

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed July 02, 2016, 12:00 a.m. through July 15, 2016, 11:59 p.m.

Number 2016-15
August 01, 2016

Nancy L. Lancaster, Managing Editor

The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah state government. The Office of Administrative Rules, part of the Department of Administrative Services, produces the *Bulletin* under authority of Section 63G-3-402.

The Portable Document Format (PDF) version of the *Bulletin* is the official version. The PDF version of this issue is available at <http://www.rules.utah.gov/publicat/bulletin.htm>. Any discrepancy between the PDF version and other versions will be resolved in favor of the PDF version.

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: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3003. 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.

Office of Administrative Rules, Salt Lake City 84114

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Utah state bulletin.

Semimonthly.

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

I. Utah. Office of Administrative Rules.

KFU440.A73S7

348.792'025--DDC

85-643197

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EDITOR'S NOTES

Incorrect Title Number on Filing for R450-3 (DAR No. 40103)

When the new rule proposal for Rule R450-3 was published in the February 1, 2016, issue of the Utah State Bulletin (DAR No. 40103, 2016-3, p. 484), there was a discrepancy between the rule number reported by the rule analysis and the rule number in the proposed new text. The correct rule number, as reported in the text, is R450-3; the rule analysis erroneously reported that it was Rule R451-3. The new rule is codified under the correct Rule R450-3.

The Office regrets any confusion caused by this error. Questions can be directed to Nancy Lancaster, Publications Editor, at 801-538-3218 or by email at nllancaster@utah.gov

End of the Editor's Notes Section

EXECUTIVE DOCUMENTS

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

The Governor's Office staff files **EXECUTIVE DOCUMENTS** that have legal effect with the Office of Administrative Rules for publication and distribution.

Calling the Sixty-First Legislature Into the Third Special Session, Utah Proclamation No. 2016-3S

PROCLAMATION

WHEREAS, since the adjournment of the 2016 General Session of the Sixty-first Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

WHEREAS, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Legislature into Special Session;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the laws of the State of Utah, do by this Proclamation call the Sixty-first Legislature of the State of Utah into a Third Special Session at the Utah State Capitol, in Salt Lake City, Utah, on the 13th day of July 2016, at 3:00 p.m., to consider the following:

1. An appropriation of funds and related legislation for the purpose of constructing an arena at the State Fair Park;
2. Legislation related to the use of unmanned aircrafts over restricted wildfire airspaces;
3. Legislation related to the Utah Justice Reinvestment Initiative;
4. Amendments to the code provisions regarding Judicial Nominating Commissions;
5. Legislation related to the ability of grandparents to visit grandchildren adopted by a family member of the child;
6. A clarification to the statutory exception to the warrant requirement for access to the controlled substance database by probation or parole officers;
7. To consider economic development legislation that would provide certain sales and use tax exemptions for a qualifying enterprise data center;
8. Amendments to the code provisions regarding continuing care retirement communities;
9. Legislation related to the Legislature's review of tax credits, similar to 2016 House Bill 310, Tax Credit Review Amendments; and
10. For the Senate to consent to appointments made by the Governor.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 11th day of July 2016.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2016/3/S

End of the Executive Documents Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a 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 July 02, 2016, 12:00 a.m., and July 15, 2016, 11:59 p.m. are included in this, the August 01, 2016, 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 Office 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 Office of Administrative Rules.

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least August 31, 2016. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through November 29, 2016, the agency may notify the Office 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 Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF 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

Agriculture and Food, Animal Industry
R58-20
Domesticated Elk Hunting Parks

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40585

FILED: 07/05/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule has been changed in order to help keep an accurate account of domestic elk numbers.

SUMMARY OF THE RULE OR CHANGE: The rule requires that hunting parks remove all elk from the hunting area by December 31 of each year.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 4, Chapter 39

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is little to no additional cost. Legislation appropriated money to the program in 2016 that will help pay for a full-time employee that as part of their duties will be to inspect records and facilities.

♦ **LOCAL GOVERNMENTS:** No cost or savings to local government, as this program is not regulated by anyone other than the state Department of Agriculture and Food.

♦ **SMALL BUSINESSES:** There maybe a small additional compliance costs to the elk hunting parks in the form of manpower to make sure that all elk are brought in prior to December 31. However, this cost will be offset by savings of a controlled breeding season, less escapes of domestic elk, and inventory correctness in the spring, by knowing exactly how many are on the facility.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There should be no effect on costs or savings to any other entity. This rule is only pertinent to the elk industry and has no effect to cost or savings on the elk industry.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There maybe a small additional compliance costs to the elk hunting parks in the form of manpower to make sure that all elk are brought in prior to December 31. However, this cost will be offset by savings of a controlled breeding season, less escapes of domestic elk, and inventory correctness in the spring by knowing exactly how many are on the facility.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The costs associated with compliance to this rule are outweighed by the benefits. This rule will help producers know how many animals they have and prevent the escape of the animals.

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

AGRICULTURE AND FOOD

ANIMAL INDUSTRY

350 N REDWOOD RD

SALT LAKE CITY, UT 84116-3034

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Cody James by phone at 801-538-7166, by FAX at 801-538-7169, or by Internet E-mail at codyjames@utah.gov

♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov

♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2016

AUTHORIZED BY: LuAnn Adams, Commissioner

R58. Agriculture and Food, Animal Industry.

R58-20. Domesticated Elk Hunting Parks.

R58-20-1. Authority and Purpose.

In accordance with the Domesticated Elk Act, and the provisions of Section 4-39-106, Utah Code, this rule specifies:

- (i) procedures for obtaining domesticated elk facility licenses,
- (ii) requirements for operating those facilities,
- (iii) standards for disposal/removal of animals within those facilities, and
- (iv) health standards and requirements in such facilities.

R58-20-2. Definitions.

In addition to terms used in Section 4-39-102, and R58-18-2:

- (1) "Division" means the Division of Animal Industry, in the Utah Department of Agriculture and Food.

- (2) "Domestic elk" means any elk which is born inside of, and has spent its entire life in captivity, and is the offspring of domestic elk.

- (3) "Elk farm" means a place where domestic elk are raised, bred and sold within the practice of normal or typical ranching operations.

- (4) "Hunting Park" means a place where domestic elk are harvested through normal or typical hunting methods.

- (5) "Isolation Facility" means a confined area where selected elk can be secured, contained and isolated from all other elk or livestock.

- (6) "Secure Enclosure" means a perimeter fence or barrier that is constructed and maintained in accordance with Section 4-39-201 and will prevent domestic elk from escaping into the wild or the ingress of big game wildlife into the facility.

R58-20-3. Application and Licensing Process.

(1) Pursuant to Section 4-39-203, Utah Code, the owner of each facility that is involved in the hunting of domestic elk must first fill out and complete a separate elk hunting park application which shall be submitted to the Division for approval.

(2) In addition to the application, a general plot plan should be submitted showing the location of the proposed hunting park in conjunction with roads, town, etc. in the immediate area.

(3) A facility number shall be assigned to an elk hunting park at the time a completed application is received at the Department of Agriculture and Food building.

(4) A complete facility inspection and approval shall be conducted prior to the issuing of a license or entry of elk to any facility. This inspection shall be made by an approved Department of Agriculture and Food employee and Division of Wildlife Resources employee. It shall be the responsibility of the applicant to request this inspection at least 72 hours in advance.

(5) Upon receipt of an application, inspection and approval of the facility, completion of the facility approval form, and receipt of the license fee, a license will be issued.

(6) All licenses for hunting parks expire on July 1 in the year following the year of issuance.

(7) No domestic elk shall be allowed to enter a hunting park until a license is issued by the division and received by the applicant.

R58-20-4. License Renewal.

(1) All laws found in Section 4-39-205 and rules found in R58-18-4 pursuant to the renewal of elk farms are applicable to elk hunting parks.

R58-20-5. Facilities.

(1) Fencing requirements established by Section 4-39-201 of the Utah Code are applicable to both domestic elk farms and hunting parks.

(2) A hunting park for domesticated elk may be no smaller than 600 fenced contiguous acres, with sufficient trees, rocks, hills and natural habitat, etc. to provide cover for the animals. Hunting park owners intending to operate facilities larger than 5,000 acres must obtain prior written approval of the Elk Advisory Council, following studies, reviews or assessments, etc., which the Council may deem necessary to undertake, in order to make an informed decision.

(3) There shall be notices posted on the outside fence and spaced a minimum of every 100 yards, to notify the public that the land area is a private hunting park.

(4) Each location of a licensed facility with separate perimeter fences must have its own separate loading facility.

(5) To be licensed, the park must include a handling and isolation facility which can be accessed and operated with reasonable ease for identification and disease control purposes. An exception to this rule may be granted in cases where there is a licensed farm owned by the same individual within 50 miles of the hunting park which can be accessed in a reasonably short period of time.

