Standards.

The Institutions shall comply with the space standards adopted by the Building Board. Any significant deviations from these standards shall be reported to the Board.

R23-29-11. Design Criteria.

The Institutions shall utilize the Design Criteria adopted by the Building Board. These may be supplemented by special requirements that are unique to each Institution. Any significant departures from the Board approved Design Criteria shall be reported to the Board.

R23-29-12. Value Engineering.

The Institutions shall comply with state law and Rule R23-6 regarding the value engineering and life cycle costing of facilities. DFCM may assist each Institution as requested in the performance of these reviews.

R23-29-13. Record Drawings.

At the completion of each delegated project, each Institution shall submit a copy of all record drawings to DFCM.

R23-29-14. Statutory Requirements on DFCM Projects.

(1) In addition to those noted elsewhere in this rule, the Institutions shall comply with the following statutory requirements which have been placed on DFCM projects:

(a) Subsection 63A-5-205(3) relating to the investment of contractor's retention.

(b) Subsection 63A-5-206(3)(c)(ii) relating to the notification to local governments regarding certain types of projects.

(c) The Percent-for-Art program as provided in Sections 63A-5-206 and 63A-5-209, and Title 9, Chapter 6, Part 4.

(d) Subsection 63A-5-206(7) relating to the reporting of completed projects to the Office of the Legislative Fiscal Analyst.

(e) Section 63A-5-208 relating to the listing and changing of subcontractors and the disclosure of subcontractor bids.

(2) The Institutions and DFCM shall strive to avoid any confusion which could result from inconsistent procedures and requirements being used by each entity.

R23-29-15. Reporting.

(1) Each Institution shall report monthly to the Building Board on the status of its delegated projects.

(2) The following reports shall be presented in a similar format and content as that presented by DFCM on projects and funds it is administering:

(a) Architect/Engineer Contracts Awarded

(b) Construction Contracts Awarded

(c) Contingency Funds

(d) Statewide Funds

(e) Status Report for Projects in Construction

(3) The above reports shall be submitted to DFCM at least ten calendar days prior to each Board meeting to be included in packet sent to the Building Board.

(4) A copy of the above reports shall be submitted to the Office of the Commissioner of Higher Education for distribution to the Board of Regents at the same time it is submitted to DFCM.

R23-29-16. Capital Budget Requests.

The Institutions shall continue to submit all capital budget requests to DFCM and the Building Board for review, prioritization, and recommendation to the Governor and the Legislature.

R23-29-17. Programming.

(1) For projects within the definition of "Capital Developments" as defined in subsection 63A-5-103(3)(a), which will be funded wholly or in part by state funds for either construction or operations and maintenance, a facility program shall be developed under the supervision of DFCM unless this requirement is waived by the Building Board.

(2) For projects which are within the delegation limits set forth in section R23-29-1 and which do not meet the requirements of subsection R23-29-17(1), the Institutions may determine the extent of programming or scope definition required and supervise the development of these documents. No DFCM review or approval will be required.

R23-29-18. Sharing of Resources.

DFCM and the Institutions shall strive to share personnel resources where resources exist at one entity and not at another. The Institutions and DFCM shall enter into a separate agreement to accomplish this sharing of resources.

R23-29-19. Staffing Levels.

(1) The Institutions have represented that they have adequate existing resources to assume the responsibilities given to them under this delegation.

(2) The Institutions shall not increase the staffing levels related to the administration of capital projects beyond the levels represented in seeking this delegation which was 32 full-time staff at the University of Utah and 15 full-time staff and 5 F.T.E. of student employees at Utah State University.

R23-29-20. Review of Delegated Projects.

Upon direction of the Building Board, DFCM staff may review the management of delegated projects and report its findings to the Board.

R23-29-21. Authority to Modify Delegation.

The Building Board may modify or repeal the authority delegated under this rule by amending or repealing this rule.]

R23-29. Delegation of Project Management.**R23-29-1. Purpose.**

This rule provides the procedures for delegation of construction projects to the University of Utah, Utah State University, and the Utah Department of Transportation, hereinafter referred to as "Entity" or "Entities." This rule also provides for the use of Partnering Agreements between the Division of Facilities Construction and Management (DFCM) and State Agencies, including the Entities.

R23-29-2. Authority.

This rule is authorized under Subsection 63A-5-103, which directs the Utah State Building Board, hereinafter referred to as "Board" to make rules necessary for the discharge of its duties and the duties of the Division of Facilities Construction and Management.

R23-29-3. Authority and Extent of Categorical Delegation.

(1) Projects Delegated on a Categorical Basis. As permitted by subsection 63A-5-206(4)(a)(ii)(B), authority is delegated to the University of Utah, Utah State University, and the Utah Department of Transportation (UDOT), to exercise direct supervision over the design and construction of all projects on their respective properties or facilities up to the dollar amounts stated below.

(2) Delegation Dollar Limitations. The delegation referred to in this Rule is granted to the Entities for projects having a budget for construction, excluding soft costs, consistent with the DFCM Construction Budget Estimate (CBE) form, of:

(a) \$4,000,000 or less for Utah State University;

(b) \$10,000,000 or less for the University of Utah; and

(c) \$350,000 or less for the Utah Department of Transportation.

R23-29-4. When Delegation Above Limits Allowed.

Delegation to the Entities may be allowed above the limits indicated above in this Rule when the Board in a meeting to which the particular Entity and DFCM has an opportunity to provide input, determines that there is a substantial justification that the project should be managed by the particular Entity. The Board may also determine that the particular project should be managed with specific roles defined for DFCM and the particular Entity.

R23-29-5. No Artificial Division of Projects.

Projects may not be divided into multiple projects in order to create projects which are small enough to meet the dollar limits for delegation. Projects that are designed to be constructed in conjunction with each other and are to be constructed by the same construction contractor, including construction manager/general contractor, are projects that are prohibited from being artificially divided under this Rule.

R23-29-6. When Legislative Authorization and a Program Is Required.

When applicable, this delegation authority shall not take effect for a specific project until the following requirements are met:

(1) legislative authorization, when required, for design and construction has been obtained for the construction of all New Facilities; and

(2) the requirements of Rule R23-29-20 below regarding the completion of a DFCM administered architectural program have been satisfied.

R23-29-7. Delegation Agreements.

The Board, at a meeting to which the particular Entity and DFCM has an opportunity to provide input, may require that delegation agreements designating the various responsibilities of the parties be executed prior to the commencement of the project under a project-specific delegation referred to in this Rule. For categorical delegations and project-specific delegations, DFCM and the particular Entity may enter into partnering agreements under Rule R23-29-24.

R23-29-8. Fiduciary Control and Codes.

(1) The Entity to whom control is delegated under this Rule shall assume fiduciary control over project finances, and shall assume all responsibility for project budgets and expenditures.

(2) Delegation of project control does not exempt the Entity from complying with all requirements for design and construction adopted by DFCM or the Board as well as all applicable laws, rules and codes.

(3) The Entity may not access for the delegated project, DFCM's statewide contingency reserve and project reserve authorized in Section 63A-5-209.

R23-29-9. Building Official.

UDOT shall use the DFCM Building Official. The University of Utah and Utah State University shall use an in-house Building Official or contract for a Building Official; all as approved by the DFCM Building Official.

R23-29-10. Procurement.

The Entity shall comply with the Utah Procurement Code, Title 63G, Chapter 6a of the Utah Code and all applicable procurement rules.

R23-29-11. Contract Documents.

The Entity shall utilize substantially the same standard Contract Documents as used by DFCM. Any substantive differences must be approved by DFCM.

R23-29-12. Transfer of State Funds.

(1) To the extent possible, state funds appropriated to DFCM for projects delegated to the Entity shall be transferred to the respective Entity in a timely manner upon the receipt of such funds by DFCM and on a reimbursement basis after providing supporting documents as required by DFCM.

R23-29-13. Contingency Funds, Contingency Reserve and Project Reserve.

The Entity shall be subject to the same laws and rules regarding contingency funds as is DFCM except that:

(1) contingency funds for delegated projects shall be segregated from the contingency funds held by DFCM for non-delegated projects; and

(2) the Entity may not access for the delegated project, DFCM's statewide contingency reserve and project reserve authorized in Section 63A-5-209.

R23-29-14. Space Standards.

The Entity shall comply with the space standards as adopted by the Board. Any significant deviations from these standards must be approved in advance by the Board.

R23-29-15. Design Criteria.

The Entity shall utilize the Design Criteria adopted by the Board. These may be supplemented by special requirements that are unique to each Entity.

R23-29-16. Value Engineering.

The Entity shall comply with applicable laws and rules regarding the value engineering and life cycle costing of facilities.

DFCM may assist the Entity as requested in the performance of these reviews.

R23-29-17. Record Drawings.

At the completion of each delegated project, each Entity shall be responsible for retention of record drawings and shall submit a copy of all record drawings of any new facility to DFCM as well as record drawings for any other project when requested by DFCM.

R23-29-18. Specific Statutory Requirements.

(1) In addition to the statutory requirement specified elsewhere in this rule, each Entity shall comply with the following requirements:

- (a) laws relating to retention;
- (b) laws relating to the notification to local governments or any person regarding certain types of projects;
- (c) the Percent-for-Art program as provided in the Utah Code;
- (d) Section 63A-5-206 relating to the reporting of completed projects to the Office of the Legislative Fiscal Analyst;
- (e) Section 63A-5-208 relating to the listing and changing of subcontractors and the disclosure of subcontractor bids; and
- (f) all applicable constitutional provisions, laws, rules, codes, and regulations.

R23-29-19. Reporting.

- (1) The Utah Department of Transportation, the University of Utah and Utah State University shall report monthly to the Board on the status of its delegated projects.
- (2) The Board may at any time indicate minimum requirements for reports as well as ask for further information.
- (3) The above reports shall be submitted to the Building Board staff in accordance with the schedule established by the Building Board staff.

R23-29-20. Programming for Delegated Projects.

- (1) For delegated projects within the definition of "New Facility" as defined in Title 63a, Chapter 5, Utah Code, a facility program shall be developed under the supervision of DFCM unless this requirement is waived by DFCM.
- (2) For delegated projects where a program is not required under this Rule, the Entity may determine the extent of programming or scope definition required and supervise the development of these documents.

R23-29-21. Sharing of Resources.

DFCM and the Entity shall coordinate to share personnel resources in order to make sure that all personnel resources from both the DFCM and the Entity are sufficient for the delegated project. The Entity and DFCM shall enter into a separate agreement to accomplish this sharing of resources.

R23-29-22. Review of Delegated Projects.

Upon direction of the Board, DFCM staff may review the management of delegated projects and report its findings to the Board.

R23-29-23. Authority to Modify Delegation.

The Board may modify or repeal the authority delegated under this Rule by amending or repealing this Rule as well as by

taking action to remove the delegation for a particular project when necessary to protect the interest of the State of Utah, at a Board meeting to which the applicable Entity and DFCM are given an opportunity to provide input.

R23-29-24. Partnering Agreements.

DFCM may execute partnering agreements with any State entity, or any public entity as allowed by law, in which the responsibilities, terms and conditions of the various parties are described. This may include, but is not limited to, allocation of specific responsibilities associated with the project in order to avoid duplicated efforts.

KEY: buildings, delegation[*]

Date of Enactment or Last Substantive Amendment: [~~October 29, 1998~~2014

Notice of Continuation: June 1, 2009

Authorizing, and Implemented or Interpreted Law: 63A-5-206

Education, Administration
R277-105
Recognizing Constitutional Freedoms
in the Schools

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38432

FILED: 04/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to update terminology and remove outdated language.

SUMMARY OF THE RULE OR CHANGE: The definition of "District" or "school district" is removed and a definition of "LEA" is provided and the language changed within the rule. "U.C.A." is removed from the rule.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The amendments update terminology and remove outdated language which likely will not result in a cost or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** The amendments update terminology and remove outdated language which likely will not result in a cost or savings to local government.
- ◆ **SMALL BUSINESSES:** The amendments update terminology and remove outdated language which likely will not result in a cost or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments update terminology and remove outdated

language which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments update terminology and remove outdated language which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely 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 06/02/2014

THIS RULE MAY BECOME EFFECTIVE ON: 06/09/2014

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

R277. Education, Administration.
R277-105. Recognizing Constitutional Freedoms in the Schools.
R277-105-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "Conscience" means a standard based upon learned experiences, a personal philosophy or system of belief, religious teachings or doctrine, an absolute or external sense of right and wrong which is felt on an individual basis, a belief in an external Absolute, or any combination of the foregoing.
- C. "Discretionary time" for students means school-related time that is not instructional time. It includes free time before and after school, during lunch and between classes or on buses, and private time before athletic and other events or activities.
- ~~D. "District" or "school district" means a public school district, the Utah Schools for the Deaf and the Blind, or an Applied Technology Center.~~
- ~~E.~~D. "Exercise of religious freedom" means the right to choose or reject religious, theistic, agnostic, or atheistic convictions and to act upon that choice.
- ~~F.~~E. "Guardian" means a person who has been granted legal guardianship of a child in accordance with state law.
- ~~G.~~E. "Instructional time" means time during which a school is responsible for a student and the student is required or

expected to be actively engaged in a learning activity. It includes instructional activities in the classroom or study hall during regularly scheduled hours, required activities outside the classroom, and counseling, private conferences, or tutoring provided by school employees or volunteers acting in their official capacities during or outside of regular school hours.

- G. "LEA" means local education agency, including local school boards/ public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.
- H. "Parent" means a biological or adoptive parent who has legal custody of a child.
- I. "USOE" means the Utah State Office of Education.

R277-105-2. Authority and Purpose.

A. This rule is adopted pursuant to Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board. The rule is based upon the First Amendment to the Constitution of the United States; Article I, Section 4, Article III, Sections 1 and 4, and Article X, Section 1 of the Utah State Constitution which speak of rights of conscience, perfect toleration of religious sentiment, the free exercise of religion, and prohibitions against the establishment of religion or the imposition of sectarian control in the schools; Section 53A-13-101(4), which directs that curriculum promoting respect for parents and home, morality, qualities of character and respect for and an understanding of the Constitutions of the United States and the State of Utah be taught in connection with regular school work; and Sections 53A-13-101.1 through 53A-13-101.3, which provide direction for the USOE and ~~school districts~~LEAs regarding curriculum, freedom of conscience, exercise of religious freedoms, and student expression.

B. The purpose of this rule is to help public school officials to protect and accommodate individual rights in the operation of Utah's schools.

R277-105-3. Interpretive Context for the Rule.

A. The Board recognizes the importance of religious belief and practice and other expressions of conscience in the lives of many people, the critical role that such beliefs have played in the development of societies and cultures throughout the world, and the influence that these beliefs continue to have on concepts and interpretations relating to school curricula. The Board also recognizes that Utah is becoming a pluralistic society with an increasing diversity of peoples and beliefs, and that this diversity will require the development of greater tolerance and understanding among the people of the state.

B. The Constitution of Utah prohibits the use of the powers of government to encourage or discourage religious beliefs or practices, or to repress rights of conscience. Given their unique relationship to children attending the public schools, school officials must be particularly careful to remain neutral in matters relating to religion, while striving to accommodate the religious beliefs and practices and the freedom of conscience of students and their parents.

C. Court decisions interpreting Constitutional establishment clause provisions are a commonly used source for information about acceptable relationships between government and religion. The Board has attempted to reflect applicable rulings in the development of this rule. Because of the relative absence of

court interpretations concerning the meaning of the Utah Constitution as applied to the public schools, this rule places primary reliance upon interpretations of related clauses in the First Amendment to the United States Constitution. In applying the rule, school officials may presume that any accommodation of religion which would be permissible under applicable rulings interpreting the First Amendment to the United States Constitution, and has not been prohibited in a decision interpreting Utah law which is binding upon the Utah public education system, is permissible in the schools of the [S]tate of Utah.

R277-105-4. Creation and Implementation of Curriculum.

A. A study, performance, or display which includes examination of or presentations about religion, religious thought or expression, or the influence thereof in music, art, literature, law, politics, history, or any other portion of the curriculum may be undertaken in the public schools so long as it is designed to achieve permissible educational objectives and is presented within the context of the approved curriculum.

B. The objective study of comparative religions is permissible, but no religious tenet, belief, or denomination may be given inappropriate emphasis.

C. No aspect of cultural heritage, political or moral theory, or societal value may be either included or excluded from consideration in the public schools primarily because it explicitly or implicitly contains theistic, agnostic, or atheistic assumptions.

D. An analysis of religion, deity, an absolute moral principle, or any other concept that may contain a theistic, agnostic, or non-theistic assumption, may be presented when included as an appropriate component or aspect of a broader study, display, presentation, or discussion regarding cultural heritage, political theory, moral theory or a societal value.

R277-105-5. Requests for Waiver of Participation in School Activities.

A. A parent, a legal guardian of a student, or a secondary student may request a waiver of participation in any portion of the curriculum or school activity which the requesting party believes to be an infringement upon a right of conscience or the exercise of religious freedom in any of the following ways:

- (1) it would require an affirmation or denial of a religious belief or right of conscience;
- (2) it would require participation in a practice forbidden by a religious belief or practice, or right of conscience; or
- (3) it would bar participation in a practice required by a religious belief or practice, or right of conscience.

B. A claimed infringement under Subsection A must rise to a level of belief that the requested conduct violates a superior duty which is more than personal preference.

C. If a minor student seeks a waiver of participation under Subsection A, the school shall promptly notify the student's parent or legal guardian about the student's choice. In the event of a conflict, a parent's or legal guardian's wishes shall prevail over those of a minor student.

D. A parent, guardian, or secondary student requesting a waiver of participation under Subsection A may also suggest an alternative that requires reasonably equivalent performance by the student of the objective of the curriculum or activity that is believed to be objectionable.

E. In responding to a request under Subsection A, the school shall:

- (1) waive participation by the student in the objectionable curriculum or activity;
- (2) provide a reasonable alternative as suggested by the parent or secondary student, or other reasonable alternative developed in consultation with the requesting party, that will achieve the objectives of the portion of the curriculum or activity for which waiver is sought; or
- (3) deny the request.

F. A request for waiver of required participation shall not be denied unless the responsible school official finds that requiring the participation of that particular student is the least restrictive means necessary to achieve a specifically identified educational objective in furtherance of a compelling governmental interest.

G. In responding to a request under Subsection A, the school shall not require an affected student to accept a sub-standard or educationally deficient alternative that is unreasonably burdensome.

H. Permitting the submission of requests for participation waivers, and the provision of reasonable alternatives, is intended to facilitate appropriate protection and accommodation of a requesting party's asserted right of conscience or exercise of religious freedom, and shall not be considered to be an attempt by a school official to endorse, promote or disparage a particular religious or non-religious viewpoint.

R277-105-6. Student Expression.

A. A student participating in a classroom discussion, presentation, or assignment, or in a school sponsored activity, shall not be prohibited from expressing personal beliefs of any kind nor be penalized for so doing, unless the conduct:

- (1) unreasonably interferes with order or discipline;
- (2) threatens the well-being of persons or property; or
- (3) violates concepts of civility or propriety appropriate in a school setting.

B. Students may initiate and conduct voluntary religious activities or otherwise exercise their religious freedom on school grounds during discretionary time. Individuals not currently enrolled as students in the school may neither conduct nor regularly attend the activities. School officials may neither conduct nor actively participate in the activities, but may be present as necessary to ensure proper observance of school rules and may limit or prohibit student activities under this section which:

- (1) unreasonably interfere with the ability of school officials to maintain order and discipline;
- (2) threaten the well-being of persons or property; or
- (3) violate concepts of civility or propriety appropriate in a school setting.

R277-105-7. Religious Services and Church-Owned Facilities.

A. Public school officers and employees may neither authorize nor encourage prayer or devotional activities in connection with any class, program, presentation or other student activity which is under the control, direction, or sponsorship of an LEA or public school [~~or school district~~]. This Subsection shall not act to restrict student rights under R277-105-6.

B. No school employee or student may be required to attend or participate in any religious service, whether in an

individual capacity or as a member of a performing group, regardless of where or when the service is held. No penalty may be assessed for failure to attend or perform in such an activity.

C. Subject to the requirements of Subsection R277-105-5, students who are members of performing groups such as school choirs may be required to rehearse or otherwise perform in a church-owned or operated facility if the following conditions are met:

- (1) the performance is not part of a religious service;
- (2) the activity of which the performance is a part is neither intended to further a religious objective nor under the direction of a church official; and
- (3) the activity is open to the general public.

D. Students may voluntarily attend and perform during a religious service as individuals or as members of a group, provided all arrangements are made by students or non-school personnel.

E. Religious activities may be conducted on the same basis as any other non-school activity outside of regular school hours.

F. Subject to the requirements of R277-105-5, students may be required to visit church-owned facilities when religious services are not being conducted if the visit is intended solely for the purpose of pursuing permissible educational objectives such as those relating to art, music, architecture, or history.

R277-105-8. Expressions of Personal Belief by Employees.

A. An employee's rights relating to voluntary religious practices and freedom of speech do not include proselytizing of any student regarding atheistic, agnostic, sectarian, religious, or denominational doctrine while the employee is acting in the employee's official capacity, nor may an employee attempt to use his position to influence a student regarding the student's religious beliefs or lack thereof.