R58-20-6. Records.

(1) All laws and rules set forth in Sections 4-39-206 and R58-18-6 apply to hunting parks.

R58-20-7. Genetic Purity.

(1) All laws and rules found in Sections 4-39-301 and R58-18-7 pursuant to genetic purity are applicable to hunting parks.

R58-20-8. Acquisition of Elk.

(1) All laws and rules found in Sections 4-39-302, 4-39-303, R58-18-8 and R58-18-11 pursuant to importation or acquisition of domestic elk are applicable to hunting parks.

R58-20-9. Identification.

(1) All laws and regulations provided in Sections 4-39-304 and R58-18-9 governing individual animal identification are applicable in hunting parks.

R58-20-10. Inspections.

(1) All hunting park facilities must be inspected yearly within 60 days before a license or the renewal of an existing license is issued. It is the responsibility of the applicant to arrange for an appointment with the department for such inspection, giving the department ample time to respond to such a request.

(2) All elk must be inspected for inventory purposes within a reasonable timely period before a license renewal can be issued.

(a) All elk must be removed from hunting grounds by harvest or recapture by December 31 of each year to ensure conclusive inventory.

(3) All live domestic elk must be brand inspected prior to entering or leaving the park.

(4) Any elk purchased or brought into the facility from an out-of-state source shall be inspected upon arrival at a licensed hunting park before being released into an area inhabited by other domestic elk.

(5) A Utah Brand Inspection Certificate shall accompany any shipment of live elk into or out of the hunting park including those which move from facility to facility within Utah.

(6) A Domestic Elk Harvest Permit must be filled out by the park owner at the time of harvest. One copy of the permit shall be sent to the division office, one copy shall go to the hunter and one copy shall be kept on file at the facility. Validated tags must be attached to the carcass and the antlers prior to leaving the park and remain affixed during transportation to residence, meat processor, taxidermist, etc.

(7) Pursuant to Section 4-39-207, agricultural inspectors may, at any reasonable time during regular business hours, have free and unimpeded access to inspect all facilities, animals and records where domestic elk are kept.

R58-20-11. Health Rules.

(1) All laws and rules found in Sections 4-39-107, R58-18-11 and R58-18-12 pursuant to animal health are applicable to hunting parks.

R58-20-12. Meat.

(1) The selling of domestic elk meat obtained from a licensed hunting park will not be allowed and:

(a) Must be consumed by either the hunter or park owner or their immediate family members, regular employees or guests, or the meat shall be:

(b) Donated as a charitable food item in compliance with Section 4-34-2 of the Utah Agriculture Code.

R58-20-13. Dissolution of an Elk Hunting Park.

(1) Before an elk hunting park can be dissolved all elk must be removed from the premises.

(2) Any abandoned elk will be removed by the Utah Department of Agriculture and Food using lethal means.

(a) Carcasses will be disposed of by either disposal in an approved landfill, incineration, or donated as a charitable food item in compliance with Section 4-34-2 of the Utah Agriculture Code.

(b) Costs for removal of abandoned elk will be charged to the owner of the elk hunting park.

R58-20-14. Liability.

(1) All laws found in Section 4-39-401 concerning the escape of domesticated elk are applicable to hunting parks.

(2) A hunting park owner shall remove all wild big game animals prior to enclosing the park. If wild big game animals are found within the park after it has been licensed, the owner shall notify the Division of Wildlife Resources within 48 hours. A cooperative removal program may be designed by the parties involved to remove the animals.

(3) No person(s) may hunt domestic elk in an approved park without first being issued written permission to do so from the owner. The approval document shall be in the hunter's possession during hunting times. Hunting hours will be from 1/2 hour before sunrise to 1/2 hour after sunset.

(4) In accordance with the state's governmental immunity act, as found in Section 63G-7-101, et seq., the granting of a hunting park license or the imposing of a requirement to gain an owner's permission does not attach any liability to the state for any accident, mishap or injury that occurs on, adjacent to, or in connection with the hunting park.

KEY: inspections, elk, hunting parks

Date of Enactment or Last Substantive Amendment: [~~December 19, 2014~~]**2016**

Notice of Continuation: January 17, 2014

Authorizing, and Implemented or Interpreted Law: 4-39-106

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

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40589

FILED: 07/07/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Barber, Cosmetologist/Barber,

Esthetician, Electrologist, and Nail Technician Licensing Board are proposing amendments to the rule. The purpose of this rule filing is to: 1) implement changes or amendments made to the Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act in the 2016 General Session by H.B. 352; 2) increase the fine schedule for unlicensed practice and aiding and abetting unlicensed practice, respectively, to better deter such unlawful conduct and make the fine schedule more consistent with Section R156-1-502; 3) modify the approved accrediting bodies for schools; 4) address apprenticeship requirements; and 5) make nonsubstantive technical changes.

SUMMARY OF THE RULE OR CHANGE: Subsection R156-11a-302a(1) updates the current titles of the required exams. Subsections R156-11a-503(1) and (2) increase the fine penalty amounts for unlicensed practice and aiding unlicensed practice, respectively. Subsection R156-11a-601(1)(b) is modified to name the United States Department of Education as the approval authority for accrediting bodies, and remove the Utah Board of Regents, which no longer approves accreditation for barber, cosmetology barber, esthetics, electrology, and nail technology schools. In Sections R156-11a-800 through R156-11a-804, the following subsections are added to each section: Subsection (2) establishes the method of apprentice registration, Subsection (3) requires approval of apprentice instructors, Subsections (4) through (11) are renumbered, and Subsection (12) prohibits an instructor from beginning a new apprenticeship until a current apprentice either passes the required exams or the apprenticeship is discontinued. Finally, Subsection (13) requires an instructor and an instructor's apprentice to appear before the Board if the apprentice fails an examination three times, to explain why the apprentice is unable to pass the exam and address remediation. Section R156-11a-902 establishes the standards for on-the-job instructor training.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The proposed rule change in part, implements H.B. 352 (2016). Any costs or savings associated with this implementation were addressed by the fiscal note attached to H.B. 352 (2016). The note was fiscally neutral with revenues from fees offsetting costs. The apprentice registration fees for initial registration and renewal have both been established in the amount of \$20. Not associated with H.B. 352 (2016), the proposed rule will result in the Division collecting additional revenue from the revised fine schedule for unlicensed practice and aiding and abetting unlicensed practice. The increase from \$200 to \$500 more closely aligns the fine for this profession with fines in other professions. The revenue is required to be deposited into the Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Education and Enforcement Fund. It is anticipated that 200 citations will be issued annually, based

on historical reference. Based on the revised fine schedule, this will result in \$60,000 of increased revenue. The Division will incur approximately \$75 to reprint this rule.

♦ **LOCAL GOVERNMENTS:** The proposed amendments apply only to current licensees and applicants for licensure/registration governed by Title 58, Chapter 11a. As a result, the proposed amendments do not apply to local governments.

♦ **SMALL BUSINESSES:** The proposed rule change in part implements H.B. 352 (2016). Any costs or savings associated with this implementation were addressed by the fiscal note attached to H.B. 352 (2016). The impact may result in a cost savings to schools that eliminate an accredited instructor program in favor of a paid employee on-the-job instructor training program. The Division is unable to estimate any potential costs or savings.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed rule change in part implements H.B. 352 (2016). Any costs or savings associated with this implementation were addressed by the fiscal note attached to H.B. 352 (2016). The impact described above for small business is not expected to affect large businesses because the Division is unaware of any schools that employs 50 or more employees. Not associated with H.B. 352 (2016), unlicensed individuals who are fined for unlawful practice will incur increased fines in the amount of \$500 versus \$200 for a first offense and \$1,000 versus \$400 for a second offense. It is estimated that this will result in \$60,000 of increased cost to this category based on historical precedent. Not associated with H.B. 352 (2016), individuals who are fined for aiding and abetting in unlicensed practice will incur fines in the amount of \$800 for the first offense and \$1,600 for a second offense. Previously, an offense of this type required evidence of "knowing employing" an individual to engage in unlicensed practice. This was a difficult standard to establish. The new standard of "aiding or abetting" is expected to be a more appropriate evidentiary standard which will result in better enforcement of this category of unlawful conduct. The Division is unable to estimate the aggregate the amount of increased fines for this category because historical precedent is inapplicable.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed rule change in part implements H.B. 352 (2016). Any costs or savings associated with this implementation were addressed by the fiscal note attached to H.B. 352 (2016). The note was fiscally neutral with revenues from fees offsetting costs. The implementation of the on-the-job instructor training established by H.B. 352 (2016) may impact the pay of an individual on-the-job instructor trainee. The Division is not able to estimate the pay differential. The implementation of the apprentice registration requirement as a result of H.B. 352 (2016) will result in a \$20 initial application and a \$20 renewal fee. Not associated with H.B. 352 (2016), an individual engaged in unlicensed practice who is fined will pay \$500 under the fine schedule versus \$200 for a first offense and \$1,000 versus \$400 for a second offense. An individual engaged in aiding and abetting unlicensed

practice who is fined will pay \$800 versus \$400 for a first offense and \$1,600 versus \$800 for a second offense.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change implements amendments made to the relevant statute by H.B. 352 (2016) passed in the 2016 General Session; increases fines for unlicensed practice, and aiding and abetting in unlicensed practice; modifies the approved accrediting bodies for schools, modifies apprenticeship requirements; and make nonsubstantive technical changes. No fiscal impact to businesses is anticipated.