B. Even though acting in an official capacity, an employee may respond in an appropriate and restrained manner to a spontaneous question from a student regarding the employee's personal belief or perspective. Nevertheless, because of the special position of trust held by school employees, employees may not advocate or encourage acceptance of a belief or perspective; but may, by exercising due caution, explain or define personal religious beliefs or perspectives, or opinions about the rightfulness or wrongfulness of his/her own, or any other person's religious beliefs or lack thereof.

R277-105-9. Mandatory Responsibilities of ~~School Districts~~ LEAs.

A. Supervision and Training

(1) Local school boards and their employees shall cooperate and share responsibilities in implementing Sections 53A-13-101 et seq. ~~[U.C.A.]~~

(2) Each local school board shall adopt and implement policies and training in accordance with this rule and the provisions of Sections 53A-13-101 et seq. ~~[U.C.A.]~~, to include the following:

- (a) the person to whom a request for waiver of participation or substitution of another activity is to be directed;
- (b) how notice is to be given to the parent of a minor secondary student who makes a request pursuant to an exercise of freedom of conscience or exercise of religious freedom under Sections 53A-13-101.2 and 53A-13-101.3 ~~[U.C.A. (1993)]~~;

(c) how appeals may be taken from a decision to require participation in any curriculum or activity after a request to either waive participation or allow substitution of another activity has been made by a parent, legal guardian or secondary student, including suspension of participation requirements until a ruling on the appeal is issued;

(d) establish procedures whereby students are not compelled to participate in any curriculum or activity after a request to waive participation or allow substitution of another activity has been submitted unless it is determined that requiring the participation of that particular student is the least restrictive means necessary to achieve a specifically identified educational objective in furtherance of a compelling governmental interest; and

(e) establish procedures whereby any portion of any curriculum or activity that is repeatedly alleged to interfere with the rights of conscience or exercise of religious freedom of students, parents or legal guardians shall be evaluated to determine whether the educational objectives could be achieved by less intrusive means.

KEY: freedom of religion, public education

Date of Enactment or Last Substantive Amendment: ~~1994~~2014

Notice of Continuation: April 4, 2014

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-13-101(4); 53A-13-101.1 through 53A-13-101.3

**Education, Administration
R277-118
LEA Post-employment Benefits Plans**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38433

FILED: 04/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to provide directives to local education agencies (LEAs) regarding post-employment benefit plans.

SUMMARY OF THE RULE OR CHANGE: This new rule provides definitions and directives on post-employment benefit plans including exceptions, funding of liability, compliance, and termination benefits.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This new rule provides directives to LEAs regarding post-employment benefit plans which likely will not result in a cost or savings to the state.
- ◆ **LOCAL GOVERNMENTS:** LEAs may have costs and/or savings associated with implementation of this rule. Because of many variables and choices LEAs can make with

implementation or discontinuation of LEA plans, costs and/or savings are too speculative to determine at this time.

♦ **SMALL BUSINESSES:** This new rule provides directives to LEAs regarding post-employment benefit plans which likely will not result in a cost or savings to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This new rule provides directives to LEAs regarding post-employment benefit plans which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be compliance costs to LEAs resulting from implementation of this rule. Because of many variables associated with implementation or discontinuation of LEA plans and decisions that LEAs can make, compliance costs are too speculative to determine at this time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely 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 06/02/2014

THIS RULE MAY BECOME EFFECTIVE ON: 06/09/2014
AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-118. LEA Post-employment Benefits Plans.

R277-118-1. Definitions.

A. "Board" means the Utah State Board of Education.
B. "GASB Statement 43" (or successor rule) means a Statement of the Governmental Accounting and Standards Boards that establishes uniform standards of financial reporting by state and local governmental entities for OPEB plans. This Statement provides standards for measurement, recognition, and display of the assets, liabilities, and, where applicable, net assets and changes in net assets of such funds and for related disclosures. GASB Statement 43 applies to financial reports of all state and local governmental entities, including public employee retirement systems.

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

D. "Other post-employment benefits (OPEB)" means benefits after retirement, other than pension benefits, provided over an extended period of time and may include:

(1) healthcare;

(2) dental care; and

(3) life insurance.

E. "Other post-employment benefits plan (OPEB plan)" means a plan approved by an LEA that provides post-employment benefits as identified in R277-118D to employees.

F. "Qualified actuary" means a statistician who determines the present effects of future contingent events; especially one who calculates insurance and pension rates on the basis of empirically based tables. An actuary shall have appropriate credentials or experience or both.

G. "Termination benefit plan" means benefit(s) (such as cash payments, health insurance supplements or bridge payments or sick leave payouts) offered to an employee as incentive(s) to retire or sever employment from an LEA voluntarily.

H. "Trust or a set aside fund balance," for purposes of this rule, means a legal trust established consistent with requirements of state law or a designation of a portion of the LEA's maintenance and operations (M and O) fund balances. Either a trust or an LEA designation of fund balance liability would be dedicated to supporting an LEA's outstanding post-employment benefits.

R277-118-2. 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, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-125 which appropriates funds to the Board to distribute to LEAs for employee retirement and social security payments.

B. The purpose of this rule is to direct LEAs not to add new employee benefits, not to lengthen existing employee benefits and not to offer employee benefit plans to new employees unless LEAs maintain adequate ongoing assets to fund the plans. The rule provides required timelines for meeting the provisions of this rule.

R277-118-3. Other Post-Employment Benefit Plans; Exceptions; Funding of Liability; Compliance.

A. LEAs shall not add enhanced benefits nor extend time periods for benefits to employees currently enrolled in and not enroll new members in post-retirement benefit plans.

B. Exceptions to R277-118-3A

(1) If an LEA has and desires to continue an outstanding OPEB liability for post-employment benefit plans, the LEA shall comply with GASB Statement 43, Paragraph 24 in the LEA's computation of its liability by a qualified actuary.

(2) If an LEA has an existing OPEB plan and the plan is fully funded consistent with the provisions of GASB Statement 43, an LEA may make the plan open to new employees so long as it remains fully funded.

(3) If an LEA's OPEB plan becomes less than fully funded at any time and the LEA has not provided the documentation for an exception under R277-118-B(2), the OPEB plan shall be

closed to eligibility to new employees and shall lose its USOE approved status.

C. Funding of liability - If an LEA has an OPEB plan:

(1) the LEA must compute an annual required contribution (ARC) as provided in GASB Statement 43;

(2) the LEA shall contribute annually the amount of the ARC in a trust account or annually set aside as a designated fund balance the equivalent amount of the ARC; and

(3) have a plan consistent with the timeline of GASB Statement 43, Paragraph 24, to ensure compliance with this rule.

D. Compliance

(1) LEAs with OPEB plans shall comply with all outlined GASB Statement 43 financial reporting requirements.

(2) If, due to adverse economic conditions, an LEA fails to meet the ARC requirement, the LEA shall provide to the Board a reasonable funding plan to bring the LEA into compliance with the actuarial timeline required in GASB Statement 43 by the end of the second year following the year of inadequate funding.

R277-118-4. Termination Benefits.

An LEA may offer retirement or severance benefits in addition to retirement/severance benefits currently in place for one year only if the LEA has adequate funds to fully pay out the benefits in the fiscal year in which the benefits are budgeted.

KEY: post-retirement benefits

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-17a-125

**Education, Administration
R277-410-5
Accreditation Procedures**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38434

FILED: 04/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to allow for a provisional status for new Utah schools requesting accreditation.

SUMMARY OF THE RULE OR CHANGE: The amendments provide language for provisional status for accreditation for Utah charter schools and districts schools in schools' first two years of operation.

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

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: This rule is amended to allow for provisional status for new Utah schools requesting

accreditation which likely will not result in a cost or savings to the state budget.

◆ LOCAL GOVERNMENTS: This rule is amended to allow for provisional status for new Utah schools requesting accreditation which likely will not result in a cost or savings to local government.

◆ SMALL BUSINESSES: This rule is amended to allow for provisional status for new Utah schools requesting accreditation which likely will not result in a cost or savings to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule is amended to allow for provisional status for new Utah schools requesting accreditation which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule is amended to allow for provisional status for new Utah schools requesting accreditation which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely 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 06/02/2014

THIS RULE MAY BECOME EFFECTIVE ON: 06/09/2014

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

**R277. Education, Administration.
R277-410. Accreditation of Schools.
R277-410-5. Accreditation Procedures.**

A. The evaluation of secondary schools for the purpose of accreditation is a cooperative activity in which the school, the school district, the USOE, and AdvancED Northwest share responsibilities. A school's internal review, development, and implementation of a school improvement plan are crucial steps toward accreditation.

B. A school seeking AdvancED Northwest accreditation for the first time shall submit a membership application to

AdvancED. The accepted application shall be forwarded to the AdvancED State Director.

(1) If a school's application for membership is accepted, the school is granted provisional accreditation status for two years and shall have an accreditation visit in year three of the school's operation. A school may request an accreditation visit prior to year three if the school has sufficient student and financial data.

([+2]) Following a visit by at least two qualified educators verifying a school's compliance with accreditation standards and approval by the AdvancED Commission, the school shall then receive accreditation.

C. AdvancED Northwest accredited schools shall be subject to:

(1) compliance with AdvancED Northwest membership requirements;

(2) satisfactory review by the State Council, AdvancED Northwest Commission and Board approval;

(3) a site visit at least every five years by an external review team to review the internal review materials, visit classes, and talk with staff and students as follows:

(a) The external review team shall present its finding in the form of a written report in a timely manner. The report shall be provided to the school, school district superintendent or local charter board chair, and other appropriate parties.

(b) AdvancED staff shall review the external review team report, consult with the State Council and the AdvancED Commission shall grant accreditation status if appropriate.

D. Following review and acceptance, accreditation external review team reports are public information and are available upon request.

KEY: accreditation, public schools, nonpublic schools

Date of Enactment or Last Substantive Amendment: [~~October 8, 2013~~]**2014**

Notice of Continuation: August 1, 2012

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

Education, Administration R277-503-4 Licensing Routes

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38435

FILED: 04/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R277-503-4 is amended to provide eligibility criteria for acceptance of individuals into the Alternative Routes to Licensure (ARL) Program.

SUMMARY OF THE RULE OR CHANGE: Amendments to Section R277-503-4 provide language defining the role of the

teacher and criteria that an individual must meet to be accepted into the ARL Program.

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

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The amendments to this rule provide eligibility criteria for acceptance of individuals into the ARL Program which likely will not result in a cost or savings to the state budget.

◆ LOCAL GOVERNMENTS: The amendments to this rule provide eligibility criteria for acceptance of individuals into the ARL Program which likely will not result in a cost or savings to local government.

◆ SMALL BUSINESSES: The amendments to this rule provide eligibility criteria for acceptance of individuals into the ARL Program which likely will not result in a cost or savings to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to this rule provide eligibility criteria for acceptance of individuals into the ARL Program which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this rule provide eligibility criteria for applicants to be accepted into the ARL Program which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely 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 06/02/2014

THIS RULE MAY BECOME EFFECTIVE ON: 06/09/2014

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

R277. Education, Administration.**R277-503. Licensing Routes.****R277-503-4. Licensing Routes.**

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

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

- (1) Nationally accredited by:
 - (a) CAEP; or
 - (b) NCATE; or
 - (c) TEAC; and

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

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

C. USOE Alternative Routes to Licensure (ARL)

(1) To be eligible to begin the ARL program, an applicant for a school position requiring an elementary license area of concentration shall have a bachelors degree and at least 27 semester hours of applicable content courses distributed among elementary curriculum areas. Elementary curriculum areas are provided under R277-700-4.

(2) To be eligible to begin the ARL program, applicants for school positions requiring a secondary license area of concentration shall hold at least a bachelors degree and:

- (a) a degree major or major equivalent directly related to the assignment; or
- (b) have completed all Board-designated content coursework required for the relevant endorsement.

(3) To be eligible to begin the ARL program, applicants for CTE school positions that do not meet the requirements in R277-503-4C(2) shall meet the requirements for a CTE license area of concentration as provided in R277-518.

(4) To be eligible for acceptance in the ARL program, an applicant shall be employed in a position at a Utah public or accredited private school where the applicant:

- (a) receives a teaching assignment where the applicant has primary instruction responsibility for the assigned students;
- (b) is designated the teacher of record for assigned courses for all school accountability and educator evaluation purposes;
- (c) is responsible for the instructional planning of the courses including developing, adapting, and implementing the curriculum to meet student needs;
- (d) analyzes and assesses student progress and adjusts instruction, materials, and delivery strategies to meet the students' needs;
- (e) has final responsibility for determining student grades and credit for the courses taught by the applicant; and
- (f) is assigned in:
 - (i) a 7-12 secondary setting and employed at least 0.5 FTE in the applicant's eligible content areas; or

(ii) a K-6 elementary setting and employed at least 0.5 FTE and is responsible to teach language arts and reading, mathematics, science, and social studies or is employed in a state-sponsored dual immersion program; and

(g) shall be formally evaluated twice each school year consistent with R277-531, Public Educator Evaluation Requirements (PEER).

~~([4]5)~~ Licensing by Agreement

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

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

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

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

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

- (i) The applicant has had at least three years of experience as an educator or paraeducator;
- (ii) The applicant's experience has been successful based on documentation from the LEA; and
- (iii) The USOE and employing LEA has approved the applicant's experience in lieu of pedagogy course(s).

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

(g) The LEA shall supervise and assess the license applicant's classroom performance ~~[during]~~for a minimum of one school year if the applicant teaches full-time or a minimum of two school years if the applicant teaches part-time~~[employment experience]~~. The LEA may request assistance from an institution of higher education or the USOE in ~~the~~ monitoring and assess~~ment~~ing the applicant.

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

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

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

~~([5]6)~~ USOE Licensing by Competency

(a) An LEA employs an individual as a teacher with appropriate skills, training or ability for an identified licensed

teaching position in the LEA who satisfies the minimum requirements of R277-503-3.

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

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

(d) The LEA shall monitor and assess the license applicant's classroom performance during a minimum one-year full-time or two-year part-time teaching experience.

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

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

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

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

([6]7) USOE ARL candidates under R277-503-4C(4) shall be issued an ARL license or license area as appropriate that is presumed to expire at the end of the school year.

([7]8) The ARL license may be extended annually for two subsequent school years with documentation of progress in the ARL program.

([8]9) Documentation shall include, specifically, a copy of the supervisor's successful end-of-year evaluation, copies of

transcripts and test results or both showing completion of required coursework, verification of working with a trained mentor, and satisfaction of the full-time full year experience.

D. LEA specific competency-based licenses:

(1) An LEA may apply to the Board for a Level 1 competency-based license to fill a position in the LEA. The application shall demonstrate that other licensing routes for the applicant are untenable or unreasonable.

(2) The employing LEA shall request a Level 1 competency-based license no later than 60 days after the date of the individual's first day of employment.

(3) The application for the Level 1 competency-based license from the LEA for an individual to teach one or more core academic subjects shall provide documentation of:

(a) the individual's bachelors degree; and

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

(c) for the teacher in grades 7-12, demonstration of a high level of competency in each of the core academic subjects in which the teacher teaches by passing the rigorous state core academic subject test required under R277-503-3E, in each of the core academic subjects in which the teacher teaches at the USOE established passing score.

(4) The application for the Level 1 competency-based license from the LEA for non-core teachers in grades K-12 shall provide documentation of:

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

(b) skills, talents or abilities specific to the teaching assignment, as determined by the LEA.

(5) Following receipt of documentation and consistent with Section 53A-6-104.5(2), the USOE shall approve a Level 1 competency-based license.

(6) If an individual with a Level 1 competency-based license leaves the LEA before the end of the employment period, the LEA shall notify the USOE Licensing Section regarding the end-of-employment date.

(7) The individual's Level 1 competency-based license shall be valid only in the LEA that originally requested the competency-based license.

(8) The written copy of the Level 1 competency-based license shall prominently state the name of the LEA followed by LEVEL 1 - LEA SPECIFIC - COMPETENCY-BASED LICENSE.

(9) An LEA may change the assignment of a competency-based license holder; notice to USOE shall be required and additional competency-based documentation may be required for the teacher to remain qualified.

(10) A Level 1 competency-based license is equivalent to the Level 1 license as described in R277-500 and R277-502 as to length and professional development expectations and subject to the same renewal procedures except that an individual may renew a Level 1 competency-based license despite the limitations of R277-504-3D.

(11) A Level 2 competency-based license may be issued to a Level 1 competency-based license holder if that individual successfully completes the Entry years Enhancement program as detailed in R277-522.

(12) A Level 2 competency-based license is equivalent to the Level 2 license as described in R277-500 and R277-502 as to length and professional development expectations.

(13) A Level 3 competency-based license may be issued to a Level 2 competency-based license holder if that individual holds a doctorate in education or in a field related to a content unit of the public education system from an accredited institution.

(14) A Level 3 competency-based license is equivalent to the Level 3 license as described in R277-500 and R277-502 as to length and professional development expectations.

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

(a) license level;

(b) current license status;

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

(d) circumstances justifying the LEA specific license.

(16) If the application is not approved based on a USOE review of the criteria provided in R277-503-4C(11), appropriate licensure procedures shall be recommended to the requesting LEA. The applicant may be required to renew an expired license, apply for an endorsement, pass appropriate Board approved tests consistent with R277-503-3C, obtain an additional area of

concentration, apply to Alternative Route to Licensure, or satisfy other reasonable standards.

KEY: teachers, alternative licensing

Date of Enactment or Last Substantive Amendment: ~~March 10, 2014~~

Notice of Continuation: March 15, 2012

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

Education, Administration R277-601-3 Standards

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38436

FILED: 04/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R277-601-3 is amended to remove a redundant reference to the manual, Standards for Utah School Buses and Operations, and to remove an unnecessary word.

SUMMARY OF THE RULE OR CHANGE: The redundant reference to Standards for Utah School Buses and Operations, 2010, is removed from the rule and the word "voice" is removed.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Removing the redundant reference and the word "voice" will likely not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Removing the redundant reference and the word "voice" will likely not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** Removing the redundant reference and the word "voice" will likely not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Removing the redundant reference and the word "voice" will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Removing the redundant reference and the word "voice" will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely 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 06/02/2014

THIS RULE MAY BECOME EFFECTIVE ON: 06/09/2014

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

R277. Education, Administration.

R277-601. Standards for Utah School Buses and Operations.

R277-601-3. Standards.

A. The local board and school district personnel shall act consistent with the manual entitled STANDARDS FOR UTAH SCHOOL BUSES AND OPERATIONS, 2010, which includes information received from Utah school districts, the Utah Transportation Commission, and the Utah Department of Public Safety and is available at each department or agency. The STANDARDS shall include the following:

~~[B. STANDARDS FOR UTAH SCHOOL BUSES AND OPERATIONS, 2010, shall include:~~

] (1) Electronic and telecommunications devices

(a) A school bus operator's primary responsibility, consistent with training and policy, is the safety of passengers and the safety of the public at all times.

(b) A school bus operator shall not use a cell phone, wireless electronic device, or any headset, earpiece, earphones or other equipment that might distract a driver from his responsibilities, whether hand held or not, while the school bus is in motion and not appropriately parked or secured. This prohibition does not apply to the safe and appropriate use of two-way radios or to mounted, ~~[voice-]~~GPS systems. All school districts and public schools that regularly transport students shall maintain documentation of training for bus drivers and employees in the safe and appropriate use of two-way radios.

(c) Once the bus is stopped and safely parked, a school bus operator may use an electronic device for emergencies, to assist special needs students, for behavior management, for appropriate assistance for field/activity trips or for other business-related issues.

(d) A school bus operator may use an electronic device for personal use once a school bus is safely parked, appropriately secured and all passengers are safely off and at a safe distance from the bus, consistent with school district policy.

(e) Any violation of these provisions for emergency or compelling reasons may require documentation and will be addressed by the employing education entity.

(f) Violations of these provisions may result in personnel action(s) against the school bus operator consistent with school district/employer policies.

(g) Private contractors employed by school districts for student transportation shall also adhere strictly to these provisions in addition to the policies of the employer.

(2) End of bus route inspection

(a) At the end of a student delivery, both during the day and after the final route of the day, a school bus operator shall complete the delivery, stop and park the bus, and insure that all students are off the bus.

(b) Where possible, this inspection shall be completed at each school site when delivering students to school.

(c) Following each from-school route of the day, the bus operator shall complete the same type of inspection at a safe location a short distance from where the final student(s) left the bus. If children are found on the bus, they shall be immediately returned to their assigned bus stop location or to an alternate location, consistent with district policy, with express permission from the parents(s).

KEY: school, buses, school transportation

Date of Enactment or Last Substantive Amendment: ~~October 11, 2010~~ **2014**

Notice of Continuation: April 7, 2014

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

Education, Administration
R277-725
Electronic High School

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38437

FILED: 04/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to make the rule consistent with current state law and recommendations of the Legislative Auditor's Office.

SUMMARY OF THE RULE OR CHANGE: The amendments to the rule remove fiscal agent language consistent with a recent legislative audit; change language for the hourly wage of Electronic High School (EHS) teachers; change language about the electronic high school diploma; remove language

about an annual commencement program; remove the requirement for counselor or pre-approval for enrollment for students registering in EHS courses; and adjust the cost per quarter tuition for out-of-state students.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-17a-131.15 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendments to this rule update language to make the rule consistent with state law and a recent legislative audit and streamline the process for a student to enroll in EHS courses which will likely not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** The amendments to this rule update language to make the rule consistent with state law and a recent legislative audit and streamline the process for a student to enroll in EHS courses which will likely not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** The amendments to this rule update language to make the rule consistent with state law and a recent legislative audit and streamline the process for a student to enroll in EHS courses which will likely not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to this rule update language to make the rule consistent with state law and a recent legislative audit and streamline the process for a student to enroll in EHS courses which will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this rule update language to make the rule

consistent with state law and a recent legislative audit and streamline the process for a student to enroll in EHS courses which will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely 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 06/02/2014

THIS RULE MAY BECOME EFFECTIVE ON: 06/09/2014

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

R277. Education, Administration.

R277-725. Electronic High School.

R277-725-1. Definitions.

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

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

C. "Home-schooled student" means a student who attends no more than two regularly scheduled classes or courses in a public school per semester as defined under Section 53A-11-102.

D. "Open entry/open exit" means:

(1) a method of instructional delivery that allows for flexible scheduling in response to individual student needs or requirements and demonstrated competency when knowledge and skills have been mastered; and

(2) students have the flexibility to begin or end study at any time, progress through course material at their own pace, and demonstrate competency when knowledge and skills have been mastered.

E. "Unit of credit" means credit awarded for courses taken with school district/school approval and successfully completed by students. A student may also earn units of credit by demonstrating subject mastery through district/school approved methods.

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

R277-725-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution, Article X, Section 3 which vests general control and supervision of the public schools in the Board, Section 53A-1-401(3) which authorizes the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-131.15 which directs the Board to have a rule for distribution of funds for the electronic high school program.

B. The purpose of this rule is to provide minimum standards, definitions, and procedures for distribution of funds and coordination of the electronic high school program.

R277-725-3. Electronic High School Funding.

~~[A—]The USOE shall maintain and distribute [F]funds appropriated by the Legislature for the electronic high school program [shall be distributed by the Utah State Office of Education].~~

~~[—]B. The Utah State Office of Education may designate a fiscal agent to pay teachers' salaries, course development fees, software licensing fees, and accreditation dues.~~

R277-725-4. Courses and Credit.

A. Curriculum, course offerings and course availability shall be determined by the USOE Electronic High School Principal

following consultation with school district personnel and USOE specialists to determine demand and curriculum requirements.

B. Courses shall be offered in an open-entry open-exit format. In a student's first week of enrollment in a course, a student shall be assigned to a cohort group with the expectation of class completion within seven to ten weeks.

C. Courses shall be designed to be competency-based, with no specific student seat time requirement. ~~[(Historically, the average course takes the average student 175 to 200 hours to successfully complete a one-credit course).]~~

D. Schools or school districts shall accept [C]credits that students earn through the electronic high school [shall be accepted by schools or school districts consistent with this rule].

R277-725-5. Student Eligibility for Enrollment.

A. There are no age or grade restrictions for Utah students to enroll in electronic high school courses.

B. Students are accepted into electronic high school courses on a first-come first-served basis.

C. ~~[A student may register for electronic high school course(s) following approval from the student's residence area secondary school counselor, consistent with the student's SEP/SEOP.]~~ A student may register for electronic high school courses at the public school where the student currently attends. The public school shall notify the student's counselor within the first four weeks of enrollment to assure that the course is consistent with the student's SEOP/plan for college and career readiness.

D. The school counselor shall assist students in evaluating courses required for and offered through the electronic high school.

R277-725-6. Electronic High School Services to Students with Disabilities.

Students with disabilities who may need additional services or resources and who seek to enroll in electronic high school classes may request appropriate accommodations through the students' assigned schools or school districts.

R277-725-7. Student Fees or Tuition.

A. Electronic high school courses are provided to students who are Utah residents, as defined under Section 53A-2-201(1), free of charge.

B. ~~[Non-resident s]Students whose parents/legal guardians are not Utah residents, consistent with Section 53A-2-201,~~ may enroll in electronic high school courses for a fee of \$1[0]50 per quarter course ~~[per semester]~~ provided that the course can accommodate additional students.

R277-725-8. Teacher Requirements and Payments.

A. All electronic high school teachers are licensed Utah educators consistent with Section 53A-6.

B. Electronic high school teachers are paid ~~[a salary determined by the electronic high school salary schedule and negotiated to the extent necessary with the USOE Electronic High School Principal]~~ an hourly wage according to their contract negotiated with the USOE.

C. All electronic high school teachers shall be subject to laws and administrative rules for Utah educators, including the state and federal Family Educational Rights and Privacy Act, Sections

53A-13-301 and 302, and 20 U.S.C. Section 1232g and 34 C.F.R. Part 99; child abuse reporting requirements; and Professional Standards for Utah Educators, R686-103.

R277-725-9. Electronic High School Credit and Diplomas.

~~_____ A. Three types of Utah students may be eligible for an electronic high school diploma:~~

- ~~_____ (1) a home-schooled student;~~
~~_____ (2) a student who has dropped out of school as defined under R277-419 and whose original high school class has graduated; and~~
~~_____ (3) a student who is identified by his resident school district as ineligible for graduation from a traditional high school program for specific reasons.~~

~~_____ B. Graduation criteria~~

- ~~_____ (1) Students shall satisfy all requirements established by R277-700 for a high school diploma.~~
~~_____ (2) Students who seek an electronic high school diploma shall be required to satisfy the requirements of the Participation Skills and Techniques and Individualized Lifetime Activity courses which are Core classes required for high school graduation. Students may satisfy course requirements through district-approved activities outside of the Electronic High School program.~~

~~_____ C. Awarding of diplomas~~

- ~~_____ (1) Diplomas shall be awarded to electronic high school graduates at least annually.~~
~~_____ (2) An annual commencement program may be offered by the USOE. Electronic high school graduates may voluntarily participate.~~

~~_____ D. Additional provisions~~

- ~~_____ (1) The USOE shall provide graduation information upon request to interested prospective graduates.~~

~~_____] _____ A. The Electronic high school may award diplomas to students consistent Section 53A-15-1007 as adequate courses and funding are available, required for graduation.~~

~~[(2)]B. The [USOE and]student's resident school[district] personnel shall assist prospective graduates, to the extent of resources available, with transcript evaluation and suggestions for completing graduation requirements required beyond the electronic high school curriculum.~~

KEY: electronic high school

Date of Enactment or Last Substantive Amendment:
[September 2, 2004]2014

Notice of Continuation: April 7, 2014

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-17a-131.15

**Environmental Quality, Air Quality
R307-101-2
Definitions**

**NOTICE OF PROPOSED RULE
(Amendment)**

**DAR FILE NO.: 38403
FILED: 04/02/2014**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The EPA has advised the Division of Air Quality (DAQ) that certain new rules written for the PM2.5 State Implementation Plan cannot be approved as reasonable available control technology rules because the optional add-on control requirements in the rules do not define the emission capture rate. DAQ staff worked with EPA to identify a solution to resolve this issue with one rulemaking filing. The solution is to add a definition for "Optional add-on controls" in Section R307-101-2.

SUMMARY OF THE RULE OR CHANGE: Section R307-101-2 is amended by adding the following definition: "Optional add-on controls" within Rules R307-344 through R307-350 and R307-352 through R307-355, refers to the overall capture and control equipment as the emission control device.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule amendment adds a definition to clarify what the optional add-on control requirements in several Air Quality rules are and does not add any new requirements to the state. Therefore, there are no anticipated costs or savings for the state budget.

◆ **LOCAL GOVERNMENTS:** This rule amendment adds a definition to clarify what the optional add-on control requirements in several Air Quality rules are and does not add any new requirements for local government. Therefore, there are no anticipated costs or savings.

◆ **SMALL BUSINESSES:** This rule amendment adds a definition to clarify what the optional add-on control requirements in several Air Quality rules are and does not add any new requirements for small businesses. Therefore, there are no anticipated costs or savings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule amendment adds a definition to clarify what the optional add-on control requirements in several Air Quality rules are and does not add any new requirements for persons other than small businesses, businesses, or local government entities. Therefore, there are no anticipated costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule amendment adds a definition to clarify what the optional add-on control requirements in several Air Quality rules are and does not add any new requirements for affected persons. There are no additional compliance costs with this rulemaking.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment adds a definition to clarify what the optional add-on control requirements in several Air Quality rules are and does not add any new requirements to

businesses; therefore, this rulemaking should have no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/02/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2014

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.

R307-101. General Requirements.

R307-101-2. Definitions.

Except where specified in individual rules, definitions in R307-101-2 are applicable to all rules adopted by the Air Quality Board.

"Actual Emissions" means the actual rate of emissions of a pollutant from an emissions unit determined as follows:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operations. The director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emission unit, other than an electric utility steam generating unit specified in (4), which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(4) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the director, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the director if the director determines such a period to be more representative of normal source post-change operations.

"Acute Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Air Contaminant" means any particulate matter or any gas, vapor, suspended solid or any combination of them, excluding steam and water vapors (Section 19-2-102(1)).

"Air Contaminant Source" means any and all sources of emission of air contaminants whether privately or publicly owned or operated (Section 19-2-102(2)).

"Air Pollution" means the presence in the ambient air of one or more air contaminants in such quantities and duration and under conditions and circumstances, as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property as determined by the standards, rules and regulations adopted by the Air Quality Board (Section 19-2-104).

"Allowable Emissions" means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the emission limitation established pursuant to R307-401-8.

"Ambient Air" means the surrounding or outside air (Section 19-2-102(4)).

"Appropriate Authority" means the governing body of any city, town or county.

"Atmosphere" means the air that envelops or surrounds the earth and includes all space outside of buildings, stacks or exterior ducts.

"Authorized Local Authority" means a city, county, city-county or district health department; a city, county or combination fire department; or other local agency duly designated by appropriate authority, with approval of the state Department of Health; and other lawfully adopted ordinances, codes or regulations not in conflict therewith.

"Board" means Air Quality Board. See Section 19-2-102(8) (a).

"Breakdown" means any malfunction or procedural error, to include but not limited to any malfunction or procedural error during start-up and shutdown, which will result in the inoperability or sudden loss of performance of the control equipment or process equipment causing emissions in excess of those allowed by approval order or Title R307.

"BTU" means British Thermal Unit, the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

"Calibration Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is the same known upscale value.

"Carbon Adsorption System" means a device containing adsorbent material (e.g., activated carbon, aluminum, silica gel), an inlet and outlet for exhaust gases, and a system for the proper disposal or reuse of all VOC adsorbed.

"Carcinogenic Hazardous Air Pollutant" means any hazardous air pollutant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American

Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Chargeable Pollutant" means any regulated air pollutant except the following:

(1) Carbon monoxide;

(2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated or established by Title VI of the Act, Stratospheric Ozone Protection;

(3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act, Prevention of Accidental Releases.

"Chronic Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - time weighted average (TLV-TWA) having no threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Clean Air Act" means federal Clean Air Act as amended in 1990.

"Clean Coal Technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

"Clean Coal Technology Demonstration Project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"Clearing Index" means an indicator of the predicted rate of clearance of ground level pollutants from a given area. This number is provided by the National Weather Service.

"Commence" as applied to construction of a major source or major modification means that the owner or operator has all necessary pre-construction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Condensable PM_{2.5}" means material that is vapor phase at stack conditions, but which condenses and/or reacts upon cooling and dilution in the ambient air to form solid or liquid particulate matter immediately after discharge from the stack.

"Compliance Schedule" means a schedule of events, by date, which will result in compliance with these regulations.

"Construction" means any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of a source which would result in a change in actual emissions.

"Control Apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

"Department" means Utah State Department of Environmental Quality. See Section 19-1-103(1).

"Director" means the Director of the Division of Air Quality. See Section 19-1-103(1).

"Division" means the Division of Air Quality.

"Electric Utility Steam Generating Unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emission" means the act of discharge into the atmosphere of an air contaminant or an effluent which contains or may contain an air contaminant; or the effluent so discharged into the atmosphere.

"Emissions Information" means, with reference to any source operation, equipment or control apparatus:

(1) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics related to air quality of any air contaminant which has been emitted by the source operation, equipment, or control apparatus;

(2) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which, under an applicable standard or limitation, the source operation was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and

(3) A general description of the location and/or nature of the source operation to the extent necessary to identify the source operation and to distinguish it from other source operations (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source operation).

"Emission Limitation" means a requirement established by the Board, the director or the Administrator, EPA, which limits the quantity, rate or concentration of emission of air pollutants on a continuous emission reduction including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction (Section 302(k)).

"Emissions Unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

"Enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan and R307, any permit requirements established pursuant to 40 CFR 52.21 or R307-401.

"EPA" means Environmental Protection Agency.

"EPA Method 9" means 40 CFR Part 60, Appendix A, Method 9, "Visual Determination of Opacity of Emissions from Stationary Sources," and Alternate 1, "Determination of the opacity of emissions from stationary sources remotely by LIDAR."

"Executive Director" means the Executive Director of the Utah Department of Environmental Quality. See Section 19-1-103(2).

"Existing Installation" means an installation, construction of which began prior to the effective date of any regulation having application to it.

"Facility" means machinery, equipment, structures of any part or accessories thereof, installed or acquired for the primary purpose of controlling or disposing of air pollution. It does not include an air conditioner, fan or other similar device for the comfort of personnel.

"Filterable PM2.5" means particles with an aerodynamic diameter equal to or less than 2.5 micrometers that are directly emitted by a source as a solid or liquid at stack or release conditions and can be captured on the filter of a stack test train.

"Fireplace" means all devices both masonry or factory built units (free standing fireplaces) with a hearth, fire chamber or similarly prepared device connected to a chimney which provides the operator with little control of combustion air, leaving its fire chamber fully or at least partially open to the room. Fireplaces include those devices with circulating systems, heat exchangers, or draft reducing doors with a net thermal efficiency of no greater than twenty percent and are used for aesthetic purposes.

"Fugitive Dust" means particulate, composed of soil and/or industrial particulates such as ash, coal, minerals, etc., which becomes airborne because of wind or mechanical disturbance of surfaces. Natural sources of dust and fugitive emissions are not fugitive dust within the meaning of this definition.

"Fugitive Emissions" means emissions from an installation or facility which are neither passed through an air cleaning device nor vented through a stack or could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food, including wastes attendant thereto.

"Gasoline" means any petroleum distillate, used as a fuel for internal combustion engines, having a Reid vapor pressure of 4 pounds or greater.

"Hazardous Air Pollutant (HAP)" means any pollutant listed by the EPA as a hazardous air pollutant in conformance with Section 112(b) of the Clean Air Act. A list of these pollutants is available at the Division of Air Quality.

"Household Waste" means any solid or liquid material normally generated by the family in a residence in the course of ordinary day-to-day living, including but not limited to garbage, paper products, rags, leaves and garden trash.

"Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned efficiently and from which the solid and gaseous residues contain little or no combustible material.

"Installation" means a discrete process with identifiable emissions which may be part of a larger industrial plant. Pollution equipment shall not be considered a separate installation or installations.

"LPG" means liquified petroleum gas such as propane or butane.

"Maintenance Area" means an area that is subject to the provisions of a maintenance plan that is included in the Utah state implementation plan, and that has been redesignated by EPA from nonattainment to attainment of any National Ambient Air Quality Standard.

(a) The following areas are considered maintenance areas for ozone:

- (i) Salt Lake County, effective August 18, 1997; and
- (ii) Davis County, effective August 18, 1997.

(b) The following areas are considered maintenance areas for carbon monoxide:

- (i) Salt Lake City, effective March 22, 1999;
- (ii) Ogden City, effective May 8, 2001; and
- (iii) Provo City, effective January 3, 2006.

(c) The following areas are considered maintenance areas for PM10:

(i) Salt Lake County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on July 6, 2005; and

(ii) Utah County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on July 6, 2005; and

(iii) Ogden City, effective on the date that EPA approves the maintenance plan that was adopted by the Board on July 6, 2005.

(d) The following area is considered a maintenance area for sulfur dioxide: all of Salt Lake County and the eastern portion of Tooele County above 5600 feet, effective on the date that EPA approves the maintenance plan that was adopted by the Board on January 5, 2005.

"Major Modification" means any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase of any pollutant. A net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone. Within Salt Lake and Davis Counties or any nonattainment area for ozone, a net emissions increase that is significant for nitrogen oxides shall be considered significant for ozone. Within areas of nonattainment for PM10, a significant net emission increase for any PM10 precursor is also a significant net emission increase for PM10. A physical change or change in the method of operation shall not include:

- (1) routine maintenance, repair and replacement;
- (2) use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;
- (3) use of an alternative fuel by reason of an order or rule under section 125 of the federal Clean Air Act;
- (4) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
- (5) use of an alternative fuel or raw material by a source:
 - (a) which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition; or
 - (b) which the source is otherwise approved to use;
- (6) an increase in the hours of operation or in the production rate unless such change would be prohibited under any enforceable permit condition;
- (7) any change in ownership at a source
- (8) the addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the director determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(a) when the director has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Clean Air Act, if any, and

(b) the director determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

(9) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) the Utah State Implementation Plan; and

(b) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Major Source" means, to the extent provided by the federal Clean Air Act as applicable to R307:

(1) any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act; or

(a) any source located in a nonattainment area for carbon monoxide which emits, or has the potential to emit, carbon monoxide in the amounts outlined in Section 187 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 187 of the federal Clean Air Act; or

(b) any source located in Salt Lake or Davis Counties or in a nonattainment area for ozone which emits, or has the potential to emit, VOC or nitrogen oxides in the amounts outlined in Section 182 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 182 of the federal Clean Air Act; or

(c) any source located in a nonattainment area for PM10 which emits, or has the potential to emit, PM10 or any PM10 precursor in the amounts outlined in Section 189 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 189 of the federal Clean Air Act.

(2) any physical change that would occur at a source not qualifying under subpart 1 as a major source, if the change would constitute a major source by itself;

(3) the fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of these R307 rules whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum or reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;

(k) Lime plants;

(l) Phosphate rock processing plants;

(m) Coke oven batteries;

(n) Sulfur recovery plants;

(o) Carbon black plants (furnace process);

(p) Primary lead smelters;

(q) Fuel conversion plants;

(r) Sintering plants;

(s) Secondary metal production plants;

(t) Chemical process plants;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the federal Clean Air Act.

"Modification" means any planned change in a source which results in a potential increase of emission.

"National Ambient Air Quality Standards (NAAQS)" means the allowable concentrations of air pollutants in the ambient air specified by the Federal Government (Title 40, Code of Federal Regulations, Part 50).

"Net Emissions Increase" means the amount by which the sum of the following exceeds zero:

(1) any increase in actual emissions from a particular physical change or change in method of operation at a source; and

(2) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. For purposes of determining a "net emissions increase":

(a) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commences; and the date that the increase from the particular change occurs.

(b) An increase or decrease in actual emissions is creditable only if it has not been relied on in issuing a prior approval for the source which approval is in effect when the increase in actual emissions for the particular change occurs.

(c) An increase or decrease in actual emission of sulfur dioxide, nitrogen oxides or particulate matter which occurs before an applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM10 emissions will be used to evaluate this increase or decrease.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable at and after the time that actual construction on the particular change begins; and

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(iv) It has not been relied on in issuing any permit under R307-401 nor has it been relied on in demonstrating attainment or reasonable further progress.

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

"New Installation" means an installation, construction of which began after the effective date of any regulation having application to it.

"Nonattainment Area" means an area designated by the Environmental Protection Agency as nonattainment under Section 107, Clean Air Act for any National Ambient Air Quality Standard. The designations for Utah are listed in 40 CFR 81.345.

"Offset" means an amount of emission reduction, by a source, greater than the emission limitation imposed on such source by these regulations and/or the State Implementation Plan.

"Opacity" means the capacity to obstruct the transmission of light, expressed as percent.

"Open Burning" means any burning of combustible materials resulting in emission of products of combustion into ambient air without passage through a chimney or stack.

"Optional add-on controls" within R307-342, R307-344 through R307-350 and R307-352 through R307-355, refers to the overall capture and control equipment as the emission control device.

"Owner or Operator" means any person who owns, leases, controls, operates or supervises a facility, an emission source, or air pollution control equipment.

"PSD" Area means an area designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the federal Clean Air Act.

"PM2.5" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by an EPA reference or equivalent method.

"PM2.5 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM2.5, and has been identified in the applicable implementation plan for PM2.5 as significant for the purpose of developing control measures. Specifically, PM2.5 precursors include SO₂, NO_x, and VOC.

"PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA reference or equivalent method.

"PM10 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM10.

"Part 70 Source" means any source subject to the permitting requirements of R307-415.

"Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. (Subsection 19-2-103(4)).