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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Allyson Pettley by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at apettley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 08/01/2016 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 210 (second floor), Salt Lake City, Utah

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2016

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

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

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

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

(1) Applicants for each classification listed below shall pass within one year prior to the date of application, or within other reasonable timeframe as approved by the Division upon review of applicable extenuating circumstances, the respective examination with a passing score of at least 75% as determined by the examination provider.

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

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

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

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

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

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

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

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

R156-11a-503. Administrative Penalties - Unlawful Conduct.

In accordance with Subsections 58-1-501(1)(a) and (c), 58-11a-301(1) and (2), 58-11a-502(1), (2), (4), (5), (6), or (7), and 58-11a-503(4), unless otherwise ordered by the presiding officer, the following fine schedule shall apply to citations issued under Title 58, Chapter 11a.

(1) Practicing or engaging in, or attempting to practice or engage in activity for which a license is required under Title 58, Chapter 11a in violation of Subsection 58-11a-502(1).

First Offense: ~~200~~500

Second Offense: ~~400~~1,000

(2) Aiding or abetting a person engaging in the practice of, or attempting to engage in the practice of,~~Knowingly employing any other person to engage in or practice or attempt to engage in or practice~~ any occupation or profession for which a license is required under Title 58, Chapter 11a in violation of Subsection 58-11a-502(2).

First Offense: ~~400~~800

Second Offense: ~~800~~1,600

(3)(a) Using a solution composed of at least 10% methyl methacrylate (MMA) on a client in violation of Subsection 58-11a-502(4)

First Offense: \$500

Second Offense: \$1,000

(b) Possessing a solution composed of at least 10% methyl methacrylate (MMA) in violation of Subsection 58-11a-502(4)

First Offense: \$500

Second Offense: \$1,000

(4) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-11a-503(4) (h).

(5) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(6) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(7) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-11a-601. Standards for Accreditation.

In accordance with Subsections 58-11a-302(3)(c)(iv), (6)(c)(iv), (9)(c)(iv), (13)(c)(iv), and (16)(c)(iv), the accreditation standards for a barber school, a cosmetology/barber school, an electrology school, an esthetics school, and a nail technology school include:

(1) Each school shall be required to become accredited by:

(a) the National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS); or

(b) other accrediting bodies recognized by the U.S. Department of Education~~commissions recognized by the Utah Board of Regents for post secondary schools~~.

(2) Each school shall maintain and keep the accreditation current.

(3) A newly licensed school shall pursue accreditation under this section using the following procedure:

(a) A new school shall:

(i) submit an application for candidate status for accreditation to an accrediting commission within one month of the date when the school was licensed by the Division as a barber school, a cosmetology/barber school, an electrology school, an esthetics school, or a nail technology school;

(ii) provide evidence received from the accrediting commission to the Division of achieving candidate status within 12 months of the date the school was licensed;

(iii) file an "Exemption of Registration as a Post-Secondary Proprietary School" form with the Division of Consumer Protection pursuant to Sections 13-34-101 and R152-34-1;

(iv) comply with all applicable accreditation standards during the pendency of its application for accreditation status; and

(v) have 24 months following the date of achieving candidate status to be approved for accreditation.

(b) The Division shall determine whether a newly-licensed school entity has succeeded a previously-licensed school entity for the purposes of achieving accreditation.

(c) If a newly-licensed school is determined by the Division to be a new entity, then the newly-licensed school shall comply with the accreditation deadlines that are specified in Subsection R156-11a-601(3)(a) above.

(d) If a newly-licensed school is determined by the Division not to be a new entity, then the newly-licensed school shall meet the accreditation deadlines previously set by its accrediting commission.

(4) The Division's determination shall be based upon whether the newly-licensed school:

(a) operates on essentially the same premises as the previously-licensed school;

(b) uses essentially the same staff;
 (c) operates under essentially the same ownership; and
 (d) maintains the previously-licensed schools's accreditation status with the applicable governing accreditation commission.

(5) A licensee whose accreditation has been withdrawn shall immediately notify the Division.

(6) A licensee who fails to obtain or maintain accreditation status, as required herein, shall immediately surrender to the Division its license as a school. Failure to do so shall constitute a basis for immediate revocation of licensure in accordance with Section 63G-4-502.

R156-11a-800. Approved Barber Apprenticeship Requirements.

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

(1) The instructor shall have only one apprentice at a time.

(2) The apprentice shall register with the Division by submitting a form prescribed by the Division.

(3) The instructor must be approved by the Division for the apprenticeship.

([2]4) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training".

([3]5) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services which will document the total number of hours of training. The record shall be available to the Division upon request.

([4]6) A complete set of barber texts shall be available to the apprentice.

([5]7) An apprentice may be compensated for services performed.

([6]8) The instructor shall provide training and technical instruction of 1,250 hours using the curriculum defined in Section R156-11a-700.

([7]9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

([8]10) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-700.

([9]11) Any hours obtained while enrolled in a barber school or a cosmetology/barber school shall not be used to satisfy the required 1,250 hours of apprentice training.

(12) An instructor may not begin a new apprenticeship until:

(a) the current apprentice passes the National Interstate Council of State Boards of Cosmetology (NIC) Barber Theory and Practical Examinations and becomes licensed as a barber; or

(b) the Division receives a Notice of Disassociation Form by the apprentice or instructor.

(13) If an apprentice completes the apprenticeship and fails the National Interstate Council of State Boards of Cosmetology (NIC) Barber Theory and Practical Examinations three times:

(a) the apprentice and instructor must meet with the Board at the next appropriate Board meeting;

(b) explain to the Board why the apprentice is not able to pass the examination; and

(c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination.

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

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

(1) The instructor shall have only one apprentice at a time.

(2) The apprentice shall be registered with the Division by submitting a form prescribed by the Division.

(3) The instructor must be approved by the Division for the apprenticeship.

([2]4) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training".

([3]5) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services which will document the total number of hours of training. The record shall be available to the Division upon request.

([4]6) A complete set of cosmetology/barber texts shall be available to the apprentice.

([5]7) An apprentice may be compensated for services performed.

([6]8) The instructor shall provide training and technical instruction of 2,500 hours using the curriculum defined in Section R156-11a-705.

([7]9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

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

([9]11) Hours obtained while enrolled in a cosmetology/barber school shall not be used to satisfy the required 2,500 hours of apprentice training.

(12) An instructor may not begin a new apprenticeship until:

(a) the current apprentice passes the National Interstate Council of State Boards of Cosmetology (NIC) Cosmetology/Barber Theory and Practical Examinations and becomes licensed as a cosmetologist/barber; or

(b) the Division receives a Notice of Disassociation Form by the apprentice or instructor.

(13) If an apprentice completes the apprenticeship and fails the National Interstate Council of State Boards of Cosmetology (NIC) Cosmetology/Barber Theory and Practical Examinations three times:

(a) the apprentice and instructor must meet with the Board at the next appropriate Board meeting;

(b) explain to the Board why the apprentice is not able to pass the examination; and

_____ (c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination.

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

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

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

_____ (2) The apprentice shall be registered with the Division by submitting a form prescribed by the Division.

_____ (3) The instructor must be approved by the Division for the apprenticeship.

_____ ([2]4) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training".

_____ ([3]5) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the Division upon request.

_____ ([4]6) A complete set of esthetics texts shall be available to the apprentice.

_____ ([5]7) An apprentice may be compensated for services performed.

_____ ([6]8) The instructor shall provide training and technical instruction of 800 hours using the curriculum defined in Section R156-11a-702.

_____ ([7]9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

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

_____ ([9]11) Hours obtained while enrolled in an esthetics school or a cosmetology/barber school shall not be used to satisfy the required 800 hours of apprentice training.

_____ (12) An instructor may not begin a new apprenticeship until:

_____ (a) the current apprentice passes the National Interstate Council of State Boards of Cosmetology (NIC) Esthetics Theory and Practical Examinations and becomes licensed as an esthetician; or

_____ (b) the Division receives a Notice of Disassociation Form by the apprentice or instructor.

_____ (13) If an apprentice completes the apprenticeship and fails the National Interstate Council of State Boards of Cosmetology (NIC) Esthetics Theory and Practical Examinations three times:

_____ (a) the apprentice and instructor must meet with the Board at the next appropriate Board meeting;

_____ (b) explain to the Board why the apprentice is not able to pass the examination; and

_____ (c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination.

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

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

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

_____ (2) The apprentice shall be registered with the Division by submitting a form prescribed by the Division.

_____ (3) The instructor must be approved by the Division for the apprenticeship.

_____ ([2]4) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

_____ ([3]5) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the Division upon request.

_____ ([4]6) A complete set of esthetics texts shall be available to the apprentice.

_____ ([5]7) An apprentice may be compensated for services performed.

_____ ([6]8) The instructor shall provide training and technical instruction of 1,500 hours using the curriculum defined in Section R156-11a-703.

_____ ([7]9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

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

_____ ([9]11) Hours obtained while enrolled in an esthetics school or a cosmetology/barber school shall not be used to satisfy the required 1,500 hours of apprentice training.

_____ (12) An instructor may not begin a new apprenticeship until:

_____ (a) the current apprentice passes the National Interstate Council of State Boards of Cosmetology (NIC) Master Esthetics Theory and Practical Examinations and becomes licensed as a master esthetician; or

_____ (b) the Division receives a Notice of Disassociation Form by the apprentice or instructor.

_____ (13) If an apprentice completes the apprenticeship and fails the National Interstate Council of State Boards of Cosmetology (NIC) Master Esthetics Theory and Practical Examinations three times:

_____ (a) the apprentice and instructor must meet with the Board at the next appropriate Board meeting;

_____ (b) explain to the Board why the apprentice is not able to pass the examination; and

_____ (c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination.

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

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

(1) The instructor shall have no more than two apprentices at a time.

(2) The apprentice shall be registered with the Division by submitting a form prescribed by the Division.

(3) The instructor must be approved by the Division for the apprenticeship.

([2]4) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

([3]5) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the Division upon request.

([4]6) A complete set of nail technician texts shall be available to the apprentice.

([5]7) An apprentice may be compensated for services performed.

([6]8) The instructor shall provide training and technical instruction of 375 hours using the curriculum defined in Section R156-11a-704.

([7]9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

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

([9]11) Hours obtained while enrolled in a nail technology school or a cosmetology/barber school shall not be used to satisfy the required 375 hours of apprentice training.

(12) An instructor may not begin a new apprenticeship until:

(a) the current apprentice passes the National Interstate Council of State Boards of Cosmetology (NIC) Nail Technology Theory and Practical Examinations and becomes licensed as a nail technician; or

(b) the Division receives a Notice of Disassociation Form by the apprentice or instructor.

(13) If an apprentice completes the apprenticeship and fails the National Interstate Council of State Boards of Cosmetology (NIC) Nail Technology Theory and Practical Examinations three times:

(a) the apprentice and instructor must meet with the Board at the next appropriate Board meeting;

(b) explain to the Board why the apprentice is not able to pass the examination; and

(c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination.

R156-11a-901. Standards for an [On-the-Job Training]On-the-Job Training Internship.

In accordance with Subsection 58-11a-304(8), students enrolled in a licensed cosmetology/barber school may participate in

an ~~[on-the-job]~~on-the-job training internship if they meet the following requirements:

(1) The ~~[on-the-job]~~on-the-job training intern shall have completed at least 1,000 hours of the training contracted with a cosmetology/barber school, of which 400 hours shall be clinical hours.

(2) There shall be a conspicuous sign near the work station of the ~~[on-the-job]~~on-the-job training intern stating "Intern in Training".

(3) A licensed "on-site" cosmetology/barber shall supervise only one ~~[on-the-job]~~on-the-job training intern at a time.

(4) An ~~[on-the-job]~~on-the-job training intern, while working under the direct supervision of an "on-site" licensed cosmetologist/barber, may perform the following procedures:

(a) draping;

(b) shampooing;

(c) roller setting;

(d) blow drying styling;

(e) applying color;

(f) removing color by rinsing and shampooing;

(g) removing permanent chemicals;

(h) removing permanent rods;

(i) removing rollers;

(j) applying temporary rinses, reconditioners, and rebuilders;

(k) acting as receptionists;

(l) doing retail sales;

(m) sanitizing the salon;

(o) doing inventory and ordering supplies; and

(p) handing equipment to the cosmetologist/barber supervisor.

(5) The "on-site" cosmetologist/barber supervisor shall have in the supervisor's possession a letter, which must be updated on a quarterly basis, from the school where the ~~[on-the-job]~~on-the-job training intern is enrolled stating that the ~~[on-the-job]~~on-the-job training intern is currently in good standing at the school and is complying with school requirements.

(6) Hours of training spent while performing ~~[on-the-job]~~on-the-job training as an intern shall not apply towards credits required for graduation.

R156-11a-902. Standards for an On-the-Job Instructor Training.

(1) In accordance with Subsections 58-11a-302(2)(e)(ii), (5)(e)(ii), (8)(e)(ii), (12)(e)(ii) and (15)(e)(ii), an employee of a licensed barber, cosmetology/barber, electrology, esthetics or nail technology school may obtain on-the-job training to become a licensed instructor if they meet the following requirements of this section.

(2) The on-the-job instructor training shall be under the supervision of an instructor licensed as an instructor in the same category as the trainee, except that an instructor providing on-the-job instructor training supervision for basic esthetics instruction shall be licensed as a master esthetician.

(3) The instructor trainee shall have an active license in the same category for which the instructor trainee is seeking licensure to instruct, except an instructor trainee receiving on-the-job training to instruct basic esthetics shall be licensed as a master esthetician.

(4) The on-the-job instructor training shall include all of the following categories:

- (a) motivation and the learning process;
- (b) teacher preparation;
- (c) teaching methods;
- (d) classroom management;
- (e) testing;
- (f) instructional evaluation;
- (g) laws, rules and regulations; and
- (h) Utah Barber, Cosmetology/Barber, Esthetics (Master level), Electrology and Nail Technology Instructors Examination review.

(5) The instructor trainee shall not count toward the instructor-to-student ratio.

(6) The on-the-job instructor training shall be completed within one year, unless the instructor trainee provides documentation of extenuating circumstances justifying an extension.

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

Date of Enactment or Last Substantive Amendment: ~~December 22, 2014~~2016

Notice of Continuation: February 6, 2012

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

Commerce, Occupational and
Professional Licensing
R156-64
Deception Detection Examiners
Licensing Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40588

FILED: 07/07/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Deception Detection Examiners Licensing Board are proposing amendments due to H.B. 185, which was passed during the 2016 General Session, which added a new license classification of deception detection examination administrator. The proposed amendments also clarify language, correct spelling, and renumber sections.

SUMMARY OF THE RULE OR CHANGE: In Section R156-64-102, the proposed amendments add a reference to the subsection the definition is used in and clarifies language. In Section R156-64-302a, the change condenses information into one subsection that will now apply to all licenses under Title 58, Chapter 64. In Section R156-64-302b, the change clarifies wording regarding existing education requirements. It also removes reference to training and experience that is

placed in Sections R156-64-302c and R156-64-302d. Section R156-64-302c is a newly added section. It is using wording previously found in Section R156-64-302b. However, it contains language that does not pertain to that section heading and so is being moved to its own section. Section R156-64-302d is a newly added section. It is using wording previously found in Section R156-64-302b. However, it contains language that does not pertain to that section heading and so is being moved to its own section. In Section R156-64-302e, the change details which classification must take the required exam. In Section R156-64-302f, the change is simply a spelling correction. In Section R156-64-305, the change makes this section applicable to all license classifications under this chapter. In Section R156-64-502, the change recodifies this section. Unprofessional conduct applicable to all classifications is relocated in a new Subsection R156-64-502(1) and unprofessional conduct only applicable to deception detection examiners and deception detection examiner interns is in Subsection R156-64-502(2). Also the American Polygraph Association Code of Ethics and Standards of Practice documents have been updated to the September 1, 2015, versions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-64-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Updates American Polygraph Association Code of Ethics, published by American Polygraph Association, September 1, 2015
- ◆ Updates American Polygraph Association Standards of Practice, published by American Polygraph Association, September 1, 2015

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$75 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
- ◆ **LOCAL GOVERNMENTS:** The proposed amendments to this rule are brought about by new 2016 legislation. Specifically, the passing of H.B. 185 (2016), which adds a new license classification to Title 58, Chapter 64. The proposed amendments apply only to licensed deception detection examiners, deception detection examiner interns, deception detection examination administrators, and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.
- ◆ **SMALL BUSINESSES:** The proposed amendments to this rule are brought about by new legislation. Specifically the passing of H.B. 185 (2016), which adds a new license classification to Title 58, Chapter 64. The proposed amendments apply only to licensed deception detection examiners, deception detection examiner interns, deception detection examination administrators, and applicants for licensure in those classifications. Any costs or savings

associated with the implementation of H.B. 185 (2016) were addressed by the fiscal note attached to that bill.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments to this rule are brought about by new legislation. Specifically, the passing of H.B. 185 (2016), which adds a new license classification to Title 58, Chapter 64. The proposed amendments apply only to licensed deception detection examiners, deception detection examiner interns, deception detection examination administrators, and applicants for licensure in those classifications. Any costs or savings associated with the implementation of H.B. 185 (2016) were addressed by the fiscal note attached to that bill.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments to this rule are brought about by new legislation. Specifically, the passing of H.B. 185 (2016), which adds a new license classification to Title 58, Chapter 64. The proposed amendments apply only to licensed deception detection examiners, deception detection examiner interns, deception detection examination administrators, and applicants for licensure in those classifications. Any costs or savings associated with the implementation of H.B. 185 (2016) were addressed by the fiscal note attached to that bill.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change results from the addition, which occurred in the 2016 General Session, of deception detection examination administrators to the deception detection examiners licensing classification. This rule change clarifies language, corrects spelling, and renumbers subsections. No fiscal impact to business is anticipated.