"Pollution Control Project" means any activity or project at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to:

(1) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(2) An activity or project to accommodate switching to a fuel which is less polluting than the fuel used prior to the activity or project, including, but not limited to natural gas or coal reburning, or the cofiring of natural gas and other fuels for the purpose of controlling emissions;

(3) A permanent clean coal technology demonstration project conducted under Title II, sec. 101(d) of the Further Continuing Appropriations Act of 1985 (sec. 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(4) A permanent clean coal technology demonstration project that constitutes a repowering project.

"Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Primary PM2.5" means the sum of filterable PM2.5 and condensable PM2.5.

"Process Level" means the operation of a source, specific to the kind or type of fuel, input material, or mode of operation.

"Process Rate" means the quantity per unit of time of any raw material or process intermediate consumed, or product generated, through the use of any equipment, source operation, or control apparatus. For a stationary internal combustion unit or any other fuel burning equipment, this term may be expressed as the quantity of fuel burned per unit of time.

"Reactivation of a Very Clean Coal-Fired Electric Utility Steam Generating Unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the emission inventory at the time of enactment;

(2) Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(3) Is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(4) Is otherwise in compliance with the requirements of the Clean Air Act.

"Reasonable Further Progress" means annual incremental reductions in emission of an air pollutant which are sufficient to provide for attainment of the NAAQS by the date identified in the State Implementation Plan.

"Refuse" means solid wastes, such as garbage and trash.

"Regulated air pollutant" means any of the following:

- (a) Nitrogen oxides or any volatile organic compound;
- (b) Any pollutant for which a national ambient air quality standard has been promulgated;
- (c) Any pollutant that is subject to any standard promulgated under Section 111 of the Act, Standards of Performance for New Stationary Sources;
- (d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, Stratospheric Ozone Protection;
- (e) Any pollutant subject to a standard promulgated under Section 112, Hazardous Air Pollutants, or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including any of the following:
 - (i) Any pollutant subject to requirements under Section 112(j) of the Act, Equivalent Emission Limitation by Permit. If the Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act;
 - (ii) Any pollutant for which the requirements of Section 112(g)(2) of the Act (Construction, Reconstruction and Modification) have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.

"Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(1) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(2) The director shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under section 409 of the Clean Air Act.

"Representative Actual Annual Emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of unit, (or a different consecutive two-year period within 10 years after that change, where the director determines that such period is more representative of source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the director shall:

(1) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State of Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the

unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

"Residence" means a dwelling in which people live, including all ancillary buildings.

"Residential Solid Fuel Burning" device means any residential burning device except a fireplace connected to a chimney that burns solid fuel and is capable of, and intended for use as a space heater, domestic water heater, or indoor cooking appliance, and has an air-to-fuel ratio less than 35-to-1 as determined by the test procedures prescribed in 40 CFR 60.534. It must also have a useable firebox volume of less than 6.10 cubic meters or 20 cubic feet, a minimum burn rate less than 5 kilograms per hour or 11 pounds per hour as determined by test procedures prescribed in 40 CFR 60.534, and weigh less than 800 kilograms or 362.9 pounds. Appliances that are described as prefabricated fireplaces and are designed to accommodate doors or other accessories that would create the air starved operating conditions of a residential solid fuel burning device shall be considered as such. Fireplaces are not included in this definition for solid fuel burning devices.

"Road" means any public or private road.

"Salvage Operation" means any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to metals, chemicals, shipping containers or drums.

"Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself.

Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

Fugitive emissions and fugitive dust from the source or modification are not considered secondary emissions.

"Secondary PM2.5" means particles that form or grow in mass through chemical reactions in the ambient air well after dilution and condensation have occurred. Secondary PM2.5 is usually formed at some distance downwind from the source.

"Significant" means:

(1) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide: 100 ton per year (tpy);

Nitrogen oxides: 40 tpy;

Sulfur dioxide: 40 tpy;

PM10: 15 tpy;

PM2.5: 10 tpy;

Particulate matter: 25 tpy;

Ozone: 40 tpy of volatile organic compounds;

Lead: 0.6 tpy.

"Solid Fuel" means wood, coal, and other similar organic material or combination of these materials.

"Solvent" means organic materials which are liquid at standard conditions (Standard Temperature and Pressure) and which are used as dissolvers, viscosity reducers, or cleaning agents.

"Source" means any structure, building, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act and which is located on one or more continuous or adjacent properties and which is under the control of the same person or persons under common control. A building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (US Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

"Standards of Performance for New Stationary Sources" means the Federally established requirements for performance and record keeping (Title 40 Code of Federal Regulations, Part 60).

"State" means Utah State.

"Temporary" means not more than 180 calendar days.

"Temporary Clean Coal Technology Demonstration Project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the Utah State Implementation Plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Threshold Limit Value - Ceiling (TLV-C)" means the airborne concentration of a substance which may not be exceeded, as adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Threshold Limit Value - Time Weighted Average (TLV-TWA)" means the time-weighted airborne concentration of a substance adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Total Suspended Particulate (TSP)" means minute separate particles of matter, collected by high volume sampler.

"Toxic Screening Level" means an ambient concentration of an air contaminant equal to a threshold limit value - ceiling (TLV- C) or threshold limit value -time weighted average (TLV-TWA) divided by a safety factor.

"Trash" means solids not considered to be highly flammable or explosive including, but not limited to clothing, rags, leather, plastic, rubber, floor coverings, excelsior, tree leaves, yard trimmings and other similar materials.

"Volatile Organic Compound (VOC)" means VOC as defined in 40 CFR 51.100(s), effective as of the date referenced in R307-101-3, is hereby adopted and incorporated by reference.

"Waste" means all solid, liquid or gaseous material, including, but not limited to, garbage, trash, household refuse, construction or demolition debris, or other refuse including that resulting from the prosecution of any business, trade or industry.

"Zero Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is zero.

KEY: air pollution, definitions

Date of Enactment or Last Substantive Amendment: ~~August 8, 2013~~ 2014

Notice of Continuation: July 2, 2009

Authorizing, and Implemented or Interpreted Law: 19-2-104(1) (a)

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-10A-6
Prior Authorization**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 38430

FILED: 04/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify exceptions to prior authorization for transplantation services.

SUMMARY OF THE RULE OR CHANGE: This amendment includes pancreatic transplantations as one of the exceptions to prior authorization criteria.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There may be some, very modest, savings to the state budget because medical review for prior authorization of pancreatic transplantation is no longer required. Nevertheless, there is no data at this time to estimate what the savings may be.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide transplant services to Medicaid recipients.
- ◆ **SMALL BUSINESSES:** There is no impact to small businesses because they do not perform medical reviews for prior authorization of transplantation recipients.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers because they do not perform medical reviews for prior authorization of transplantation recipients. This change also allows these providers to bypass any costs associated with the prior authorization process. In addition, there is no impact to Medicaid recipients who receive transplant services under this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single Medicaid provider because the provider does not perform medical reviews for prior authorization of transplantation recipients. This change also allows a provider to bypass any costs associated with the prior authorization process. In addition, there is no impact to a Medicaid recipient who receives transplant services under this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No effect on business except to make such transplants more quickly approved.

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

♦ Nina Baker by phone at 801-538-9127, by FAX at 801-538-6412, or by Internet E-mail at nabaker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/02/2014
THIS RULE MAY BECOME EFFECTIVE ON: 06/09/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-10A. Transplant Services Standards.

R414-10A-6. Prior Authorization.

(1) Prior authorization is required for all transplantation services except for the following transplants:

(a) cornea transplantation.

(b) kidney, heart, ~~and~~ liver, and pancreas transplantation performed in a Utah transplant center, which has been Medicare-approved for the last five or more years.

(2) The prior authorization request for transplantation services must be initiated by the client's referring physician. Failure to submit all required information with the prior authorization request will delay processing of the request for transplantation.

(3) The initial request for prior authorization of any transplantation, except heart, liver, cornea, or kidney, must contain all of the following:

(a) A description of the medical condition which necessitates a transplantation.

(b) Transplantation treatment alternatives utilized previous to the transplantation request.

(c) Transplantation treatment alternatives considered and discarded, including discussion of why the alternatives have been discarded.

(d) Comprehensive examination, evaluation and recommendations completed by a board-certified or board-eligible specialist in a field directly related to the client's condition which necessitates the transplantation, such as a nephrologist, gastroenterologist, cardiologist, or hematologist.

(e) Comprehensive psycho-social evaluation of the client must include a comprehensive history regarding substance abuse and compliance with medical treatment.

(f) Psycho-social evaluation of parent(s) or guardian(s) of the client, if the client is less than 18 years of age. The psycho-social evaluation must include a comprehensive history regarding substance abuse, and past and present compliance with medical treatment.

(g) Comprehensive psychiatric evaluation of the client, if the client has a history of mental illness.

(h) Comprehensive psychological or developmental testing, as requested by the Department.

(i) Comprehensive infectious disease evaluation for a client with a recent or current suspected infectious episode.

(j) Documentation by the client's referring physician that a client with a history of substance abuse has successfully completed a substance abuse program or has documented abstinence for a period of at least six months before any transplantation service can be authorized.

(k) At least two negative drug screens within three months of the request date for prior authorization. The Utah Medicaid program requires monthly drug screens until the transplant date or until the transplant is denied if either of the two random drug screens are positive for drug use, past drug screens have been positive for drug use, or the Department requests the monthly screens. If the client has a history of substance abuse that does not include the drugs listed in Subsection R414-10A-2(11), then the drug screens must include the other substance(s) upon drug testing availability.

(l) Hospital and outpatient records for at least the last two years, unless the patient is less than two years of age, in which case all records.

(m) Pretransplant evaluation for a client diagnosed with cancer that includes staging of the cancer, laboratory tests, and imaging studies. A letter documenting that the transplant evaluation has been completed and that all medical records documentation from the evaluation have been transmitted to the Department.

(n) Any other medical evidence needed to evaluate possible contraindications for the type of transplantation being considered. Contraindications are listed in this rule under each organ or transplant type.

(o) The transplant center must document, by a current medical literature review, a one-year survival rate from patients having received transplantation for the age group, specific diagnosis(es), condition and type of transplantation proposed for the client. Survival rate must be calculated by the Kaplan-Meier product-limit method or the actuarial life table method: "Kaplan, G., Meier, P. Non-Parametric estimation from incomplete observations. *Journal of American Statistical Association* 53:457-481, 1958. Cox, D.R., Oakes, D. *Analysis of survival data*. Chapman and Hill, 1984." adopted and

incorporated by reference. At least ten patients in the appropriate age group must be alive at the end of the one or three year period to document adequate confidence intervals. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(p) The transplant center must document by a current medical literature review, a one year graft function rate for patients having received pancreas, kidney or small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. Graft function rate must be calculated by the Kaplan-Meier product-limit method or the actuarial life table method: "Kaplan, G., Meier, P. Non-Parametric estimation from incomplete observations. *Journal of American Statistical Association* 53:457-481, 1958. Cox, D.R., Oakes, D. Analysis of survival data. Chapman and Hill, 1984." adopted and incorporated by reference. The time to graft failure will be determined by the use of insulin post-pancreas transplantation, by the use of dialysis post-renal transplantation, and the use of total parenteral nutrition post-small bowel transplantation. At least ten patients in the appropriate age group must have documented graft function at the end of the one year period to document adequate confidence intervals. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(q) Bone marrow transplantation centers must document, by a current medical literature review, a one-year and a three-year survival rate from patients having received transplantation for the age group, specific diagnosis(es), condition and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(r) The transplant center must provide written recommendations for each client which support the need for the transplant. The recommendations must reflect use of both the transplant center's own patient selection criteria and the Utah Medicaid program criteria as noted in Sections R414-10A-8 through 22. Agreement of the transplant center to provide the required service must also be established.

(s) The physician must provide, for review by the Department, any additional medical information which could affect the outcome of the specific transplant being requested.

(t) The completed request for authorization, along with all required information and documentation, must be delivered to:

Utah Department of Health
Bureau of Coverage and Reimbursement Policy
Utilization Management Unit
Transplant Coordinator
288 North 1460 West
P.O. Box 143103
Salt Lake City, Utah 84114-3103

(u) If incomplete documentation is received by the Department, the client's case is pending until the requested documentation has been received.

(4) Prior authorization for each donor lymphocyte infusion must contain all of the following:

(a) A description of the medical condition that necessitates a donor lymphocyte infusion.

(b) Comprehensive examination, evaluation and recommendations completed by a board-certified or board-eligible specialist in a field directly related to the client's condition that

necessitates the transplantation, such as a nephrologist, gastroenterologist, cardiologist, or hematologist. The evaluation must document that the proposed donor lymphocyte infusion for the client is a medically necessary service as defined in Subsections R414-1-2(18)(a) and (b).

(c) Hospital and outpatient records for at least the last six months. If the patient is less than six months of age, the Department requires all case records.

(d) The transplant center must document by a current medical literature review that the donor lymphocyte infusion is a medically necessary service as defined in Subsections R414-1-2(18)(a) and (b) for the age group, specific diagnosis(es), condition, and type of transplantation the client has previously received.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~July 23, 2007~~ 2014

Notice of Continuation: January 24, 2012

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-1

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-45** Personal Supervision by a Physician

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 38431

FILED: 04/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule repeal is necessary because the criteria and requirements found in the rule text already exist in the Medicaid State Plan, corresponding Medicaid provider manuals, and in state and federal law.

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3 and Title 58, Chapter 31b

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no impact to the state budget because this rule repeal does not affect ongoing nurse practitioner services.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide nurse practitioner services to Medicaid recipients.

◆ **SMALL BUSINESSES:** There is no impact to small businesses because this rule repeal does not affect ongoing nurse practitioner services.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers and to Medicaid recipients because this rule repeal does not affect ongoing nurse practitioner services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single Medicaid provider or to a Medicaid recipient because this rule repeal does not affect ongoing nurse practitioner services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No effect on business because there is no change in current practices.

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

◆ Nina Baker by phone at 801-538-9127, by FAX at 801-538-6412, or by Internet E-mail at nabaker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/02/2014

THIS RULE MAY BECOME EFFECTIVE ON: 06/09/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

[R414-45. Personal Supervision by a Physician.

R414-45-1. Introduction and Authority.

~~This rule defines medical services provided under the supervision of a physician or osteopath. Physician services are authorized by Sections 1901 and 1905(a)(5) of the Social Security Act, and 42 CFR 440.50, 491.2, October 1992 ed., which are adopted and incorporated by reference. Reference is also made to Title 58, Chapters 12 and 31; and R156-12d, R156-31.~~

R414-45-2. Definitions.

~~In addition to the definitions in R414-1 and R156-12d-3, the following definitions also apply to this rule:~~

~~(1) "Consultation and referral plan" means a written document defined to include the nature, frequency, and methods of~~

~~consultation and supervision, and the methods of documentation of records:~~

~~(2) "Non-physician" means a nurse practitioner or a physician assistant.~~

~~(3) "Non-physician services" means those medical services rendered, incident to a physician's services, by a nurse practitioner or a physician assistant.~~

~~(4) "Personal supervision" means the critical observation and guidance by a physician of a non-physician's activities within the non-physician's scope of practice.~~

R414-45-3. Client Eligibility Requirements.

~~Medical services under the personal supervision of a physician or osteopath are available to categorically and medically-needy individuals.~~

R414-45-4. Program Access Requirements.

~~(1) A physician licensed to practice medicine or osteopathy under Title 58, Chapter 12, must personally render medical services or supervise those services, rendered incident to the physician's services, by a nurse practitioner or a physician assistant.~~

~~(a) When a consultation and referral plan regarding supervised procedures is in place in both the physician's office and the non-physician's office, the Medicaid standard for personal supervision is the physician's availability by telephone.~~

~~(b) Any non-physician medical service provided in the course of treatment prescribed by a physician for any Medicaid client must meet the personal supervision requirement.~~

~~(2) A physician must be present for sufficient periods of time to provide the medical direction, services, consultation, supervision, and signing of the medical records, as specified in R156-12d-8(1).~~

~~(3) This rule does not apply to Rural Health Clinics.~~

R414-45-5. Service Coverage.

~~Services under this rule may include medical services provided personally by a physician or osteopath or those services rendered, incident to the physician's services, by a nurse practitioner or a physician assistant, under the personal supervision of the physician.~~

KEY: ~~medicaid~~

Date of Enactment or Last Substantive Amendment: 1994

Notice of Continuation: January 24, 2012

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 58-12; 58-31

Judicial Performance Evaluation Commission, Administration **R597-3** Judicial Performance Evaluations

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38438

FILED: 04/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to delete outmoded provisions, change one time frame, correct two misnumbered sections, and add a section addressing performance evaluations for judges who retire or resign in the course of an evaluation cycle.

SUMMARY OF THE RULE OR CHANGE: The changes: 1) delete references to transition cycles that have already occurred and are no longer applicable; 2) change one time frame from four to six months; 3) correct two misnumbered sections, and 4) add a section addressing how to deal with evaluations before and when a judge officially retires or resigns.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 78A-12-201 through 78A-12-206

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No impact because the amendment deletes provisions that are no longer applicable, and affects only timing and not how the commission spends its state-allocated budget.
- ◆ **LOCAL GOVERNMENTS:** No impact because the commission does not regulate local government or have any dealings with local government.
- ◆ **SMALL BUSINESSES:** No impact because the commission has no authority with respect to small businesses and no dealings of any kind with them.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No

other persons are affected by this amendment. No cost or savings are implicated because the amendment only has to do with timing of certain reports and events.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any affected persons. If there were, the commission would assume them.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendment has no fiscal impact on businesses.

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

JUDICIAL PERFORMANCE EVALUATION
 COMMISSION
 ADMINISTRATION
 ROOM B-330 SENATE BUILDING
 420 N STATE ST
 SALT LAKE CITY, UT 84114
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Joanne Slotnik by phone at 801-538-1652, by FAX at 801-538-1024, or by Internet E-mail at jslotnik@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/02/2014

THIS RULE MAY BECOME EFFECTIVE ON: 06/10/2014

AUTHORIZED BY: Anthony Schofield, Chair

R597. Judicial Performance Evaluation Commission, Administration.

R597-3. Judicial Performance Evaluations.

R597-3-1. Evaluation Cycles.

- (1) For judges not serving on the supreme court:
 - (a) The mid-term evaluation cycle. Except as provided in subsection (3) the mid-term evaluation cycle begins upon the appointment of the judge or on the first Monday in January following the retention election of the judge and ends 2 1/2 years later, on June 30th of the third year preceding the year of the judge's next retention election.
 - (b) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the judge's next retention election.
 - (2) For justices serving on the supreme court:
 - (a) The initial evaluation cycle. The initial evaluation cycle begins upon the appointment of the justice or on the first Monday in January following the retention election of the justice and ends 2 1/2 years later, on June 30th of the seventh year preceding the year of the justice's next retention election.
 - (b) The mid-term evaluation cycle. The mid-term evaluation cycle begins the day after the initial evaluation cycle is finished and ends four years later, on June 30th of the third year preceding the year of the justice's next retention election.
 - (c) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the justice's next retention election.
- ~~[(3) Transition Evaluation Cycles~~
- ~~(a) For judges not on the supreme court standing for retention election in 2014, the retention evaluation cycle shall begin on June 1, 2012 and end on June 30, 2013.~~
 - ~~(b) For supreme court justices standing for retention election in 2014, the retention evaluation cycle shall begin on June 1, 2012 and end on June 30, 2013.~~
 - ~~(c) For judges not on the supreme court standing for retention election in 2016:~~
 - ~~(i) Except as provided in subsection (3), the mid-term evaluation cycle shall begin on July 1, 2011 and end two years later on June 30, 2013.~~
 - ~~(ii) The retention evaluation cycle shall be as described in R597-3(1)(b), supra.~~
 - ~~(d) For supreme court justices standing for retention election in 2016:~~
 - ~~(i) The initial evaluation cycle shall be combined with the mid-term evaluation, beginning in 2009 and ending on June 30, 2013.~~
 - ~~(ii) The combined initial/mid-term evaluation cycle for surveys of attorneys shall begin in 2009 and end on June 30, 2013.~~

~~(iii) The combined initial/mid-term evaluation cycle for relevant pilot programs categories shall begin no later than July 1, 2010.~~

~~(iv) The retention evaluation cycle shall be as described in R597-3-1(2)(e).~~

] (4) Timing of evaluations within cycles. In order to allow judges time to incorporate feedback from midterm evaluations into their practices, no evaluations shall be conducted during the first ~~four~~ six months of the retention cycle.

R597-3-2. Survey.

(1) General provisions.

(a) All surveys shall be conducted according to the evaluation cycles described in R597-3-1, supra.

(b) The commission may provide a partial midterm evaluation to any judge whose appointment date precludes the collection of complete midterm evaluation data.

(c) The commission shall post on its website the survey questionnaires upon which the judge shall be evaluated at the beginning of the survey cycle.

(d) The commission may select retention survey questions from among the midterm survey questions.

(e) Periodically, reviews may be conducted to ensure compliance with administrative rules governing the survey process.

(f) The commission may consider narrative survey comments that cannot be reduced to a numerical score.

(2) Respondent Classifications

(a) Attorneys

(i) Identification of survey respondents. Within 10 business days of the end of the evaluation cycle, the clerk for the judge or the Administrative Office of the Courts shall identify as potential respondents all attorneys who have appeared before the judge who is

being evaluated at a minimum of one hearing or trial during the evaluation cycle. Attorneys who have been confirmed as judges during the evaluation cycle shall be excluded from the attorney pool.

(ii) Number of survey respondents.

(A) For each judge who is the subject of a survey, the surveyor shall identify the number of attorneys most likely to produce a response level yielding reliability at a 95% confidence level with a margin of error of +/- 5%.

(B) In the event that the attorney appearance list from the Administrative Office of the Courts contains an insufficient number of attorneys with one trial appearance or at least three total appearances before the evaluated judge to achieve the required confidence level, then the surveyor shall supplement the survey pool with other attorneys who have appeared before the judge during the evaluation cycle.

(iii) Sampling. The surveyor shall design the survey to comply with generally-accepted principles of surveying. All attorneys with one trial appearance or at least three total appearances before the evaluated judge shall be surveyed.

(iv) Distribution of surveys. Surveys shall be distributed by the third-party contractor engaged by the commission to conduct the survey. The contractor shall determine the maximum number of survey requests sent to a single attorney based on an analysis of the Administrative Office of the Courts appearance data at the time of the survey. In no event shall any attorney receive more than nine survey requests.

(b) Jurors

(i) Identification and number of survey respondents. All jurors who participate in deliberation shall be eligible to receive an online juror survey.

(ii) Distribution of surveys. Prior to the jury being dismissed, the bailiff or clerk in charge of the jury shall collect email addresses from all jurors. If email addresses are not available, street addresses shall be collected. The bailiff or clerk shall transmit all such addresses to the surveyor within 24 hours of collection. The surveyor shall administer the survey online and deliver survey results electronically to each judge. Paper surveys may be sent to those jurors who do not have access to email.

(c) Court Staff

(i) Definition of court staff who have worked with the judge. Court staff who have worked with the judge refers to employees of the judiciary who have regular contact with the judge as the judge performs judicial duties and also includes those who are not employed by the judiciary but who have ongoing administrative duties in the courtroom.

(ii) Identification of survey respondents. Court staff who have worked with the judge include, but are not limited to:

(A) judicial assistants;

(B) case managers;

(C) clerks of court;

(D) trial court executives;

(E) interpreters;

(F) bailiffs;

(G) law clerks;

(H) central staff attorneys;

(I) juvenile probation and intake officers;

(J) other courthouse staff, as appropriate;

(K) Administrative Office of the Courts staff.

([f]d) Juvenile Court Professionals

(i) Definition of juvenile court professional. A juvenile court professional is someone whose professional duties place that individual in court on a regular and continuing basis to provide substantive input to the court.

(ii) Identification of survey respondents. Juvenile court professionals shall include, where applicable:

(A) Division of Child and Family Services ("DCFS") child protection services workers;

(B) Division of Child and Family Services ("DCFS") case workers;

(C) Juvenile Justice Services ("JJS") Observation and Assessment Staff;

(D) Juvenile Justice Services ("JJS") case managers;

(E) Juvenile Justice Services ("JJS") secure care staff;

(F) Others who provide substantive professional services on a regular basis to the juvenile court.

(iii) Beginning with juvenile court judges standing for retention in 2014, juvenile court professionals shall be included as an additional survey respondent group for both the midterm and retention evaluation cycles.

(3) Anonymity and Confidentiality

(a) Definitions

(i) Anonymous.

(A) "Anonymous" means that the identity of the individual who authors any survey response, including comments, will be protected from disclosure.

(B) The independent contractor conducting the surveys shall provide to the commission all written comments from the surveys, redacted to remove any information that identifies the person commenting. The contractor shall also redact any information that discloses the identity of any crime victims referenced in a written comment.

(C) The submission of a survey form containing an anonymous narrative comment does not preclude any survey respondent from submitting a public comment in writing pursuant to the Judicial Performance Evaluation Commission Act.

(ii) Confidentiality: Confidentiality means information obtained from a survey respondent that the respondent may reasonably expect will not be disclosed other than as indicated in the survey instrument.

(iii) The raw form of survey results consists of [a] quantitative survey data that contributes to the minimum score on the judicial performance survey.

(iv) The summary form of survey results consists of quantitative survey data in aggregated form.

R597-3-3. Courtroom Observation.

(1) General Provisions.

(a) Courtroom observations shall be conducted according to the evaluation cycles described in R597-3-1(1) and (2), *supra*.

(b) The commission shall provide notice to each judge at the beginning of the survey cycle of the courtroom observation process and of the instrument to be used by the observers.

(c) Only the content analysis of the individual courtroom observation reports shall be included in the retention report for each judge.

(2) Courtroom Observers.

(a) Selection of Observers

(i) Courtroom observers shall be volunteers, recruited by the commission through public outreach and advertising.

(ii) Courtroom observers shall be selected by the commission staff, based on written applications and an interview process.

(b) Selection Criteria. Observers with a broad and varied range of life experiences shall be sought. The following persons shall be excluded from eligibility as courtroom observers:

(i) persons with a professional involvement with the state court system, the justice courts, or the judge;

(ii) persons with a fiduciary relationship with the judge;

(iii) persons within the third degree of relationship with a state or justice court judge (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);

(iv) persons lacking computer access or basic computer literacy skills;

(v) persons currently involved in litigation in state or justice courts;

(vi) convicted felons;

(vii) persons whose background or experience suggests they may have a bias that would prevent them from objectively serving in the program.

(c) Terms and Conditions of Service

(i) Courtroom observers shall serve at the will of the commission staff.

(ii) Courtroom observers shall commit to one one-year term of service.

(iii) Courtroom observers may serve up to three one-year terms, subject to annual renewal at the discretion of the commission.

(iv) Courtroom observers shall not disclose the content of their courtroom evaluations in any form or to any person except as designated by the commission.

(d) Training of Observers

(i) Courtroom observers must satisfactorily complete a training program developed by the commission before engaging in courtroom observation.

(ii) Elements of the training program shall include:

(A) Orientation and overview of the commission process and the courtroom observation program;

(B) Classroom training addressing each level of court;

(C) In-court group observations, with subsequent classroom discussions, for each level of court;

(D) Training on proper use of observation instrument;

(E) Training on confidentiality and non-disclosure issues;

(F) Such other periodic trainings as are necessary for effective observations.

(3) Courtroom Observation Program.

(a) Courtroom Requirements

(i) During each midterm and retention evaluation cycle, a minimum of four different observers shall observe each judge subject to that evaluation cycle.

(ii) Each observer shall observe each judge in person while the judge is in the courtroom and for a minimum of two hours while court is in session. The observations may be completed in one sitting or over several courtroom visits.

(iii) If a judge sits in more than one geographic location at the judge's appointed level or a justice court judge serves in more than one jurisdiction, the judge may be observed in any location or combination of locations in which the judge holds court.

(iv) When the observer completes the observation of a judge, the observer shall complete the observation instrument, which will be electronically transferred to the commission or the third party contractor for processing.

(b) Travel and Reimbursement

(i) All travel must be preapproved by the executive director.

(ii) All per diem and lodging will be reimbursed, when appropriate, in accordance with Utah state travel rules and regulations.

(iii) Travel reimbursement forms shall be submitted on a monthly basis or whenever the observer has accumulated a minimum of 200 miles of travel.

(iv) Travel may be reimbursed only after the observer has satisfactorily completed and successfully submitted the courtroom observation report for which the reimbursement is sought.

(v) Overnight lodging

(A) Overnight lodging is reimbursable when the courtroom is located over 100 miles from home base and court is scheduled to begin before 9:30 a.m., with any exceptions preapproved by commission staff.

(B) Multiple overnight lodging is reimbursable where the commission staff determines it is cost-effective to observe several courtrooms in a single trip.

(vi) Each courtroom observer must provide a social security number or tax identification number to the commission in order to process state reimbursement.

(4) Principles and Standards used to evaluate the behavior observed.

(a) Procedural fairness, which focuses on the treatment judges accord people in their courts, shall be used to evaluate the judicial behavior observed in the courtroom observation program.

(b) To assess a judge's conduct in court with respect to procedural fairness, observers shall respond in narrative form to the following principles and behavioral standards:

(i) Neutrality, including but not limited to:

(A) displaying fairness and impartiality toward all court participants;

(B) acting as a fair and principled decision maker who applies rules consistently across court participants and cases;

(C) explaining transparently and openly how rules are applied and how decisions are reached.

(D) listening carefully and impartially;

(ii) Respect, including but not limited to:

(A) demonstrating courtesy toward attorneys, court staff, and others in the court;

(B) treating all people with dignity;

(C) helping interested parties understand decisions and what the parties must do as a result;

(D) maintaining decorum in the courtroom.

(E) demonstrating adequate preparation to hear scheduled cases;

(F) acting in the interests of the parties, not out of demonstrated personal prejudices;

(G) managing the caseload efficiently and demonstrating awareness of the effect of delay on court participants;

(H) demonstrating interest in the needs, problems, and concerns of court participants.

(iii) Voice, including but not limited to:

(A) giving parties the opportunity, where appropriate, to give voice to their perspectives or situations and demonstrating that they have been heard;

(B) behaving in a manner that demonstrates full consideration of the case as presented through witnesses, arguments, pleadings, and other documents.

(C) attending, where appropriate, to the participants' comprehension of the proceedings.

(c) Courtroom observers may also be asked questions to help the commission assess the overall performance of the judge with respect to procedural fairness.

R597-3-4. Minimum Performance Standards.

(1) In addition to the minimum performance standards specified by statute or administrative rule, the judge shall:

(a) Demonstrate by a preponderance of the evidence, based on courtroom observations and relevant survey responses, that the judge's conduct in court promotes procedural fairness for court participants.

(b) Meet all performance standards established by the Judicial Council, including but not limited to:

(i) annual judicial education hourly requirement;

(ii) case-under-advisement standard; and

(iii) physical and mental competence to hold office.

(2) No later than October 1st of the year preceding each general election year, the Judicial Council shall certify to the commission whether each judge standing for retention election in the next general election has satisfied its performance standards.

R597-3-5. Public Comments.

(1) Persons desiring to comment about a particular judge with whom they have had first-hand experience may do so at any time, either by submitting such comments on the commission website or by mailing them to the executive director.

(2) In order for the commission to consider comments in making its retention recommendation on a particular judge, comments about that judge must be received no later than November 1st of the year preceding the election in which the judge's name appears on the ballot.

(3) Persons submitting comments pursuant to this section must include their full name, address, and telephone number with the submission.

(4) All comments must be based upon first-hand experience with the judge.

R597-3-6. Judicial Retirements and Resignations.

(1) For purposes of judicial performance evaluation, the commission shall evaluate each judge until the judge:

(a) provides written notice of resignation or retirement to the Governor;

(b) is removed from office;

(c) otherwise vacates the judicial office; or

(d) fails to properly file for retention.

(2) For judges who provide written notice of resignation or retirement after a retention evaluation has been conducted but before it is distributed, the retention evaluation shall be sent to the Judicial Council.

KEY: judicial performance evaluations, judges, evaluation cycles, surveys

Date of Enactment or Last Substantive Amendment: [~~May 14, 2012~~]2014

Notice of Continuation: February 17, 2014

Authorizing, and Implemented or Interpreted Law: 78A-12

Judicial Performance Evaluation Commission, Administration **R597-4** Justice Courts

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38440

FILED: 04/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish classifications and criteria for those classifications for the performance evaluation of all justice court judges.

SUMMARY OF THE RULE OR CHANGE: The rule establishes three classification categories for the purpose of evaluating justice court judges. It establishes the criteria that

will be used to place each judge in a category. It articulates standards for dealing with judges who serve in multiple jurisdictions and stand for retention election in multiple years.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 78A-12-201 through 78A-12-206

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule is promulgated to supplement the 2014 amendment to the Judicial Performance Evaluation Commission Act. The amendment was supported by a general fund annual appropriation of \$83,000 to the commission, which will cover the cost of all justice court evaluation.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost to local government. All costs of justice court evaluation will be borne by Judicial Performance Evaluation Commission (JPEC).

◆ **SMALL BUSINESSES:** No impact because the commission has no authority with respect to small businesses and no dealings of any kind with them.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Only justice court judges are affected by this rule, and there are no costs to them.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs. If there were, the Judicial Performance Evaluation Commission (JPEC) would assume them.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule will have no fiscal impact on businesses.

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

JUDICIAL PERFORMANCE EVALUATION
COMMISSION
ADMINISTRATION
ROOM B-330 SENATE BUILDING
420 N STATE ST
SALT LAKE CITY, UT 84114
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Joanne Slotnik by phone at 801-538-1652, by FAX at 801-538-1024, or by Internet E-mail at jslotnik@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/02/2014

THIS RULE MAY BECOME EFFECTIVE ON: 06/10/2014

AUTHORIZED BY: Anthony Schofield, Chair

R597. Judicial Performance Evaluation Commission, Administration.

R597-4. Justice Courts.

R597-4-1. Classification of Justice Court Judges.

(a) As used in this section, a qualified attorney is an attorney with at least one trial appearance or three total appearances before the evaluated judge during the evaluation cycle.

(b) Classification Determination. Each judge's classification shall be made by the commission following the judge's retention election, except that newly-appointed judges shall be classified upon appointment.

(c) Basis of classification.

(1) Classification shall be based on weighted caseload data and attorney appearance data provided by the Administrative Office of the Courts for the 12 months preceding the judge's most recent election or appointment.

(2) Notwithstanding section R597-4-1 (b) and (c)(1), for judges standing for retention in 2018, classification shall be based on weighted caseload data and attorney appearance data provided by the Administrative Office of the Courts for the calendar year 2013.

(3) If the data specified in subsection R597-4-1(c)(1) is unavailable or inapplicable, classification shall be based on the best data available from the Administrative Office of the Courts.

(d) Once classified, the judge retains the classification for the judge's term of office.

(e) Judicial classification categories. Justice court judges shall be classified into one of three categories for purposes of judicial evaluation, based on the timeframes specified in section R597-4-1(c).

(1) Full Evaluation Judges must have a total of 50 or more qualified attorneys in the combined jurisdictions in which they serve.

(2) Mid-level Evaluation Judges must have fewer than 50 qualified attorneys in the combined jurisdictions in which they serve and a weighted caseload, as defined by the Administrative Office of the Courts, of .2 or more in at least one jurisdiction.

(3) Basic Evaluation Judges must not qualify for full evaluation and must have a weighted caseload of less than .2 in every jurisdiction in which they serve.

R597-4-2. Justice Court Judges Serving in Multiple Courts.

(a) For judges serving in multiple courts:

(1) Once a judge is classified, the judge may be evaluated in any court in which the judge serves, regardless of retention year.

(2) Evaluation data gathered from different courts served by a single judge shall be aggregated into a single midterm evaluation and a single retention report.

(b) For judges serving in multiple courts who stand for retention election in multiple years:

(1) Each judge shall be assigned to a single controlling evaluation cycle.

(2) The retention evaluation report compiled pursuant to the controlling evaluation cycle shall be used for all other subsequent retention elections for which that judge stands within the controlling cycle.

KEY: justice court evaluations, justice court multiple jurisdictions, justice court classifications, justice court multiple election years

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implemented or Interpreted Law: 78A-12-201 through 78A-12-206

**Natural Resources, Parks and
Recreation
R651-205
Zoned Waters**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38444

FILED: 04/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Newton Reservoir is located on Clarkston Creek approximately two miles north of the city of Newton, Utah. The reservoir is owned by the Bureau of Reclamation and operated by the Newton Water Users Association. The

reservoir has become a popular alternative for water recreation and has posed questions of boating safety as the reservoir levels fluctuate. The 5,600 acre-feet reservoir has 288 surface acres at full pool and 139 surface acres at half pool. The Bureau of Reclamation and the Newton Water Users have requested as a boating safety precaution and to assist in shoreline erosion protection, to make the reservoir wakeless when it reaches the elevation of 4,761 which is approximately 50% full. This request was presented to the Boating Advisory Council on 07/17/2013, and the request was approved.

SUMMARY OF THE RULE OR CHANGE: Newton Reservoir is located on Clarkston Creek approximately two miles north of the city of Newton, Utah. The reservoir is owned by the Bureau of Reclamation and operated by the Newton Water Users Association. The reservoir has become a popular alternative for water recreation and has posed questions of boating safety as the reservoir levels fluctuate. The 5,600 acre-feet reservoir has 288 surface acres at full pool and 139 surface acres at half pool. The Bureau of Reclamation and the Newton Water Users have requested as a boating safety precaution and to assist in shoreline erosion protection, to make the reservoir wakeless when it reaches the elevation of 4,761 which is approximately 50% full. This request was presented to the Boating Advisory Council on 07/17/2013, and the request was approved.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 73-18-4(1)(c)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: No effect on state budget as this rule is the same as other regulated water rules and there is no anticipated cost to implement it.

♦ LOCAL GOVERNMENTS: No effect on local government as this rule is the same as other regulated water rules and there is no anticipated cost to implement it.

♦ SMALL BUSINESSES: No effect on small businesses as this rule is the same as other regulated water rules and there is no anticipated cost to implement it.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No effect as this rule is the same as other regulated water rules and there is no anticipated cost to implement it.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance to the rule should not impose any cost to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Should have little/no effect on business.

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

NATURAL RESOURCES
PARKS AND RECREATION
ROOM 116

1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/02/2014

THIS RULE MAY BECOME EFFECTIVE ON: 06/09/2014

AUTHORIZED BY: Fred Hayes, Director

R651. Natural Resources, Parks and Recreation.

R651-205. Zoned Waters.

R651-205-1. Obeying Zoned Waters.

The operator of a vessel shall obey zoned water requirements or restrictions.

R651-205-2. Deer Creek Reservoir.

Vessels and all other water activities are prohibited within 1500 feet of the dam. A vessel may not be operated at a speed greater than wakeless speed at any time in Wallsberg Bay.

R651-205-3. Green River.

The use of motors is prohibited between the Flaming Gorge Dam and the confluence with Red Creek.

R651-205-4. Stansbury Park Lake.

The use of vessels over 20 feet in length and motors, except electric trolling motors, is prohibited.

R651-205-5. Lower Provo River.

The section from where it enters into Utah Lake upstream to the gas pipeline is designated as a wakeless speed area, and the use of motors is prohibited upstream from this point.

R651-205-6. Decker Lake.

The use of motors is prohibited.

R651-205-7. Palisade Lake.

The use of motors, except electric trolling motors, is prohibited.

R651-205-8. Ivins Reservoir.

The use of motors whose manufacture listed horsepower is 10 horsepower or more is prohibited.

R651-205-9. Jordan River.

The use of motors is prohibited, except motors whose manufacture listed horsepower is less than 10 horsepower. Such motors are permitted on the Utah County portion of the river.

R651-205-10. Ken's Lake.

The use of motors, except electric trolling motors, is prohibited.

R651-205-11. Pineview Reservoir.

The use of motors, except electric motors, is prohibited in the designated area in the North Arm, North Geersten Bay and the Middle Fork of the Ogden River. Vessels are prohibited in the Middle Inlet and Cemetery Point picnic areas.

R651-205-12. Jordanelle Reservoir.

The use of motorboats or sailboats is prohibited in the designated area of Hailstone Beach.

R651-205-13. Little Dell Reservoir.

The use of motors is prohibited.

R651-205-14. Bear Lake.

The use of a vessel is prohibited from July 1 through Labor Day in the area adjacent to Cisco Beach starting at the entrance station and extending approximately 1/4 mile south, when this area is marked with appropriate buoys.

R651-205-15. Lost Creek Reservoir in Morgan County.

A vessel may not be operated at a speed greater than wakeless speed at any time.

R651-205-16. Huntington Reservoir.

The use of motors whose manufacturer listed horsepower is 10 horsepower or more is prohibited.

R651-205-17. Cutler Reservoir.

The use of motors whose manufactured listed horsepower is more than 35 horsepower is prohibited, and a vessel may not be

operated at a speed greater than wakeless speed at any time in the area south of the Benson Railroad Bridge. A vessel may not be operated at a speed greater than wakeless speed from the last Saturday in September through March 31st in the Bear River, east of the confluence with the reservoir.

R651-205-18. Newton Reservoir

A vessel may not be operated at a speed greater than wakeless speed when the reservoir is at or below 4,761 feet above sea level.

KEY: boating, parks

Date of Enactment or Last Substantive Amendment: [~~July 23, 2012~~], June 9, 2014

Notice of Continuation: January 26, 2011

Authorizing, and Implemented or Interpreted Law: 73-18-4(1)(c)

Natural Resources, Parks and Recreation **R651-213** Dealer Numbers and Registrations

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38443

FILED: 04/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Dealer numbers and registrations have been under the Division of Motor Vehicles acting as an agent for the Division of Parks and Recreation. Boat dealers would apply to the Division of Parks and Recreation for a dealer number and registration. The Boating Program coordinator would approve the appropriate number of registrations and forward the approved application to the Division of Motor Vehicle for the issuance of numbers and registration decals for demonstration use only. The Department of Motor Vehicles launched a new database for vehicle/vessel registrations statewide. It was reported to the Division of Parks and Recreation that the new database could not issue dealer numbers or registrations. The Division of Parks and Recreation is now responsible for issuing them. This rule change allows for that to take place.