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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jana Johansen by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at janajohansen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 08/17/2016 09:00 AM, Heber Wells Bldg, 160 E 300 S, Hearing Room 250 (second floor), Salt Lake City, Utah

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2016

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-64. Deception Detection Examiners Licensing Act Rule.
R156-64-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 64, as used in [~~Title 58, Chapters 1 and 64 or~~]this rule:

(1) "Activity sensor", as used in Subsection R156-64-502(2)(i), means a sensor attached to a deception detection instrument that is approved for use by the manufacturer of the instrument for placement under the buttocks of the examinee to detect movement and attempts at countermeasures by the examinee.

(2) "Clinical [~~testing~~]examination", as used in Subsection R156-64-502(2)(g), means a deception detection examination which is not intended to supplement and assist in a criminal investigation.

(3) "Comparison question", as used in Subsection R156-64-102(8), means a nonrelevant test question used for comparison against a relevant test question in a deception detection examination.

(4) "Concealed information examination", as used in Subsection R156-64-502(2)(g), means a psychophysiological technique for examining whether a person has knowledge of crime-relevant information [~~— means a recognition examination administered to determine whether the examinee recognizes elements of a crime not reported to the public that are known only to the individual who engaged in the behavior, an investigator or both.~~].

(5) "Deception detection case file", as used in Subsection R156-64-502(2)(o), means written records of a polygraph exam including:

- (a) case information;
- (b) the name and license number of the examiner;
- (c) a list of all questions used during the examination;
- (d) copies of all charts recorded during the examination;

and

- (e) either the audio or video recording of the examination.

(6) "Directed lie screening exam", as used in Subsection R156-64-502(2)(d), means a screening exam in which the examinee is instructed to lie to one or more questions.

(7) "Experienced deception detection examiner", as used in Section R156-64-302f, means a deception detection examiner who has completed over 250 deception detection examinations and has been licensed or certified by the United States Government for three years or more.

(8) "Irrelevant and relevant testing", as used in Subsection R156-64-502(2)(e), means a deception detection examination which consists of relevant questions, interspersed with irrelevant questions, and does not include any type of comparison questions.

(9) "Irrelevant question", as used in Subsection R156-64-102(8), means a question of neutral impact, which does not relate to a matter under inquiry, in a deception detection examination.

(10) "Post conviction sex offender testing", as used in Subsections R156-64-302f(2) and R156-64-502(2)(p), means testing of sex offenders and includes:

- (a) sexual history testing to determine if the examinee is accurately reporting all sexual offenses prior to a conviction;

(b) maintenance testing to determine if the examinee is complying with the conditions of probation or parole; and

(c) specific issue/single issue examinations.

(11) "Pre-employment examination", as used in Subsection R156-64-502(2)(d) and (g), means a deception detection screening examination administered as part of a pre-employment background investigation.

(12) [~~"Qualified continuing professional education"~~] means ~~continuing education that meets the standards set forth in Section R156-64-304.~~

(13) [~~"Relevant question"~~] as used in Subsection R156-64-102(8), means a question which relates directly to a matter under inquiry in a deception detection examination.

(14) "Screening examination", as used in Subsections R156-64-502(2)(d) and (g), means a multiple issue deception detection examination administered to determine the examinee's truthfulness concerning more than one narrowly defined issue in the absence of any specific allegation.

(15) "Specific issue/single issue examination", as used in Subsections R156-64-102(10)(c) and R156-64-502(2)(d) and (g), means a deception detection examination administered to determine the examinee's truthfulness concerning one narrowly defined issue.

(16) "Supervision" means general supervision as established in Subsection R156-1-102a(4)(c).

(17) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 64, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-64-502.

(18) "Work experience", as used in Subsection 58-64-302(3)(f) and R156-64-302c(3), means work done while licensed as a deception detection examiner, deception detection examiner intern, deception detection examiner administrator, or while exempt from licensure under this chapter.

R156-64-302a. Qualifications for Licensure - Application Requirements - Criminal Background Check.

[~~(1)~~] Pursuant to Section 58-64-302, an application for licensure ~~[as a deception detection examiner]~~ under all classifications under Title 58, Chapter 64 shall be accompanied by:

(a) two fingerprint cards for the applicant; and

(b) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a ~~[check of]~~ records check of:

(i) the Federal Bureau of Investigation; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety.

[~~(2)~~] Pursuant to Section 58-64-302, an application for licensure as a deception detection intern shall be accompanied by:

(a) two fingerprint cards for the applicant; and

(b) a fee established in accordance with Section 63J-1-504 equal to the cost of conducting a check of records of:

(i) the Federal Bureau of Investigation; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety.]

R156-64-302b. Qualifications for Licensure - Deception Detection Examiner and Deception Detection Examiner Intern Education Requirements.

[~~(1)~~] In accordance with Subsections 58-64-302(1)(f)(i) and 58-64-302(2)(f)(i), deception detection examiner and deception

detection examiner intern applicants ~~[the bachelor's degree]~~ shall have ~~[been]~~ earned a bachelor's degree from a university or college program, that at the time the applicant graduated, was accredited through the U.S. Department of Education or one of the regional accrediting association of schools and colleges. [

~~(2) In accordance with Subsections 58-64-302(1)(f)(ii) and 58-64-302(2)(f)(ii), the 8,000 hours of investigation experience shall have been as a criminal or civil investigator with a federal, state, county or municipal law enforcement agency, or other equivalent investigation experience approved by the Division in collaboration with the Board.~~

~~(3) In accordance with Subsections 58-64-302(1)(f)(iii) and 58-64-302(2)(f)(iii), the college education and investigation experience may be combined in the ratio of 2000 hours of investigation experience for one year as a matriculated student in an accredited bachelor's degree program.~~

~~(4) In accordance with Subsections 58-64-302(1)(g) and 58-64-302(2)(g), the deception detection training program shall consist of:~~

~~(a) graduation from a course of instruction in deception detection in a school accredited by the American Polygraph Association; and~~

~~(b) passing the Utah Deception Detection Theory Exam with a score of at least 75%.]~~

R156-64-302c. Qualifications for Licensure - Experience Requirements.

(1) In accordance with Subsections 58-64-302(1)(f)(ii) and 58-64-302(2)(f)(ii), deception detection examiner and deception detection examiner intern applicants shall have 8,000 hours of investigation experience with a federal, state, county, or municipal law enforcement agency. Equivalent investigation experience may be approved by the Division in collaboration with the Board.

(2) In accordance with Subsection 58-64-302(1)(f)(iii) and 58-64-302(2)(f)(iii), deception detection examiner and deception detection examiner intern applicants may complete, in part or in whole, the college education requirements in Subsection R156-64-302b through additional investigation experience in the ratio of 2,000 hours of investigation experience, beyond the required 8,000 hour requirement in Subsection R156-64-302c(1), for one year as a matriculated student in an accredited bachelor's degree program.

(3) In accordance with Subsection 58-64-302(3)(f), deception detection examination administrator applicants may complete, in part or in whole, the college education requirements in Subsection 58-64-302(3)(f) through additional work experience in the ratio of 2,000 hours of work experience for one year as a matriculated student in an accredited associate's degree program.

R156-64-302d. Qualifications for Licensure - Deception Detection Training Requirements.

(1) In accordance with Subsection 58-64-302(1)(g) and 58-64-302(2)(g), a deception detection training program for a deception detection examiner or a deception detection examiner intern shall consist of graduation from a deception detection training program in a school accredited by the American Polygraph Association.

(2) In accordance with Subsection 58-64-302(3)(g), a deception detection training program for a deception detection

examination administrator shall consist of graduation from a certification program provided by a software manufacturer.

R156-64-302[e]. Qualifications for Licensure - Examination Requirements.

In accordance with Section 58-1-309, deception detection examiner and deception detection examiner intern applicants shall pass the Utah Deception Detection Examiners Law and Rule Examination with a score of at least 75%.