SUMMARY OF THE RULE OR CHANGE: Dealer numbers and registrations have been under the Division of Motor Vehicles acting as an agent for the Division of Parks and Recreation. Boat dealers would apply to the Division of Parks and Recreation for a dealer number and registration. The Boating Program coordinator would approve the appropriate number of registrations and forward the approved application to the Division of Motor Vehicle for the issuance of numbers and registration decals for demonstration use only. The Department of Motor Vehicles launched a new database for

vehicle/vessel registrations statewide. It was reported to the Division of Parks and Recreation that the new database could not issue dealer numbers or registrations. The Division of Parks and Recreation is now responsible for issuing them. This rule change allows for that to take place.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 73-18-7(18)(c)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There is no anticipated costs or savings. This is a transfer of responsibilities from one state agency to another.

◆ LOCAL GOVERNMENTS: There is no effect on local government as this rule only applies to state government processes.

◆ SMALL BUSINESSES: There is no anticipated costs or savings to small businesses as this rule only changes which agency the businesses have to correspond with.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no effect to this group. This rule only changes which agency the businesses have to correspond with.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no anticipated compliance costs for affected persons as it is a transfer of state agency responsibilities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Should help business.

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

NATURAL RESOURCES
PARKS AND RECREATION
ROOM 116
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/02/2014

THIS RULE MAY BECOME EFFECTIVE ON: 06/09/2014

AUTHORIZED BY: Fred Hayes, Director

R651. Natural Resources, Parks and Recreation.
R651-213. Dealer Numbers and Registrations.
R651-213-1. Dealer Numbers and Registrations.

(1) Each person acting as a vessel dealer who has an established place of business and is engaged in the business of selling

motorboats and/or sailboats shall make application to the Division~~[of Motor Vehicles, who is acting as agent for the division]~~, to obtain dealer numbers and registration decals.

(2) The application shall contain the following information:

(a) the name of the business;

(b) the business address;

(c) the business owner's name (if the business is a corporation, the names of the principal officers of the corporation);

(d) the type of vessels offered for sale; and

(e) the manufacture line of vessels which the dealer holds franchise from the manufacturer to sell. Attached to the application shall be copies of the appropriate city, county, and state licenses required to do business in this state.

(3) Upon filing the application by the dealer, the Division~~[of Motor Vehicles]~~ may assign dealer numbers and registration decals to the dealer.

(4) Dealer numbers and registration decals are valid only when demonstrating, servicing or testing a motorboat or sailboat~~[to a prospective purchaser]~~ and the dealer or employee of the dealer is present during the demonstration.

(5) Every vessel dealer who obtains dealer numbers and registration decals is responsible to maintain the numbers and to control their use.

(6) Dealer numbers and registration decals are not valid on any vessel which is a rental or lease unit, or on a vessel which is not part of the dealer inventory and available for immediate sale.

(7) Dealer numbers and registration decals shall not be permanently attached to any vessel, but shall be mounted and displayed on a backing plate.

(8) If the Division~~[of Motor Vehicles]~~ has reasonable grounds to believe that a dealer has failed to comply with any of the above provisions, after notice to the dealer and a hearing, dealer numbers and registration decals may be suspended. Upon suspension, the dealer will surrender all of his dealer numbers and registration decals to the Division of Motor Vehicles within 15 days.

(9) The dealer registration fee shall be \$25 per year.

(10) The dealer registration decals and cards shall expire annually on the last day of April.

KEY: boating

Date of Enactment or Last Substantive Amendment: ~~[1987]~~June 9, 2014

Notice of Continuation: February 10, 2011

Authorizing, and Implemented or Interpreted Law: 73-18-7(18)(c)

Natural Resources, Parks and
Recreation

R651-409

Minimum Amounts of Liability
Insurance Coverage for an Organized
Practice or Sanctioned Race

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38441

FILED: 04/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Insurance standards are set by the Division of Risk Management. Those standards have changed so the Division is updating this rule to meet those standards. Also changes the rule to reflect a general statement so that the rule does not have to be changed each time the Division of Risk Management changes the standards.

SUMMARY OF THE RULE OR CHANGE: Insurance standards are set by the Division of Risk Management. Those standards have changed so the Division is updating this rule to meet those standards. Also changes the rule to reflect a general statement so that the rule does not have to be changed each time the Division of Risk Management changes the standards.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 79-4-501 and Subsection 41-22-29(1)(a) and Subsection 41-22-29(1)(b)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These rule changes do not have a cost associated with them. The only savings resulting from these rule changes will be in saved staff time when the minimum insurance amounts change since we are now using generic wording in the rules that will not need any changes in the future.

◆ **LOCAL GOVERNMENTS:** These rule changes do not have a cost associated with them. The only savings resulting from these rule changes will be in saved staff time when the minimum insurance amounts change since we are now using generic wording in the rules that will not need any changes in the future.

◆ **SMALL BUSINESSES:** These rule changes are not applicable to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rule changes will not affect people conducting business with the State of Utah. The insurance requirements are the same. The wording is changed to reflect current and future standards.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs associated with these rule changes. This is a wording change to meet the needs of current, as well as future changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Should have no impact on business.

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

NATURAL RESOURCES
PARKS AND RECREATION
ROOM 116
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/02/2014

THIS RULE MAY BECOME EFFECTIVE ON: 06/09/2014

AUTHORIZED BY: Fred Hayes, Director

R651. Natural Resources, Parks and Recreation.

R651-409. Minimum Amounts of Liability Insurance Coverage for an Organized Practice or Sanctioned Race.

R651-409-1. Insurance Policy Requirements Maintained.

The insurance specifications for Subsections 41-22-29(1)(a) and (b) for an organization conducting "organized practices" or "sanctioned races" shall be a continuously maintained policy fully covering insurable responsibilities. This insurance policy shall be obtained from a reliable insurance company that is authorized to do business in Utah and is at all times A.M. Best Company rated "A" or better with a financial size category of XII or larger. The policy shall include Comprehensive General Liability Insurance, including coverage for premises and operations, products, combined single limit per occurrence, ~~and an aggregate of not less than \$1,000,000 combined single limit per occurrence, and an aggregate of not less than \$1,000,000,~~ meeting the minimum insurance requirements set by the Utah Division of Risk Management, which shall be designated as applying only to the organization conducted under Subsections 41-22-29(1)(a) and (b) U.C.A. 1953. If this coverage is written on a claims-made basis, the certificate of insurance shall so indicate. The policy shall also contain an extended-reporting-period provision or similar "tail" provision that keeps full insurance in force for claims reported up to three (3) years after the organization ceases activities covered by the policy. The insurance policy shall be endorsed to add all persons providing services or who own lands affected by the activities conducted.

KEY: parks, liability, insurance

Date of Enactment or Last Substantive Amendment: ~~[July 4, 2000]~~ **June 9, 2014**

Notice of Continuation: June 29, 2010

Authorizing, and Implemented or Interpreted Law: 79-4-501; 41-22-29(1)(a); 41-22-29(1)(b)

**Natural Resources, Parks and
Recreation
R651-608
Events of Special Uses**

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38439
FILED: 04/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Insurance standards are set by the Division of Risk Management. Those standards have changed so the Division is updating this rule to meet those standards. Also changes the rule to reflect a general statement so that the rule does not have to be changed each time the Division of Risk Management changes the standards.

SUMMARY OF THE RULE OR CHANGE: Insurance standards are set by the Division of Risk Management. Those standards have changed so the Division is updating this rule to meet those standards. Also changes the rule to reflect a general statement so that the rule does not have to be changed each time the Division of Risk Management changes the standards.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 79-4-501

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: These rule changes do not have a cost associated with them. The only savings resulting from these rule changes will be in saved staff time when the minimum insurance amounts change since generic wording is being used in the rules that will not need any changes in the future.
- ◆ LOCAL GOVERNMENTS: These rule changes do not have a cost associated with them. The only savings resulting from these rule changes will be in saved staff time when the minimum insurance amounts change since generic wording is being used in the rules that will not need any changes in the future.
- ◆ SMALL BUSINESSES: These rule changes are not applicable to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: These rule changes will not affect people conducting business with the State of Utah. The insurance requirements will still be the same regardless of how the rules are worded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs associated with these rule changes. Changes to the wording are being made to meet future needs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Should be no impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
PARKS AND RECREATION
ROOM 116
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/02/2014

THIS RULE MAY BECOME EFFECTIVE ON: 06/09/2014

AUTHORIZED BY: Fred Hayes, Director

R651. Natural Resources, Parks and Recreation.

R651-608. Events of Special Uses.

R651-608-1. Permit Requirements.

A special assembly, exhibit, public speech, public demonstration, or special activity or use (in this Rule collectively called "event") shall be by special use permit ("permit").

(1) REQUESTS. The person or group desiring to conduct an event shall request a permit from the local park manager, region or the Division's main office at least 30 business days before the proposed event. Late requests may be accepted subject to the terms of subsection (4) below.

(2) REQUIREMENTS. The Division director or his designee shall have the discretion to grant or deny the request for permit. A permit may be granted only on the following requirements: (a) No event may substantially interrupt the safe and orderly operation of the park or facility; (b) No event may unduly interfere with proper fire, police, ambulance or other life-safety protection or service to areas where the activity will take place or areas contiguous thereto; (c) No event may be reasonably likely to cause injury to persons or property; (d) No event may involve pornographic or obscene materials or performances, or materials harmful to minors, as those terms are used in the Utah criminal code or in applicable local ordinances; and (f) liability insurance will be required, co-insuring the Division and meeting the minimum requirements set by the Utah Division of Risk Management.

(3) CONFLICTING REQUESTS.

(a) Considerations. When two or more persons, groups or organizations request to use a park or facility for events that conflict as to time, place, or purpose, the Division director or his designee shall evaluate: (i) the size, nature and purpose of each event; (ii) each event's historical or traditional use of the park or facility; (iii) the date

and time each conflicting request was received by the Division: (iv) whether an event would require Division support services; (v) possible alternative places or times for the conflicting events; and (vi) other factors that would resolve the conflicts, protect the public safety, health, and welfare, or assist the Division in regulating the time, place, and manner of the events.

(b) Disposition. After obtaining the relevant information and weighing the relevant considerations stated in the immediately preceding paragraph, the Division director or his designee shall resolve the conflict (i) by the parties' agreement to modify the requests to avoid conflicts and accommodate the public interest; or (ii) if no voluntary agreement is reached, by ordering the time, place, and manner for each requested event; or (iii) by exercising his discretion to deny one or more or all of the requests.

(4) LATE REQUESTS. When a request for permit is not timely made under subsection (1), the request shall state the grounds for its untimeliness. If the Division director or his designee determines that the untimeliness should be excused because of exigency, unexpected circumstances, or other reasons, the request shall be processed.

(5) APPEALS. There shall be no right to administrative appeal of the decision granting or denying a request for permit.

R651-608-2. Events Prohibited without Permit.

Any person, defined as "an individual, partnership, corporation, association, governmental entity or public or private organization of any character other than an agency", or agency shall not engage, conduct, or participate in a commercial activity or scheduled event on state park property without a Special Use Permit, Cooperative Agreement or Concession Contract.

KEY: parks

Date of Enactment or Last Substantive Amendment: ~~[May 9, 2011]~~ **June 9, 2014**

Notice of Continuation: June 27, 2013

Authorizing, and Implemented or Interpreted Law: 79-4-501

**Natural Resources, Parks and
Recreation
R651-619**

**Possession of Alcoholic Beverages or
Controlled Substances**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38442

FILED: 04/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Insurance standards are set by the Division of Risk Management. Those standards have changed so this rule is being updated to meet those standards. The rule is also being changed to reflect a general statement so that the

rule does not have to be changed each time the Division of Risk Management changes the standards.

SUMMARY OF THE RULE OR CHANGE: Insurance standards are set by the Division of Risk Management. Those standards have changed so this rule is being updated to meet those standards. The rule is also being changed to reflect a general statement so that the rule does not have to be changed each time the Division of Risk Management changes the standards.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 79-4-203 and Section 79-4-304

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** These rule changes do not have a cost associated with them. The only savings resulting from these rule changes will be in saved staff time when the minimum insurance amounts change since generic wording is now being used in the rule that will not need any changes in the future.

♦ **LOCAL GOVERNMENTS:** These rule changes do not have a cost associated with them. The only savings resulting from these rule changes will be in saved staff time when the minimum insurance amounts change since generic wording is now being used in the rule that will not need any changes in the future.

♦ **SMALL BUSINESSES:** These rule changes are not applicable to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rule changes will not affect people conducting business with the State of Utah. The insurance requirements are the same. The wording is changed to reflect current and future standards.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs associated with these rule changes. This is a wording change to meet the needs of current, as well as future changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There should be no impact on business.

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

NATURAL RESOURCES
PARKS AND RECREATION
ROOM 116
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/02/2014

THIS RULE MAY BECOME EFFECTIVE ON: 06/09/2014

AUTHORIZED BY: Fred Hayes, Director

R651. Natural Resources, Parks and Recreation.

R651-619. Possession of Alcoholic Beverages or Controlled Substances.

R651-619-1. Possession of Alcohol and Controlled Substances.

Offenses for the possession or use of any alcoholic beverage or controlled substance, shall be handled through Utah Code, Titles 32A, 41, 58, 73 and 76.

R651-619-2. Alcohol in Buildings.

There shall be no possession and/or consumption of any alcoholic beverage in the state park system visitor centers, museums and administrative offices, unless permission is expressly given, in writing, by the division director, or designee. Organizations dispensing such beverages are required to carry ~~one million dollars (\$1,000,000)~~ in insurance coverage meeting the minimum requirements set by the Utah Division of Risk Management.

KEY: parks

Date of Enactment or Last Substantive Amendment: ~~July 5, 2004~~ **June 9, 2014**

Notice of Continuation: June 27, 2013

Authorizing, and Implemented or Interpreted Law: 79-4-203; 79-4-304

**Workforce Services, Employment
Development**

R986-100-117

**Disqualification For Fraud (Intentional
Program Violations or IPVs)**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38429

FILED: 04/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to correct an error from an earlier filing.

SUMMARY OF THE RULE OR CHANGE: The Division mistakenly made effective a filing that was intended to lapse. A person is prohibited from accessing TANF funds at a strip club, bar, or place of gambling. While it will result in a loss of benefits, it does not meet the definition of an intentional

program violation and should never have been included in this section. It was moved to Section R986-100-118 where it belongs.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-3-302(5)(b)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This applies to federally-funded programs so there are no costs or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** This applies to federally-funded programs so there are no costs or savings to local governments.

♦ **SMALL BUSINESSES:** There will be no costs to small businesses to comply with these changes because this is a federally-funded program.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs to persons other than small businesses, businesses, or local government entities to comply with these changes because there are no costs or fees associated with these proposed changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for this change to anyone, including persons affected by this change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

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

WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY, UT 84111-2333

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/02/2014

THIS RULE MAY BECOME EFFECTIVE ON: 06/09/2014

AUTHORIZED BY: Jon Pierpont, Executive Director

R986. Workforce Services, Employment Development.

R986-100. Employment Support Programs.

R986-100-117. Disqualification For Fraud (Intentional Program Violations or IPV).

(1) Any person, including a child care provider, who is at fault in obtaining or attempting to obtain, an overpayment of assistance, as defined in Section 35A-3-602 from any of the programs listed in R986-100-102 or otherwise intentionally breaches any program rule either personally or through a representative is guilty of an intentional program violation (IPV). Acts which constitute an IPV include but are not limited to:

- (a) knowingly making false or misleading statements;
- (b) misrepresenting, concealing, or withholding facts or information;
- (c) posing as someone else;
- (d) knowingly taking[~~g~~, using] or accepting a public assistance payment the party knew or should have known they were not eligible to receive or not reporting the receipt of a public assistance payment the individual knew or should have known they were not eligible to receive;
- (e) not reporting a material change as required by and in accordance with these rules;
- (f) committing an act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity[~~g~~ or ~~accessing TANF public assistance funds through an electronic benefit transfer, including through an automated teller machine or point of sale device, in an establishment in the state that;~~
- ~~(i) exclusively or primarily sells intoxicating liquor;~~
- ~~(ii) allows gambling or gaming, or~~
- ~~(iii) provides adult-oriented entertainment where performers disrobe or perform unclad.~~

(2) An IPV occurs when a person commits any of the above acts in an attempt to obtain, maintain, increase or prevent the decrease or termination of any public assistance payment(s).

(3) When the Department determines or receives notice from a court that fraud or an IPV has occurred, the client is disqualified from receiving assistance of the same type for the time period as set forth in rule, statute or federal regulation.

(4) Disqualifications run concurrently.

(5) All income and assets of a person who has been disqualified from assistance for an IPV continue to be counted and affect the eligibility and assistance amount of the household assistance unit in which the person resides.

(6) If an individual has been disqualified in another state, the disqualification period for the IPV in that state will apply in Utah provided the act which resulted in the disqualification would have resulted in a disqualification had it occurred in Utah. If the individual has been disqualified in another state for an act which would have led to disqualification had it occurred in Utah and is found to have committed an IPV in Utah, the prior periods of disqualification in any other state count toward determining the length of disqualification in Utah.

(7) The client will be notified that a disqualification period has been determined. The disqualification period shall begin no later than the second month which follows the date the client receives written notice of the disqualification and continues in consecutive months until the disqualification period has expired.

(8) Nothing in these rules is intended to limit or prevent a criminal prosecution for fraud based on the same facts used to determine the IPV.

KEY: employment support procedures

Date of Enactment or Last Substantive Amendment: [March 1, 2014

Notice of Continuation: September 8, 2010

Authorizing, and Implemented or Interpreted Law: 35A-3-101 et seq.; 35A-3-301 et seq.; 35A-3-401 et seq.

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 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 June 2, 2014.

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 (example). Deletions made to the rule appear struck out with brackets surrounding them (~~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 may 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 August 29, 2014, an agency may notify the Division of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

The Changes in Proposed Rules Begin on the Following Page

Environmental Quality, Air Quality
R307-335
Degreasing and Solvent Cleaning
Operations

NOTICE OF CHANGE IN PROPOSED RULE
(THIRD)

DAR FILE NO.: 37829

FILED: 04/02/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: After the public comment period for the Change in Proposed Rule for Rule R307-335 (DAR No. 37829), the Division of Air Quality (DAQ) received a petition from IM Flash Technologies petitioning to amend Rule R307-335 by setting a VOC content limit of 6.7 pounds per gallon for semiconductor tools, maintenance, and equipment cleaning. This limit is necessary because they must use 100% isopropyl alcohol in their clean room operations in order to eliminate moisture on sensitive surfaces without leaving a residue and to ensure a quality product. DAQ staff evaluated this request and have found it to be reasonable, as the 6.7 pound per gallon proposed limit is consistent with other air district rules and the use of 100% isopropyl alcohol is the industry standard for this type of cleaning.

SUMMARY OF THE RULE OR CHANGE: Table 1 is amended by adding a new category for semiconductor tools maintenance and equipment cleaning with a VOC-content limit for it of 6.7 pounds per gallon. (DAR NOTE: This is the third change in proposed rule (CPR) for Rule R307-335. The original proposed amendment upon which the first CPR was based was published in the August 1, 2013, issue of the Utah State Bulletin, on page 23. The first CPR upon which the second CPR was based was published in the December 1, 2013, issue of the Utah State Bulletin, on page 54. The second CPR upon which this third CPR is based was published in the April 1, 2014, issue of the Utah State Bulletin, on page 85. 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 first CPR, the second CPR, the third CPR, and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Because there are no new requirements for the state, there are no anticipated costs or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Because there are no new requirements to local government, there are no anticipated costs or savings.

◆ **SMALL BUSINESSES:** This amendment allows for the continued use of solvent cleaning processes currently used by industry; therefore, there is no anticipated costs or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because this amendment only affects those businesses that use solvents for semiconductor tools, maintenance, and equipment cleaning, there are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: While the amendment affects what kinds of solvents affected persons may use, it does not affect the cost of compliance because it permits the continued use of an industry standard.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment should not have a fiscal impact on businesses. It sets an industry specific VOC content limit for semiconductor tools, maintenance and cleaning operations that will allow industry to use 100% isopropyl alcohol.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

THIS RULE MAY BECOME EFFECTIVE ON: 06/02/2014

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.

R307-335. Degreasing and Solvent Cleaning Operations.

R307-335-1. Purpose.

The purpose of this rule is to limit volatile organic compound (VOC) emission from degreasing and solvent cleaning operations.

R307-335-2. Applicability.

R307-335 applies to all degreasing or solvent cleaning operations that use VOCs and that are located in PM10 and PM2.5 nonattainment and maintenance plan areas as defined in 40 CFR 81.345 (July 1, 2011).

R307-335-3. Definitions.

The following additional definitions apply to R307-335:

"Batch open top vapor degreasing" means the batch process of cleaning and removing grease and soils from metal surfaces by condensing hot solvent vapor on the colder metal parts.

"Cold cleaning" means the batch process of cleaning and removing soils from metal surfaces by spraying, brushing, flushing or immersing while maintaining the solvent below its boiling point.

"Conveyorized degreasing" means the continuous process of cleaning and removing greases and soils from metal surfaces by using either cold or vaporized solvents.

"Department of Defense military technical data" means a specification that specifies design requirements, such as materials to be used, how a requirement is to be achieved, or how an item is to be fabricated or constructed.

"Freeboard ratio" means the freeboard height (distance between solvent line and top of container) divided by the width of the degreaser.

"Industrial solvent cleaning" means operations performed using a liquid that contains any VOC, or combination of VOCs, which is used to clean parts, tools, machinery, equipment and work areas. Cleaning operations include, but are not limited to, spraying, wiping, flushing, and purging.

"Open top vapor degreaser" means the batch process of cleaning and removing soils from metal surfaces by condensing low solvent vapor on the colder metal parts.

"Separation operation" means any process that separates a mixture of compounds and solvents into two or more components. Specific mechanisms include extraction, centrifugation, filtration, and crystallization.

"Solvent metal cleaning" means the process of cleaning soils from metal surfaces by cold cleaning, open top vapor degreasers, or conveyorized degreasing.

R307-335-4. Cold Cleaning Facilities.

No owner or operator shall operate a degreasing or solvent cleaning operation unless conditions in R307-335-4(1) through (7) are met.

(1) A cover shall be installed which shall remain closed except during actual loading, unloading or handling of parts in cleaner. The cover shall be designed so that it can be easily operated with one hand if:

(a) The volatility of the solvent is greater than 2 kPa (15 mm Hg or 0.3 psi) measured at 38 degrees C (100 degrees F),

(b) The solvent is agitated, or

(c) The solvent is heated.

(2) An internal draining rack for cleaned parts shall be installed on which parts shall be drained until all dripping ceases. If the volatility of the solvent is greater than 4.3 kPa (32 mm Hg at 38 degrees C (100 degrees F)), the drainage facility must be internal, so that parts are enclosed under the cover while draining. The drainage facility may be external for applications where an internal type cannot fit into the cleaning system.

(3) Waste or used solvent shall be stored in covered containers.

(4) Tanks, containers and all associated equipment shall be maintained in good operating condition, and leaks shall be repaired immediately or the degreaser shall be shutdown.

(5) Written procedures for the operation and maintenance of the degreasing or solvent cleaning equipment shall be permanently posted in an accessible and conspicuous location near the equipment.

(6) If the solvent volatility is greater than 4.3 kPa (33 mm Hg or 0.6 psi) measured at 38 degrees C (100 degrees F), or if solvent is heated above 50 degrees C (120 degrees F), then one of the following control devices shall be used:

(a) Freeboard that gives a freeboard ratio greater than 0.7;

(b) Water cover if the solvent is insoluble in and heavier than water); or

(c) Other systems of equivalent control, such as a refrigerated chiller or carbon adsorption.

(7) If used, the solvent spray shall be a solid fluid stream at a pressure that does not cause excessive splashing and may not be a fine, atomized or shower type spray.

R307-335-5. Open Top Vapor Degreasers.

Owners or operators of open top vapor degreasers shall, in addition to meeting the requirements of R307-335-4(3), (4) and (5),

(1) Equip the vapor degreaser with a cover that can be opened and closed without disturbing the vapor zone. The cover shall be closed except when processing work loads through the degreaser;

(2) Install one of the following control devices:

(a) Equipment necessary to sustain:

(i) A freeboard ratio greater than or equal to 0.75, and

(ii) A powered cover if the degreaser opening is greater than 1 square meter (10.8 square feet),

(b) Refrigerated chiller,

(c) Enclosed design (cover or door opens only when the dry part is actually entering or exiting the degreaser),

(d) Carbon adsorption system, with ventilation greater than or equal to 15 cubic meters per minute per square meter (50 cubic feet per minute per square foot) of air/vapor area when cover is open and exhausting less than 25 parts per million of solvent averaged over one complete adsorption cycle;

(3) Minimize solvent carryout by:

(a) Racking parts to allow complete drainage,

(b) Moving parts in and out of the degreaser at less than 3.3 meters per minute (11 feet per minute),

(c) Holding the parts in the vapor zone at least 30 seconds or until condensation ceases,

(d) Tipping out any pool of solvent on the cleaned parts before removal, and

(e) Allowing the parts to dry within the degreaser for at least 15 seconds or until visibly dry.

(4) Spray parts only in or below the vapor level;

(5) Not use ventilation fans near the degreaser opening, nor provide exhaust ventilation exceeding 20 cubic meters per minute per square meter (65 cubic feet per minute per square foot) in degreaser open area, unless necessary to meet state and federal occupational, health, and safety requirements.

(6) Not degrease porous or absorbent materials, such as cloth, leather, wood or rope;

(7) Not allow work loads to occupy more than half of the degreaser's open top area;

(8) Ensure that solvent is not visually detectable in water exiting the water separator;

(9) Install safety switches on the following:

(a) Condenser flow switch and thermostat (shuts off sump heat if condenser coolant is either not circulating or too warm); and

(b) Spray switch (shuts off spray pump if the vapor level drops excessively, i.e., greater than 10 cm (4 inches).

(10) Open top vapor degreasers with an open area smaller than one square meter (10.8 square feet) are exempt from R307-335-5(2)(b) and (d).

R307-335-6. Conveyorized Degreasers.

Owners and operators of conveyorized degreasers shall, in addition to meeting the requirements of R307-335-4(3), (4) and (5) and R307-335-5(5):

(1) Install one of the following control devices for conveyorized degreasers with an air/vapor interface equal to or greater than two square meters (21.5 square feet):

(a) Refrigerated chiller; or

(b) Carbon adsorption system, with ventilation greater than or equal to 15 cubic meters per minute per square meter (50 cubic feet per minute per square foot) of air/vapor area when downtime covers are open, and exhausting less than 25 parts per million of solvent, by volume, averaged over a complete adsorption cycle.

(2) Equip the cleaner with equipment, such as a drying tunnel or rotating (tumbling) basket, sufficient to prevent cleaned parts from carrying out solvent liquid or vapor.

(3) Provide downtime covers for closing off the entrance and exit during shutdown hours. Ensure that down-time cover is placed over entrances and exits of conveyorized degreasers immediately after the conveyor and exhaust are shut down and is removed just before they are started up.

(4) Minimize carryout emissions by racking parts for best drainage and maintaining the vertical conveyor speed at less than 3.3 meters per minute (11 feet per minute).

(5) Minimize openings: Entrances and exits should silhouette work loads so that the average clearance (between parts and the edge of the degreaser opening) is either less than 10 cm (4 inches) or less than 10% of the width of the opening.

(6) Install safety switches on the following:

(a) Condenser flow switch and thermostat - shuts off sump heat if coolant is either not circulating or too warm;

(b) Spray switch - shuts off spray pump or conveyor if the vapor level drops excessively, i.e., greater than 10 cm or (4 inches); and

(c) Vapor level control thermostat - shuts off sump level if vapor level rises too high.

(7) Ensure that solvent is not visibly detectable in the water exiting the water separator.

R307-335-7. Industrial Solvent Cleaning.

(1) Exemptions. The requirements of R307-335-7 do not apply to aerospace, wood furniture, shipbuilding and repair, flat wood paneling, large appliance, metal furniture, paper film and foil, plastic parts, miscellaneous metal parts coatings and light autobody and truck assembly coatings, flexible packaging, lithographic and letterpress printing materials, fiberglass boat manufacturing materials, and operations that are exclusively covered by Department of Defense

military technical data and performed by a Department of Defense contractor and/or on site at installations owned and/or operated by the United States Armed Forces.

(2) Operators of industrial solvent cleaning that emit 15 pounds of VOCs or more per day from industrial solvent cleaning operations, shall reduce VOC emissions from the use, handling, storage, and disposal of cleaning solvents and shop towels by implementing the following work practices:

(a) Covering open containers; and

(b) Storing used applicators and shop towels in closed fire proof containers, and

(c) Limiting VOC emissions by either:

(i) Using solvents with a VOC limit in Table 1; or

(ii) Installing an emission control system designed to have an overall control efficiency of at least 85%.

TABLE 1
Solvent Cleaning VOC Limits

Solvent Cleaning Category	VOC Limit (lb/gal)
Coatings, adhesives and ink manufacturing	4.2
Electronic parts and components	4.2
General miscellaneous cleaning	2.5
Medical devices and pharmaceutical	
Tools, equipment and machinery	6.7
General surface cleaning	5.0
Screening printing operations	4.2
Semiconductor tools, maintenance and equipment	
Cleaning	6.7

R307-335-8. Emission Control Systems.

(1) The owner or operator of a control device shall maintain certification from the manufacturer that the emission control system will attain at least 85% overall efficiency performance and make the certification available to the director upon request.

(2) Emission control systems shall be operated and maintained in accordance with the manufacturer recommendations to maintain at least 85% overall efficiency performance. The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.

R307-335-9. Recordkeeping.

The owner or operator shall maintain, for a minimum of two years, records of the solvent VOC content applied and the physical characteristics that demonstrate compliance with R307-335.

R307-335-10. Compliance Schedule.

(1) All sources shall be in compliance with R307-335-7 by ~~July~~ August 1, 2014.

KEY: air pollution, degreasing, solvent cleaning

Date of Enactment or Last Substantive Amendment: 2014

Notice of Continuation: February 1, 2012

Authorizing, and Implemented or Interpreted Law: 19-2-104(1)

(a)

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 help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <http://www.rules.utah.gov/publicat/code.htm>. The rule text may also be inspected at the agency or the Division of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

Administrative Services, Facilities Construction and Management

R23-3

Planning and Programming for Capital Projects

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38405

FILED: 04/03/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Board's authority to administer the planning process for state facilities is contained in Section 63A-5-103. The statutes governing the Planning Fund are contained in Section 63A-5-211. The Board's authority to make rules for its duties and those of the Division is set forth in Subsection 63A-5-103(1).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received either supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule needs to be continued because it establishes policies and procedures for the authorization, funding, and development of programs for capital

development and capital improvement projects and the use and administration of the Planning Fund.

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
ROOM 4110 STATE OFFICE BLDG
450 N STATE ST

SALT LAKE CITY, UT 84114-1201

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov

♦ Cecilia Niederhauser by phone at 801-538-3261, by FAX at 801-538-9694, or by Internet E-mail at cniederhauser@utah.gov

♦ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov

AUTHORIZED BY: Joshua Haines, Director

EFFECTIVE: 04/03/2014

Administrative Services, Facilities Construction and Management

R23-29

Across the Board Delegation

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38404

FILED: 04/03/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Section 63A-5-103, which directs the Building Board to make rules necessary for the discharge of its duties and the duties of the Division of Facilities Construction and Management.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received either supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule needs to be continued because it provides the procedures for delegation of construction projects to the University of Utah and Utah State University.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 FACILITIES CONSTRUCTION AND MANAGEMENT
 ROOM 4110 STATE OFFICE BLDG
 450 N STATE ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
 ♦ Cecilia Niederhauser by phone at 801-538-3261, by FAX at 801-538-9694, or by Internet E-mail at cniederhauser@utah.gov
 ♦ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cglead@utah.gov
 ♦ Priscilla Anderson by phone at 801-538-9595, by FAX at 801-538-3378, or by Internet E-mail at phanderson@utah.gov

AUTHORIZED BY: Joshua Haines, Director

EFFECTIVE: 04/03/2014

**Commerce, Occupational and
 Professional Licensing
 R156-60
 Mental Health Professional Practice Act
 Rule**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38421
 FILED: 04/08/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 60, Part 1, provides general provisions that apply to professions that can practice mental health therapy in their scope of practice. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. This rule was enacted to clarify the provisions of Title 58, Chapter 60, Part 1, with respect to the professions that can practice mental health therapy in their scope of practice as outlined in this part.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the rule was last reviewed in 2009, it has been amended two times. However, the Division has received no written comments with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 60, Part 1. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions and ethical standards relating to the various professions governed by Part 1.

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

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 04/08/2014

Education, Administration
R277-102
Adjudicative Proceedings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 38408
FILED: 04/04/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(3) allows the Utah State Board of Education (Board) to adopt rules in accordance with its responsibilities and Section 63G-4-203 directs agencies to make rules regarding adjudicative proceedings following the general designation of Board hearings as informal.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides procedures for adjudicative proceedings conducted before the Board. Therefore, this rule should be continued.

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

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

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

EFFECTIVE: 04/04/2014

Education, Administration
R277-105
Recognizing Constitutional Freedoms
in the Schools

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 38409
FILED: 04/04/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it outlines criteria to assist public school officials in protecting and accommodating individual student rights in the operation of Utah's public schools. Therefore, this rule should be continued.

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

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

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

EFFECTIVE: 04/04/2014

Education, Administration

R277-601

Standards for Utah School Buses and Operations

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38410
FILED: 04/04/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-402(1)(d) directs the Utah State Board of Education (Board) to adopt rules for state-reimbursed bus routes, bus safety, and operational requirements and other transportation needs, and Subsection 53A-1-401(3) allows the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides standards for state student transportation funds, school buses, and school bus drivers under the control of school districts. Therefore, this rule should be continued.

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

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

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

EFFECTIVE: 04/04/2014

Education, Administration

R277-725

Electronic High School

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38411
FILED: 04/04/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(3) allows the Utah State Board of Education (Board) to adopt rules in accordance with its responsibilities and Section 53A-17a-131.15 directs the Board to have a rule for distribution of funds for the Electronic High School Program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides procedures for distribution of funds and coordination of the Electronic High School Program. Therefore, this rule should be continued.

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

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

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

EFFECTIVE: 04/04/2014

Education, Administration

R277-916Career and Technical Education
Introduction and Work-Based Learning
Programs**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**DAR FILE NO.: 38412
FILED: 04/04/2014**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(3) allows the Utah State Board of Education (Board) to adopt rules in accordance with its responsibilities and Section 53A-15-202 allows the Board to establish minimum standards for career and technical education programs in the public education system.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides standards and procedures for local education agencies to qualify for Career and Technical Education Introduction and Work-Based Learning Programs funds administered by the Board. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

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

EFFECTIVE: 04/04/2014

Health, Health Care Financing,
Coverage and Reimbursement Policy**R414-401**

Nursing Care Facility Assessment

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**DAR FILE NO.: 38418
FILED: 04/07/2014**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 35a, requires the Department to impose an assessment on nursing care facilities to ensure patient care and quality services. In addition, Section 26-1-30 requires the Department to adopt rules for the enforcement and administration of the nursing facility assessment.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it implements the nursing facility assessment, which fosters quality and cost effective services for Medicaid recipients who reside in nursing facilities.

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

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 04/07/2014

Health, Family Health and Preparedness, Licensing
R432-14
Birthing Center Construction Rule

Health, Family Health and Preparedness, Licensing
R432-270
Assisted Living Facilities

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 38422
FILED: 04/10/2014

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 38423
FILED: 04/10/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
♦ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
♦ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 04/10/2014

EFFECTIVE: 04/10/2014

Health, Disease Control and
Prevention, Medical Examiner

R448-10

Unattended Death and Reporting
Requirements

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 38419
FILED: 04/07/2014

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 26-1-5. It clarifies the meaning of "unattended" under the provisions of Subsection 26-4-2(8) and the requirements of Section 26-4-8.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received during the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule clarifies the definition of what is an "unattended death". Its provisions help assure that deaths which can be appropriately certified by a treating health practitioner do not unnecessarily come to the Office of the Medical Examiner for investigation, examination, and certification. Therefore, this rule should be continued.

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

HEALTH
DISEASE CONTROL AND PREVENTION,
MEDICAL EXAMINER
48 N MEDICAL DR
SALT LAKE CITY, UT 84113-1105
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Todd Grey by phone at 801-584-8410, by FAX at 801-584-8435, or by Internet E-mail at toddgrey@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 04/07/2014

Health, Disease Control and
Prevention, Medical Examiner

R448-20

Access to Medical Examiner Reports

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 38420
FILED: 04/07/2014

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The rule is authorized by Section 26-1-5. It establishes who may, under the provisions of Subsection 26-4-17(3), access medical examiner reports generated in the investigation of a death.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received during the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule clarifies the definition of "next-of kin" and "legal representative" for the purposes of who may obtain records from the Office of the Medical Examiner. Therefore, this rule should be continued.

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

HEALTH
DISEASE CONTROL AND PREVENTION,
MEDICAL EXAMINER
48 N MEDICAL DR
SALT LAKE CITY, UT 84113-1105
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Todd Grey by phone at 801-584-8410, by FAX at 801-584-8435, or by Internet E-mail at toddgrey@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 04/07/2014

Insurance, Administration
R590-93
Replacement of Life Insurance and
Annuities

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION
 DAR FILE NO.: 38413
 FILED: 04/07/2014

NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201 authorizes the commissioner to write rules to implement the provisions of Title 31A. Subsection 31A-23a-402(8) allows the commissioner to define methods of competition and acts and practices found to be unfair or deceptive. Section 31A-22-429 gives the commissioner authority to require statements regarding existing insurance and to adopt the notice regarding replacement.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This rule went through the rulemaking process twice in the past five years, DAR No. 37515 and No. 34026. No comments were received requesting or in regard to the the first set of changes made under DAR No. 37515. Members of the life insurance industry requested a change to the trigger to complete the replacement notice. Changes were proposed to the rule, two comments were received during the first comment period, additional changes were proposed, a second comment period provided. No written comments were received at that time or since.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides consumer protection and sets minimum standards to be followed by producers and insurers during the replacement of life insurance policies and annuity contracts. It informs the consumer, who is contemplating replacing existing coverage, to think about the benefits that the old policy may provide over those in a new policy. Therefore, this rule should be continued.

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

ROOM 3110 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Todd Kiser, Commissioner

EFFECTIVE: 04/07/2014

Insurance, Administration
R590-98
Unfair Practice in Payment of Life
Insurance and Annuity Policy Values

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION
 DAR FILE NO.: 38414
 FILED: 04/07/2014

NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201 allows the commissioner to write rules to implement the provisions of Title 31A. Subsection 31A-23a-402(8) allows the commissioner to define methods of competition and acts and practices found to be unfair or deceptive. This rule requires prompt response by a life insurance and annuity company to a policyholder's request for policy values. It limits the exercise of the statutory deferral option to situations in which the financial stability of the insurer is at risk.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received any written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to protect policyholders who request payment of life and annuity policy values. Therefore, this rule should be continued. Some insurers think they can delay payment up to six months. However, such a delay must first be approved by the commissioner.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Todd Kiser, Commissioner

EFFECTIVE: 04/07/2014

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Todd Kiser, Commissioner

EFFECTIVE: 04/07/2014

Insurance, Administration
R590-166

Home Protection Service Contract Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 38417
FILED: 04/07/2014

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) authorizes the commissioner to adopt rules to implement provisions of the insurance code, Title 31A. The purpose of the rule is to establish certain exemptions from the requirements of Chapter 6a, Service Contracts.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Within the past five years, the department has not received any written request to change this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule was intended to be a temporary fix to a problem facing home warranty companies having problems finding reimbursement insurance. The rule was intended to be a stop-gap measure to allow them to provide "alternative security" for the warranties they issue until the reimbursement insurance market could be developed. To date it still has not been developed making it necessary to keep this rule in effect. Therefore, this rule should be continued.

Insurance, Administration
R590-190

Unfair Property, Liability and Title
Claims Settlement Practices Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 38416
FILED: 04/07/2014

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The rule is authorized specifically or generally by the following code references: Subsections 31A-2-201(1) and 31A-2-201(3) empowering the commissioner to enforce and write rules to implement the provisions of Title 31A. Subsection 31A-2-202(4) authorizes rules requiring timely response to written inquiries from the commissioner. Subsection 31A-26-301(1) allows the commissioner to write rules to provide for the timely payment of claims. Section 31A-26-301 and Subsection 31A-21-312(5) authorize rules dealing with proof and notice of loss-time limitations and under-insurance policies. Subsection 31A-26-303(4) provides the authority to write rules defining unfair claims settlement practices or acts.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received by the department in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE

RULE, IF ANY: This rule is a critical guide for the insurance industry and their insureds to use in claim settlement and complaint process for automobile, homeowners, and title policies. Therefore, this rule should be continued.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Todd Kiser, Commissioner

EFFECTIVE: 04/07/2014

**Insurance, Administration
R590-191
Unfair Life Insurance Claims
Settlement Practices Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 38415
FILED: 04/07/2014

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsections 31A-2-201(1) and 31A-2-201(3)(a) empower the commissioner to administer and make rules to implement the provisions of Title 31A. Further authority to provide for timely payment of claims is provided by Subsection 31A-26-301(1). Matters relating to proof and notice of loss are promulgated pursuant to Section 31A-26-301 and Subsection 31A-21-312(5). Authority to promulgate rules defining unfair claims settlement practices or acts is provided in Subsection 31A-26-303(4). The authority to require a timely response to the Insurance Department is provided by Subsection 31A-2-202(4). Authority to require payment of interest on death proceeds is provided in Section 31A-22-428.