R156-64-302[d]f. Qualifications for Licensure - Supervision Requirements.

In accordance with Subsection 58-64-302(2)(h), each deception detection intern supervision agreement shall be in a form that requires a deception detection intern to serve an internship under the direct supervision of an experienced deception detection examiner as follows:

(1) the supervising deception detection examiner shall observe either directly or by video recording a minimum of five complete examinations;

(2) if the deception detection intern is performing post-[] conviction sex offender testing, the [~~supervision~~]supervising deception detection examiner shall hold a certification for post-[] conviction sex offender testing by the American Polygraph Association; and

(3) the "Internship Supervision Agreement", as required in Subsection 58-64-302(2)(h), shall be approved by the Division in collaboration with the Board.

R156-64-305. Demonstration of Clear Criminal History for Licensees as Renewal Requirement.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), an applicant shall demonstrate a clear criminal history as a condition of renewal or reinstatement of license issued under Title 58, Chapter 64 for all classifications under this chapter[~~in the classification of deception detection examiner~~].

(2) A criminal history background check shall be performed by the Division and is not required to be submitted by the applicant.

(3) If the criminal background check discloses a criminal background, the Division shall evaluate the criminal history in accordance with Section R156-1-302 to determine appropriate licensure action.

R156-64-502. Unprofessional Conduct.

(1) "Unprofessional conduct for all classifications under this chapter includes:

(a) conducting an examination if the examinee is not physically present and aware than an examination is being conducted;

(b) publishing, directly or indirectly, or circulating any fraudulent or false statements as to the skill or method of practice of any examiner;

(c) refusing to render deception detection services to or for any person on account of race, color, creed, national origin, sex, or age of such person;

(d) conducting an examination:

(i) on a person who is under the influence of alcohol or drugs; or

(ii) on a person who is under the age of 14 without written permission from the person's parent or guardian;

(e) failing during a pretest interview to specifically inquire whether the individual to be examined is currently receiving or has in the past received medical or psychiatric treatment or consultation;

(f) failing to obtain a release or a physician's statement from the individual being examined if there is any reasonable doubt concerning the individual's ability to safely undergo an examination;

(g) not creating and maintaining a record for every examination administered;

(h) expressing a bias in any manner regarding the truthfulness of the examinee prior to the completion of any testing;

(i) not maintaining records of all deception detection examinations for a minimum of three years; and

([26]j) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established by the American Polygraph Association Code of Ethics, dated [January 10, 1999]September 1, 2015, and Standards of Practice, dated [January 20, 2007]September 1, 2015, which are hereby incorporated by reference.

(2) "Unprofessional conduct" specific to deception detection examiners and deception detection examiner interns includes:

([1]a) not immediately terminating [the]an examination upon [the]request of the examinee;

([2]b) not conducting a pre-examination review with the examinee [reviewing]where each question is reviewed word for word[prior to conducting the examination];

([3]c) attempting to determine truth or deception on matters or issues not discussed with the examinee during the pre-examination review;

([4]d) basing decisions concerning truthfulness or deception upon data that fails to meet the following minimum standards:

([a]i) two charts for a pre-employment exam;

([b]ii) two charts for a screening examination that is to be followed by a specific issue/single issue examination;

([e]iii) three repetitions of each question on a directed lie screening exam; or

([d]iv) three charts for all other exams;[

(5) ~~conducting an examination if the examinee is not physically present and aware that an examination is being conducted;~~

([6]e) using irrelevant and relevant testing techniques in other than pre-employment and periodic testing, without prior approval of the Division in collaboration with the Board;

([7]f) using a polygraph instrument that does not record as a minimum:

([a]i) respiration patterns recorded by two pneumograph components recording thoracic and abdominal patterns;

([b]ii) electro dermal activity reflecting relative changes in the conductance or resistance of current by the epidermal tissue;

([e]iii) relative changes in pulse rate, pulse amplitude and relative blood volume by use of a cardiograph;

([d]iv) continuous physiological recording of sufficient amplitude to be easily readable by the examiner; and

([e]v) pneumograph and cardiograph tracings no less than one-half inch in amplitude when using an analog polygraph instrument;

([8]g) conducting in a 24-hour period more than:

([a]i) five specific issue/single issue examinations;

([b]ii) five clinical examinations;

([e]iii) five screening examinations;

([d]iv) five pre-employment examinations; or

([e]v) 15 concealed information examinations;

([9]h) conducting an examination of less than the

required duration as follows:

([a]i) 30 minutes for a concealed information exam;

([b]ii) 60 minutes for a pre-employment exam; and

([e]iii) 90 minutes for all other exams;

([10]i) failing~~[- after January 1, 2011,]~~ to use an activity sensor in all testing unless the examinee suffers from a diagnosed medical condition that contraindicates its use;

([11]j) not audibly recording all criminal/specific examinations and informing the examinee of such recording prior to the examination;

([12]k) during a pre-employment pre-test interview or actual examination, asking any questions concerning the subject's sexual attitudes, political beliefs, union sympathies or religious beliefs unless there is a demonstrable overriding reason;[

~~(13) publishing, directly or indirectly, or circulating any fraudulent or false statements as to the skill or method of practice of any examiner;]~~

([14]l) ~~[dividing fees or agreeing to split or divide the-] splitting, or dividing fees received for deception detection services or otherwise paying [with-]any person for referring a client;[~~

~~(15) refusing to render deception detection services to or for any person on account of race, color, creed, national origin, sex or age of such person;~~

~~(16) conducting an examination:~~

~~(a) on a person who is under the influence of alcohol or drugs; or~~

~~(b) on a person who is under the age of 14 without written permission from the person's parent or guardian;]~~

([17]m) not providing at least 20 seconds between the beginning of one question and the beginning of the next;[

~~(18) failing during a pretest interview to specifically inquire whether the individual to be examined is currently receiving or has in the past received medical or psychiatric treatment or consultation;~~

~~(19) failing to obtain a release from the individual being examined or a physician's statement if there is any reasonable doubt concerning the individual's ability to safely undergo an examination;]~~

([20]n) not using a validated scoring method~~[numerical scoring system]~~ in all examinations~~[- except for relevant irrelevant];[~~

~~(21) not creating and maintaining a record for every examination administered;]~~

([22]o) creating [records]deception detection case files not containing at a minimum the following:

([a]i) all charts on each subject properly identified by name and date and if the exam was performed on an analog polygraph instrument, signed by the examinee;

([b]ii) an index, either chronological or alphabetical, listing:

([i]A) the names of all persons examined;

([i]B) the type of exam conducted;

([i]C) the date of the exam;

([iv]D) the name and license number of the examiner;

([v]E) the file number in which the records are maintained;

([vi]E) the examiner's written opinion of the test results;

and

([vii]G) the time the examination began and ended;

([e]iii) all written reports or memoranda of verbal reports;

([d]iv) a list of all questions asked while the instrument was recording;

([e]v) background information elicited during the pre-test interviews;

([f]vi) a form signed by the examinee agreeing to take the examination after being informed of his or her right to refuse;

([g]vii) the following statement, dated and signed by the examinee: "If I have any reason to believe that the examination was not completely impartial, fair and conducted professionally, I am aware that I can report it to the Division of Occupational and Professional Licensing";

([h]viii) any recordings made of the examination; and

(ix) documentation of an instrument functionality check as mandated by the manufacture of the instrument being used; and[on a semi-annual basis including a functionality chart;

~~(23) expressing a bias in any manner regarding the truthfulness of the examinee prior to the completion of any testing;]~~

([24]p) conducting a clinical polygraph examination of a sex offender without holding a current certification from the American Polygraph Association for post~~[-]~~conviction sex offender testing.];

~~(25) not maintaining records of all deception detection examinations for a minimum of three years; and]~~

KEY: licensing, deception detection examiner, deception detection intern, deception detection examination administrator
Date of Enactment or Last Substantive Amendment: [October 23, 2014]2016

Notice of Continuation: January 31, 2012

Authorizing, and Implemented or Interpreted Law: 58-64-101; 58-1-106(1)(a); 58-1-202(1)(a)

Governor, Economic Development
R357-11
Technology Commercialization
Innovation Program (TCIP)

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 40605

FILED: 07/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments to this rule are to correct grammatical errors and to clarify two items in the rule.

SUMMARY OF THE RULE OR CHANGE: The change to the rule corrects grammatical errors, clarifies that a grant recipient must keep at least 51% of service locations in the state, defines a "service location," and clarifies that matching funds are not required unless specified by the grant application and when matching funds must be acquired, if required.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63N-3-204(2)(b)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no effect to state budget because this rule governs a program that only can expend its legislatively appropriated fund.
- ◆ **LOCAL GOVERNMENTS:** This rule does not effect local government because they cannot apply for this grant per statute.
- ◆ **SMALL BUSINESSES:** This rule does not effect small businesses because the grant program does not create any regulations or conditions on small businesses or their practices.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule does effect any other group or persons because it only impacts grant applicants in terms of clarifying grant requirements if chosen as an awardee.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because this rule only clarifies certain grant requirements and does not create new requirements or compliance needs that would create costs to an awardee.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule does not effect small businesses because the grant program does not create any regulations or conditions on small businesses or their practices. It only provides clarity concerning matching fund requirements and service location requirements for a grant awardee.

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

GOVERNOR
ECONOMIC DEVELOPMENT
60 E SOUTH TEMPLE 3RD FLR
SALT LAKE CITY, UT 84111
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Jeffrey Van Hulten by phone at 801-538-8694, by FAX at 801-538-8888, or by Internet E-mail at jeffreyvan@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2016

AUTHORIZED BY: Val Hale, Executive Director

R357. Governor, Economic Development.**R357-11. Technology Commercialization and Innovation Program (TCIP).****R357-11-1. Purpose.**

(1) The purpose of the Technology Commercialization and Innovation Act is to catalyze and enhance growth of technologies by encouraging interdisciplinary research activity and targeted areas, facilitating the transition of technologies out of the higher education to enhance job creation, and to support the commercialization of technologies developed by small businesses to enhance job creation.

R357-11-2. Authority.

(1) UCA 63N-3-204(2)(b) requires the office to make rules to regulate the Technology Commercialization Innovation Program ("TCIP") grant structure and awards and to recapture awards when a recipient fails to maintain a presence in Utah for at least five years after the award is made, as set forth in these rules.

R357-11-3. Definitions.

- (1) This rule adopts the definitions set forth in 63N-3-203.
- (2) "Board" means the Board of Business Development set forth in 63N-1-301.
- (3) "Derivative Technology" means: Incremental advance or new of application of an existing technology.
- (4) "Developmental Research Phase" means: A phase in which the technology is not beyond a basic concept as determined by the office.
- (5) "New technology means" Intellectual property not previously marketed or generated revenue for any entity.
- (6) Qualified Pre-screening entity "means" A University's Technology Transfer Office or the USTAR Technology Outreach Innovation Program. This term only applies to University team applicants.

(7) "Service location" means a location where a grant recipient is developing and/or commercializing the new technology in a way that provides economic impact to the state; including but not limited to: job creation, new state revenue, and new local revenue.

~~(7)~~(8) Solicitation Cycle Means: A granting cycle from application to grant distribution to be held at least once a year or more depending on availability of funds. All dates for any solicitation may be found on the TCIP website.

~~(8)~~(9) "TCIP" means the Technology Commercialization and Innovation Program as defined in Utah Code Section 63N-3-203(6).

R357-11-4. General Grant Requirements.

(1) An applicant can only receive a TCIP award totaling an amount defined in policy per new technology. Policy shall be available on the TCIP website.

(2) An applicant may not submit more than one application in the same solicitation cycle if the applicant has more than one new technology that meets the eligibility requirement for a TCIP grant.

(a) Only one new technology project per applicant will be funded in an solicitation cycle.

(3) An applicant that has generated more than \$500,000 in revenue from the proposed new or derivative technology is not eligible for a TCIP grant.

(4) An applicant that has raised more than \$3,000,000 in total prior funding, including equity and debt based financing, is not eligible for the TCIP grant.

(5) An Applicant may apply for a TCIP grant up to three times for a specific new technology. If, after the third application TCIP does not fund the technology, TCIP will reject subsequent applicants for the same new technology without further review.

R357-11-5. Matching Funds.

(1) Matching funds may be considered in granting an award if the Office provides notice of such a requirement in the application. If considered a grant recipient must show proof of the matching funds.

(2) Matching funds may be raised and spent at any time prior to submitting an invoice to the TCIP

(a) Grant recipient must submit bank statements (for Licensees) or financial statements (for Universities) demonstrating that the matching funds were available during the match period.

(b) If matching funds have been required by the Office to be a condition precedent to a grant award, [M]matching funds do not have to be in place at the time of the application, but must be in place before TCIP funds are disbursed within the contract period of one year.

R357-11-6. Applicant Specific Requirements.

(1) University Teams: In order to apply for a grant or loan under the TCIP program, a University Team must satisfy the following initial criteria:

(a) The technology must be organized by faculty led university team;

(b) The technology must have completed the developmental research phase; and

(c) The applicant must be pre-screened by a qualified pre-screening entity.

(d) The qualified pre-screening entity must certify that the technology meets the criteria set forth in (a) and (b) of this section, and the certification must be provided before grant is awarded.

(2) Small Businesses: In order to apply for a grant or loan under the TCIP program, a small business must satisfy the following initial criteria:

(a) The applicant must be a "small business" as defined by the Federal Small Business Administration's definition and meet the criteria set forth in UCA Section 63N-3-203(5).

(3) A University-licensee is also be eligible if it meets the definitions in (a) above.

R357-11-7. Review of Applications and Awards.

(1) Applicants who successfully meet the eligibility requirements set forth in R357-11-4 and R357-11-5 and R357-11-6 may submit their application for the TCIP grant through the online registration portal.

(2) The Executive Director of GOED or the director's designee will evaluate the applications received in each solicitation

cycle. The Executive Director or the designee may use the following criteria, as defined by the Executive Director or the designee, to evaluate applications for TCIP grants:

(a) Quality, diversity, and number of jobs created in Utah,

(b) Quality of Management and Leadership, including experience with commercialization of new technologies as demonstrated by grant applicant's application and proposal;

(c) Strength of the new technology and potential for commercialization;

(d) Size and Growth of the market of the proposed technology

(e) Applicant's ability to market the technology and the credibility of their "go-to-market" strategy.

(f) Availability of matching funds and the source and relevance of those funds as set forth in R357-11-5

(g) Whether the project combines or coordinates related research at two or more institutions of higher education;

(h) Any other criteria deemed necessary or valuable to the selection process.

(3) Additionally, each applicant's application will be compared against and with the strength of all other applicants' applications and proposals within the same solicitation cycle.

(4) The Executive Director may assemble an outside review team to review the criteria set forth above and to make recommendations regarding the application.

(5) The Executive Director or his designee shall propose funding allocations to the Board.

(6) After the Board provides its advice, the Executive Director or the designee shall determine which applications should be prioritized for funding.

(7) Applications will be prioritized and funded based on the criteria set forth in (1)-(3). Award letters will be provided setting forth the terms of the grant offer.

R357-11-8. Requirements for Grant Recipients.

(1) Contract

(a) An applicant who is awarded a TCIP grant must sign a contract with the State of Utah prior to receiving any funds

(2) Sub-Contracts

(a) Grant Recipients are prohibited from subcontracting with another entity to administer the new technology funded by the Grant.

(3) Time in State

(a) Grant recipients will be expected to retain their company, and supported technology, and exploit the technology in the State of Utah for a minimum period of five years from the date of their agreement with the State.

(b) Any applicant who fails to maintain a manufacturing or service location in the state or who fails to exploit the new technology from a location in the state will be subject to recapture of the grant funding, subject to the provisions of Utah Code Section 63N-3-204(2) (d) and R357-11-8.

(4) Authorization to disclose tax information

(a) Licensee grant recipients will be required to sign an authorization to disclose tax records for up to five years from the date of their agreement with the State.

(5) Mentoring Program

(a) Grant awardees may be required to participate in the TCIP Mentoring Program in order to secure funding.

(b) If a grant award is contingent on participation in the TCIP Mentoring Program, an awardee will be required to show active participation in the program prior to receiving any or part of the grant funding as outlined in recipient's contract.

R357-11-9. Funding.

(1) TCIP funding is for developing existing research to the point of commercialization, bridging the "funding gap" between research dollars and manufacturing dollars.

(2) TCIP funding may be used to:

(a) Purchase equipment;

(b) Purchase supplies;

(c) Fund graduate/undergraduate students for time directly applicable to center commercialization activities related to the new technology;

(d) Fund faculty salaries directly applicable to center commercialization and related to the new technology;

(e) Fund product development activities (prototypes, models, simulations);

(f) Fund technology transfer activities (trade shows, brochures, etc.);

(g) Fund market analysis;

(h) Pay for consulting fees directly applicable to center commercialization;

(i) Pay for business manager or marketing manager salaries directly applicable to center commercialization activities; or

(j) Other purposes approved by GOED in writing.

(3) Carryover Funds

(a) The budget described in the contract is designated for the particular fiscal year and is an integral part of the contract. Upon the expiration of the contract, residual funds under the contract can only be accessed by amending the contract as described above.

(4) Invoicing Requirement

(a) Funds are disbursed on a reimbursement basis. To receive funds from the program, an invoice of actual expenses of the funded center should be submitted by the awardee at least quarterly.