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 regarding this rule in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is a critical guide for the insurance industry and their insureds to use in the claim settlement and complaint process for life insurance policies. Therefore, this rule should be continued.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Todd Kiser, Commissioner

EFFECTIVE: 04/07/2014

**Natural Resources, Wildlife Resources
R657-62
Drawing Application Procedures**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 38427
FILED: 04/14/2014

**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: Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for drawing applications and procedures. Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the respective guidebooks of the Wildlife Board.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments supporting or opposing Rule R657-62 were received since 04/21/2009 when the rule was created.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-62 provides the authority, standards, and procedures for accepting applications for wildlife drawings. Continuation of this rule is necessary for continued success with the annual drawings.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: Gregory Sheehan, Director

EFFECTIVE: 04/14/2014

**Public Safety, Driver License
R708-22
Commercial Driver License
Administrative Proceedings**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 38406
FILED: 04/03/2014

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Division is authorized under Section 53-3-104 to create rules to consider the record of a licensee upon an application for renewal of a license or at other appropriate times.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: As authorized under Section 53-3-14 and as specified in Section 53-3-221, the Division is obligated to afford hearings to those whose privilege has been withdrawn.

This rule specifically pertains to commercial motor vehicle operators licensed in Utah or who have committed a violation in Utah which would require action. Therefore, this rule should be continued.

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

PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY, UT 84119-5595
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jill Laws by phone at 801-964-4469, by FAX at 801-964-4482, or by Internet E-mail at jlaws@utah.gov

AUTHORIZED BY: Nannette Rolfe, Director

EFFECTIVE: 04/03/2014

**Public Safety, Driver License
R708-24
Renewal of a Commercial Driver
License (CDL)**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 38407
FILED: 04/03/2014

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Division is authorized under Section 53-3-104 to create rules related to licensing of applicants.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Division continues to license commercial motor vehicle operators in accordance with this rule, Utah statutes, and federal regulations. Therefore, this rule should be continued.

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

PUBLIC SAFETY
 DRIVER LICENSE
 CALVIN L RAMPTON COMPLEX
 4501 S 2700 W 3RD FL
 SALT LAKE CITY, UT 84119-5595
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Jill Laws by phone at 801-964-4469, by FAX at 801-964-4482, or by Internet E-mail at jlaws@utah.gov

AUTHORIZED BY: Nannette Rolfe, Director

EFFECTIVE: 04/03/2014

Technology Services, Administration
R895-7
Acceptable Use of Information
Technology Resources

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38428
 FILED: 04/15/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is issued by the Chief Information Officer under the authority of Section 63F-1-206 of the Utah Technology Governance Act, Utah Code, and in accordance with Section 63G-3-201 of the Utah Rulemaking

Act, Utah Code. Information technology resources are provided to state employees to assist in the efficient day-to-day operations of state agencies. Employees shall use information technology resources in compliance with this rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received during and since the last five-year review of the rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Information technology resources are provided to state employees to assist in the efficient day-to-day operations of state agencies. Employees shall use information technology resources to maintain the security of the state's data. Therefore, this rule should be continued.

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

TECHNOLOGY SERVICES
 ADMINISTRATION
 ROOM 6000 STATE OFFICE BUILDING
 450 N STATE ST
 SALT LAKE CITY, UT 84114
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Stephanie Weiss by phone at 801-538-3284, by FAX at 801-538-3622, or by Internet E-mail at stweiss@utah.gov

AUTHORIZED BY: Mark VanOrden, Executive Director and CIO

EFFECTIVE: 04/15/2014

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 administrative 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 make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the 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.

Agencies have notified the Division of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal & Reenact
REP = Repeal

Commerce

Occupational and Professional Licensing
No. 38279 (AMD): R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rule
Published: 03/01/2014
Effective: 04/08/2014

Education

Administration
No. 38299 (AMD): R277-117. Utah State Board of Education Protected Documents
Published: 03/01/2014
Effective: 04/07/2014

No. 38300 (AMD): R277-400. School Emergency Response Plans
Published: 03/01/2014
Effective: 04/07/2014

No. 38301 (AMD): R277-495. Required Policies for Electronic Devices in Public Schools
Published: 03/01/2014
Effective: 04/07/2014

No. 38302 (AMD): R277-526. Paraeducator to Teacher Scholarship Program
Published: 03/01/2014
Effective: 04/07/2014

Environmental Quality

Radiation Control
No. 38076 (AMD): R313-14. Violations and Escalated Enforcement
Published: 11/15/2013
Effective: 04/03/2014

No. 38076 (CPR): R313-14. Violations and Escalated Enforcement
Published: 02/15/2014
Effective: 04/03/2014

No. 38082 (AMD): R313-25. License Requirements for Land Disposal of Radioactive Waste - General Provisions
Published: 11/15/2013
Effective: 04/03/2014

No. 38082 (CPR): R313-25. License Requirements for Land Disposal of Radioactive Waste - General Provisions
Published: 02/15/2014
Effective: 04/03/2014

No. 38147 (AMD): R313-38-3. Clarifications or Exceptions
Published: 12/01/2013
Effective: 04/07/2014

No. 38147 (CPR): R313-38-3. Clarifications or Exceptions
Published: 03/01/2014
Effective: 04/07/2014

Human Services

Substance Abuse and Mental Health
No. 38297 (REP): R523-1. Procedures
Published: 03/01/2014
Effective: 04/07/2014

NOTICES OF RULE EFFECTIVE DATES

No. 38292 (NEW): R523-4. Local Mental Health Authorities and Local Substance Abuse Authorities
Published: 03/01/2014
Effective: 04/07/2014

No. 38293 (NEW): R523-5. Certification of Designated Examiners and Case Managers
Published: 03/01/2014
Effective: 04/07/2014

No. 38298 (NEW): R523-6. Medication, Psychosurgery and Electroshock Procedures for Children, Consumer Rights, Due Process, Family Involvement
Published: 03/01/2014
Effective: 04/07/2014

Insurance

Administration

No. 38291 (AMD): R590-227-5. Filing Submission Requirements
Published: 03/01/2014
Effective: 04/09/2014

Money Management Council
Administration

No. 38180 (NEW): R628-21. Conditions and Procedures for the Use of Reciprocal Deposits
Published: 01/01/2014
Effective: 04/15/2014

No. 38180 (CPR): R628-21. Conditions and Procedures for the Use of Reciprocal Deposits
Published: 03/15/2014
Effective: 04/15/2014

Workforce Services

Employment Development

No. 38268 (AMD): R986-100-117. Disqualification For Fraud (Intentional Program Violations or IPVs)
Published: 02/15/2014
Effective: 04/15/2014

No. 38269 (AMD): R986-700. Child Care Assistance
Published: 02/15/2014
Effective: 04/15/2014

Unemployment Insurance

No. 38248 (AMD): R994-312-102. Examination of Employer Records: Scope and Authority
Published: 02/01/2014
Effective: 04/15/2014

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, 2014 through April 15, 2014. 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 the Division of Administrative Rules (801-538-3764).

A copy of the **RULES INDEX** is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

<p>AMD = Amendment (Proposed Rule) CPR = Change in Proposed Rule EMR = 120-Day (Emergency) Rule EXD = Expired Rule EXP = Expedited Rule EXT = Five-Year Review Extension GEX = Governor's Extension</p>	<p>LNR = Legislative Nonreauthorization NEW = New Rule (Proposed Rule) NSC = Nonsubstantive Rule Change R&R = Repeal and Reenact (Proposed Rule) REP = Repeal (Proposed Rule) 5YR = Five-Year Notice of Review and Statement of Continuation</p>
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CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Facilities Construction and Management</u>					
R23-3	Planning and Programming for Capital Projects	38405	5YR	04/03/2014	Not Printed
R23-29	Across the Board Delegation	38404	5YR	04/03/2014	Not Printed
R23-33	Rules for the Prioritization and Scoring of Capital Improvements by the Utah State Building Board	38247	NEW	03/10/2014	2014-3/2
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	38175	AMD	02/07/2014	2014-1/4
<u>Fleet Operations</u>					
R27-7-3	Driver Eligibility to Operate a State Vehicle	38073	AMD	03/11/2014	2013-22/14
<u>Purchasing and General Services</u>					
R33-6	Modification and Termination of Contracts for Supplies, Services, Construction, and Technology	38218	EXT	01/02/2014	2014-3/57
R33-7	Cost Principles	38219	EXT	01/02/2014	2014-3/57
R33-9	Insurance Procurement	38220	EXT	01/02/2014	2014-3/57
AGRICULTURE AND FOOD					
<u>Animal Industry</u>					
R58-20	Domesticated Elk Hunting Parks	38251	5YR	01/17/2014	2014-4/67
<u>Regulatory Services</u>					
R70-530	Food Protection	38262	R&R	03/27/2014	2014-4/5
ALCOHOLIC BEVERAGE CONTROL					
<u>Administration</u>					
R81-1-16	Disqualification Based Upon Conviction of Crime	38274	AMD	03/25/2014	2014-4/10
R81-7	Single Event Permits	38275	AMD	03/25/2014	2014-4/11
R81-10b	Temporary Beer Event Permits	38276	AMD	03/25/2014	2014-4/14
ATTORNEY GENERAL					
<u>Administration</u>					
R105-2	Records Access and Management	38245	NSC	01/30/2014	Not Printed

COMMERCE

Consumer Protection

R152-21	Credit Services Organizations Act Rules	38266	5YR	01/29/2014	2014-4/67
R152-26	Telephone Fraud Prevention Act	38125	AMD	01/07/2014	2013-23/4

Occupational and Professional Licensing

R156-1-501	Unprofessional Conduct	38157	AMD	01/21/2014	2013-24/6
R156-1-501	Unprofessional Conduct	38253	NSC	01/31/2014	Not Printed
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rule	38279	AMD	04/08/2014	2014-5/7
R156-42a	Occupational Therapy Practice Act Rule	38254	5YR	01/21/2014	2014-4/68
R156-44a	Nurse Midwife Practice Act Rule	38249	5YR	01/16/2014	2014-4/69
R156-46a	Hearing Instrument Specialist Licensing Act Rule	38155	AMD	01/21/2014	2013-24/7
R156-46a	Hearing Instrument Specialist Licensing Act Rule	38257	5YR	01/27/2014	2014-4/69
R156-55a	Utah Construction Trades Licensing Act Rule	38151	AMD	01/21/2014	2013-24/10
R156-55a-301	License Classifications - Scope of Practice	38380	NSC	04/14/2014	Not Printed
R156-60	Mental Health Professional Practice Act Rule	38421	5YR	04/08/2014	Not Printed
R156-61	Psychologist Licensing Act Rule	38233	5YR	01/13/2014	2014-3/49
R156-67	Utah Medical Practice Act Rule	38106	AMD	01/07/2014	2013-23/5
R156-68	Utah Osteopathic Medical Practice Act Rule	38107	AMD	01/07/2014	2013-23/6
R156-69	Dentist and Dental Hygienist Practice Act Rule	38149	AMD	01/21/2014	2013-24/20
R156-72	Acupuncture Licensing Act Rule	38165	AMD	02/10/2014	2014-1/8
R156-80a	Medical Language Interpreter Act Rule	38388	5YR	03/31/2014	2014-8/37
R156-81	Retired Volunteer Health Care Practitioner Act Rule	38382	5YR	03/25/2014	2014-8/37

Real Estate

R162-2f	Real Estate Licensing and Practices Rules	38213	AMD	02/25/2014	2014-2/4
R162-2g	Real Estate Appraiser Licensing and Certification Administrative Rules	38270	AMD	03/31/2014	2014-4/16

CORRECTIONS

Administration

R251-111	Government Records Access and Management	38255	NEW	03/26/2014	2014-4/25
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CRIME VICTIM REPARATIONS

Administration

R270-1-13	Awards	38221	EMR	01/04/2014	2014-3/47
R270-3	ADA Complaint Procedure	38258	EXT	01/27/2014	2014-4/75
R270-4	Government Records Access and Management Act	38259	EXT	01/27/2014	2014-4/75

EDUCATION

Administration

R277-102	Adjudicative Proceedings	38408	5YR	04/04/2014	Not Printed
R277-105	Recognizing Constitutional Freedoms in the Schools	38409	5YR	04/04/2014	Not Printed
R277-116	Utah State Board of Education Internal Audit Procedure	38183	AMD	02/07/2014	2014-1/10
R277-117	Utah State Board of Education Protected Documents	38295	5YR	02/13/2014	2014-5/59
R277-117	Utah State Board of Education Protected Documents	38299	AMD	04/07/2014	2014-5/16
R277-400	School Emergency Response Plans	38296	5YR	02/13/2014	2014-5/59
R277-400	School Emergency Response Plans	38300	AMD	04/07/2014	2014-5/17
R277-437	Student Enrollment Options	38185	AMD	02/07/2014	2014-1/12
R277-438	Dual Enrollment	38347	5YR	03/14/2014	2014-7/89
R277-470-6	Charter School Mentoring Program	38186	AMD	02/07/2014	2014-1/14
R277-477-3	Distribution of Funds - Local Board or Local Charter Board Approval of School LAND Trust Plans	38326	NSC	04/01/2014	Not Printed

RULES INDEX

R277-481	Charter School Oversight, Monitoring and Appeals	38187	AMD	02/07/2014	2014-1/15
R277-486	Professional Staff Cost Program	38348	5YR	03/14/2014	2014-7/89
R277-486	Professional Staff Cost Program	38356	NSC	04/01/2014	Not Printed
R277-495	Required Policies for Electronic Devices in Public Schools	38301	AMD	04/07/2014	2014-5/20
R277-497	School Grading System	38111	AMD	01/08/2014	2013-23/8
R277-503	Licensing Routes	38240	AMD	03/10/2014	2014-3/4
R277-510-4	NCLB Highly Qualified Assignments - Elementary Teachers 1-8	38289	NSC	02/27/2014	Not Printed
R277-518	Career and Technical Education Licenses	38241	AMD	03/10/2014	2014-3/8
R277-524	Paraprofessional/Paraeducator Programs, Assignments, and Qualifications	38349	5YR	03/14/2014	2014-7/90
R277-525	Special Educator Stipends	38114	AMD	01/08/2014	2013-23/9
R277-526	Paraeducator to Teacher Scholarship Program	38302	AMD	04/07/2014	2014-5/23
R277-527	International Guest Teachers	38190	AMD	02/07/2014	2014-1/18
R277-528	Use of Public Education Job Enhancement Program (PEJEP) Funds	38242	NEW	03/10/2014	2014-3/12
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R277-735	Corrections Education Programs	38352	5YR	03/14/2014	2014-7/91
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R307-150	Emission Inventories	38261	5YR	01/28/2014	2014-4/70
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R307-401-19	General Approval Order	37833	AMD	01/06/2014	2013-15/29
R307-401-19	General Approval Order	37833	CPR	01/06/2014	2013-23/55
R307-405	Permits: Major Sources in Attainment or Unclassified Areas (PSD)	38260	5YR	01/28/2014	2014-4/70
R307-840	Lead-Based Paint Program Purpose, Applicability, and Definitions	38330	5YR	03/06/2014	2014-7/92

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R313-14	Violations and Escalated Enforcement	38076	CPR	04/03/2014	2014-4/50
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R313-25	License Requirements for Land Disposal of Radioactive Waste - General Provisions	38082	AMD	04/03/2014	2013-22/49
R313-25	License Requirements for Land Disposal of Radioactive Waste - General Provisions	38082	CPR	04/03/2014	2014-4/53
R313-38-3	Clarifications or Exceptions	38147	AMD	04/07/2014	2013-23/20
R313-38-3	Clarifications or Exceptions	38147	CPR	04/07/2014	2014-5/56
R313-70-5	Payment of Fees	38146	AMD	02/18/2014	2013-23/22
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R315-12	Administrative Procedures	38335	NSC	04/01/2014	Not Printed
<u>Water Quality</u>					
R317-1-7	TMDLs	38235	AMD	03/27/2014	2014-3/13
R317-5	Large Underground Wastewater Disposal (LUWD) Systems	38271	R&R	03/26/2014	2014-4/26
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<u>Economic Development, Pete Suazo Utah Athletic Commission</u>					
R359-1-604	Boxing - Gloves	38033	AMD	01/24/2014	2013-20/25
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<u>Administration</u>					
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<u>Center for Health Data, Health Care Statistics</u>					
R428-15	Health Data Authority Health Insurance Claims Reporting	38144	AMD	01/07/2014	2013-23/43
<u>Children's Health Insurance Program</u>					
R382-3	Accountable Care Organization Incentives to Appropriately Use Emergency Room Services in the Children's Health Insurance Program	38102	NEW	01/13/2014	2013-23/23
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R392-303	Public Geothermal Pools and Bathing Places	38285	5YR	02/11/2014	2014-5/60
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R384-200	Program Eligibility, Benefits, and Administration	38178	NEW	03/21/2014	2014-1/22
R384-203	Prescription Drug Database Access	38081	NEW	03/01/2014	2013-22/68
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R448-10	Unattended Death and Reporting Requirements	38419	5YR	04/07/2014	Not Printed
R448-20	Access to Medical Examiner Reports	38420	5YR	04/07/2014	Not Printed
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R426-100	Air Medical Service Rules	38079	REP	01/06/2014	2013-22/119
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R432-7	Specialty Hospital - Psychiatric Hospital Construction	38391	5YR	04/01/2014	2014-8/40
R432-8	Specialty Hospital - Chemical Dependency/Substance Abuse Construction	38392	5YR	04/01/2014	2014-8/41
R432-9	Specialty Hospital - Rehabilitation Construction Rule	38393	5YR	04/01/2014	2014-8/41
R432-10	Specialty Hospital - Long-Term Acute Care Construction Rule	38394	5YR	04/01/2014	2014-8/42
R432-11	Orthopedic Hospital Construction	38395	5YR	04/01/2014	2014-8/42
R432-12	Small Health Care Facility (Four to Sixteen Beds) Construction Rule	38396	5YR	04/01/2014	2014-8/43
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R432-14	Birthing Center Construction Rule	38422	5YR	04/10/2014	Not Printed
R432-30	Adjudicative Procedure	38398	5YR	04/01/2014	2014-8/44
R432-32	Licensing Exemption for Non-Profit Volunteer End-of-Life Care	38399	5YR	04/01/2014	2014-8/44
R432-270	Assisted Living Facilities	38423	5YR	04/10/2014	Not Printed
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R414-11	Podiatric Services	38371	5YR	03/18/2014	2014-8/39
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R414-21	Physical and Occupational Therapy	38132	AMD	01/10/2014	2013-23/28
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R414-511	Medicaid Accountable Care Organization Incentives to Appropriately Use Emergency Room Services	38103	NEW	01/13/2014	2013-23/42

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R477-6-9	Severance Benefit	38092	AMD	01/14/2014	2013-22/125
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R523-5	Certification of Designated Examiners and Case Managers	38293	NEW	04/07/2014	2014-5/42
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R590-268	Small Employer Stop-Loss Insurance	38087	CPR	03/13/2014	2014-3/45
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R657-67	Utah Hunter Mentoring Program	38172	NEW	02/10/2014	2014-1/70
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R708-26	Learner Permit Rule	38372	NSC	04/14/2014	Not Printed
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R708-31	Ignition Interlock Systems	38374	5YR	03/18/2014	2014-8/49
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R865-16R	Severance Tax	38222	5YR	01/06/2014	2014-3/54
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R895-4	Sub-Domain Naming Conventions for Executive Branch Agencies	38239	NSC	01/30/2014	Not Printed
R895-6	IT Plan Submission Rule for Agencies	38386	5YR	03/27/2014	2014-8/51
R895-7	Acceptable Use of Information Technology Resources	38428	5YR	04/15/2014	Not Printed

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R986-100-117	Disqualification For Fraud (Intentional Program Violations or IPVs)	38268	AMD	04/15/2014	2014-4/45
R986-200-204	Eligibility Requirements	38140	AMD	01/14/2014	2013-23/50
R986-700	Child Care Assistance	38159	AMD	03/01/2014	2013-24/38
R986-700	Child Care Assistance	38269	AMD	04/15/2014	2014-4/46

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ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>abortion</u> Health, Health Care Financing, Coverage and Reimbursement Policy	38369	R414-1B	5YR	03/18/2014	2014-8/39
<u>acceptable use</u> Technology Services, Administration	38428	R895-7	5YR	04/15/2014	Not Printed
<u>accidents</u> Administrative Services, Fleet Operations	38073	R27-7-3	AMD	03/11/2014	2013-22/14

<u>acupuncture</u>						
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<u>ADA complaint procedures</u>						
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<u>adjudicative proceedings</u>						
Environmental Quality, Solid and Hazardous Waste	38335	R315-12	NSC	04/01/2014	Not Printed	
<u>administrative law judges</u>						
Human Resource Management, Administration	38091	R477-101	NEW	01/14/2014	2013-22/129	
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Education, Administration	38408	R277-102	5YR	04/04/2014	Not Printed	
Environmental Quality, Air Quality	38252	R307-103-1	NSC	01/31/2014	Not Printed	
Labor Commission, Adjudication	38193	R602-2-5	AMD	02/21/2014	2014-2/7	
	38327	R602-7	5YR	03/05/2014	2014-7/94	
	38328	R602-8	5YR	03/05/2014	2014-7/94	
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Environmental Quality, Solid and Hazardous Waste	38335	R315-12	NSC	04/01/2014	Not Printed	
Public Safety, Driver License	38406	R708-22	5YR	04/03/2014	Not Printed	
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