(b) Every invoice must include:

(i) Contract Number;

(ii) Name of entity and Principal Investigator.;

(iii) Billing Period; and

(iv) Current and Cumulative Amounts.

R357-11-10. Reporting Requirements.

(1) Reporting and Monitoring

(a) Grant awardees or mentor will be required to submit a report of activities, achievements and expenses, etc. as specified in the awardees contract.

(b) Grant awardees or mentor will be required to comply with the State's request for information pertaining to the economic impact to the State, at least annually for up to five years from date of the agreement.

(c) Grant awardees or mentor will also be required to respond to additional periodic reporting to the TCIP Director, Governor's Office of Economic Development and GOED Board, and the Legislature, at any time during the agreement period and thereafter for two additional years.

(d) Universities and Small Businesses should also expect periodic site visits from TCIP Director or board members. Such visits will be scheduled at mutually convenient times.

R357-11-11. Recapture.

(1) In order to receive grant funding under these provisions, an applicant must commit to maintain a manufacturing location or service location in the State of Utah for at least five years from the date that the grant award letter is issued.

(2) Maintaining a manufacturing and service location means that the applicant will perform at least 51%~~[X]~~ percent of the grant activities listed above in the State of Utah, will exploit the technology into a commercial project in Utah and will maintain working operations in the State for at least five years from the date the grant award letter is issued.

(3) If the applicant fails to maintain a manufacturing a service location in Utah for at least five years from the date the grant award letter is issued, the entire grant amount may be subject to recapture.

(4) A repayment by an applicant shall be prorated based on the number of full years the applicant operated in the state from the date of the awarded grant.

(5) Should an applicant fail to comply with the requirements to maintain a~~[n]~~ manufacturing and service location in Utah for the purpose of exploiting the new technology that is the subject of the grant, the Office will issue a Notice of Agency Action for Recapture.

(6) The Notice of Agency Action shall contain the grounds for recapture, and the prorated amount of the recapture, if any.

KEY: technology, innovations, commercialization, small businesses

Date of Enactment or Last Substantive Amendment: ~~[March 23, 2015]~~2016

Authorizing, and Implemented or Interpreted Law: 63N-3-204(2)

**Health, Health Care Financing,
Coverage and Reimbursement Policy**

R414-1-5

Incorporations by Reference

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40599

FILED: 07/13/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsection 26-18-3(2)(a) requires the Medicaid program to implement policy through administrative rules. The Department, in order to draw down federal funds, must have an approved State Plan with the Centers for Medicare and Medicaid Services (CMS). The purpose of this change, therefore, is to incorporate the most current Medicaid State Plan by reference.

SUMMARY OF THE RULE OR CHANGE: The Department incorporates by reference the Utah Medicaid State Plan and approved State Plan Amendments (SPAs) to 07/01/2016. Specifically, the Department incorporates by reference SPA

16-0002-UT Former Foster Care Youth from Other States, which expands coverage to foster care youth who reside in Utah, and were in foster care in any state, at the time they turned 18 years old. Coverage continues for these individuals through the month in which they turn 26 years of age. The Department also incorporates by reference the following: SPA 16-0006-UT Mental Health Diagnostic and Rehabilitative Services, which removes obsolete provisions for retroactive cost settlement in both San Juan County and Wasatch County as mental health providers are no longer limited under contract to provide services in mental health centers only; SPA 16-0008-UT Payment for Hospice Services, which includes additional language to describe the availability of Service Intensity Add-on payments for hospice care services provided in the home, based on the number of direct care hours provided by either a registered nurse or clinical social worker; SPA 16-0009-UT Disproportionate Share Hospital Payments (DSH), which updates and clarifies DSH payment methodology by including verbiage to specify that the calculation for the DSH add-on uses the CMS preliminary allotment; and SPA 16-0010 Federal Upper Limit, which will allow the State to use the lesser of the Maximum Allowable Cost (MAC) or Federal Upper Limit (FUL) wherever CMS has established an FUL. This proposed rule also incorporates by reference the following: Medical Supplies Utah Medicaid Provider Manual, and the manual's attachment for Donor Human Milk Request Form, effective 07/01/2016; the Hospital Services Utah Medicaid Provider Manual with its attachments, effective 07/01/2016; the Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid, effective 07/01/2016; the Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual, effective 07/01/2016; the Hospice Care Utah Medicaid Provider Manual, and the manual's attachment for the Utah Medicaid Prior Authorization Request for Hospice Services, effective 07/01/2016; the Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual, with its attachments, effective 07/01/2016; the Utah Home and Community-Based Waiver Services for Individuals Age 65 or Older Utah Medicaid Provider Manual, effective 07/01/2016; the Personal Care Utah Medicaid Provider Manual, and the manual's attachment for the Request for Prior Authorization: Personal Care and Capitated Programs effective 07/01/2016; the Utah Home and Community-Based Waiver Services for Individuals with an Acquired Brain Injury Utah Medicaid Provider Manual, effective 07/01/2016; Utah Community Supports Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual, effective 07/01/2016; the Utah Home and Community-Based Services Waiver for Individuals with Physical Disabilities Utah Medicaid Provider Manual, effective 07/01/2016; the Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual, effective 07/01/2016; the Utah Home and Community-Based Services Waiver for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual, effective 07/01/2016; the Utah Home and Community-Based Waiver Services Medicaid

Autism Waiver Utah Medicaid Provider Manual, effective 07/01/2016; the Office of Inspector General (OIG) Administrative Hearings Procedures Manual, effective 07/01/2016; the Pharmacy Services Utah Medicaid Provider Manual with its attachments, effective 07/01/2016; the Coverage and Reimbursement Code Look-up Tool, effective 07/01/2016; the CHEC Services Utah Medicaid Provider Manual with its attachments, effective 07/01/2016; the Chiropractic Medicine Utah Medicaid Provider Manual, effective 07/01/2016; the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual, effective 07/01/2016; the General Attachments (All Providers) for the Utah Medicaid Provider Manual, effective 07/01/2016; the Indian Health Utah Medicaid Provider Manual, effective 07/01/2016; the Laboratory Services Utah Medicaid Provider Manual with its attachments, effective 07/01/2016; the Medical Transportation Utah Medicaid Provider Manual, effective 07/01/2016; the Non-Traditional Medicaid Plan Utah Medicaid Provider Manual with attachment, effective 07/01/2016; the Licensed Nurse Practitioner Utah Medicaid Provider Manual, effective 07/01/2016; the Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, and the manual's attachment for Physical Therapy and Occupational Therapy Decision Tables, effective 07/01/2016; the Physician Services, Anesthesiology and Laboratory Services Utah Medicaid Provider Manual with its attachments, effective 07/01/2016; the Podiatric Services Utah Medicaid Provider Manual, effective 07/01/2016; the Primary Care Network Utah Medicaid Provider Manual with its attachments, effective 07/01/2016; the Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual, effective 07/01/2016; the Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual, effective 07/01/2016; the School-Based Skills Development Services Utah Medicaid Provider Manual, effective 07/01/2016; Section I: General Information Utah Medicaid Provider Manual, effective 07/01/2016; the Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual, effective 07/01/2016; Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual, effective 07/01/2016; Vision Care Services Utah Medicaid Provider Manual, effective 07/01/2016; Women's Services Utah Medicaid Provider Manual, effective 07/01/2016; Medically Complex Children's Waiver Utah Medicaid Provider Manual, effective 07/01/2016; and Autism Spectrum Disorder Related Services for EPSDT Eligible Individuals Utah Medicaid Provider Manual, effective 07/01/2016.

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

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Updates Hospice Care Utah Medicaid Provider Manual, Prior Authorization Request for Hospice Services attachment, published by Division of Medicaid and Health Financing, 07/01/2016

- ◆ Updates Chiropractic Medicine Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Hospital Services Utah Medicaid Provider Manual and attachments, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Primary Care Network Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Women's Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Office of Inspector General Administrative Hearings Procedures Manual, published by Office of Inspector General of Medicaid Services, 07/01/2016
- ◆ Updates CHEC Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Indian Health Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Podiatric Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates School-Based Skills Development Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Utah Medicaid State Plan, published by Centers for Medicare and Medicaid Services, 07/01/2016
- ◆ Updates Utah Home and Community-Based Waiver Services Medicaid Autism Waiver Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Licensed Nurse Practitioner Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Medical Supplies Utah Medicaid Provider Manual Sect. 2 and Donor Human Milk Request Form, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Pharmacy Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Utah Home and Community-Based Services Waiver for Technology Dependent Medically Fragile Individuals Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Utah Home and Community-Based Services Waiver Services for Individuals with Physical Disabilities Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Coverage and Reimbursement Code Look-up Tool, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Medically Complex Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Autism Spectrum Disorder Related Services for EPSDT Eligible Individuals Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual and attachment for Physical Therapy and Occupational Therapy Decision Tables, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals with an Acquired Brain Injury Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Medical Transportation Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Home Health Agencies Utah Medicaid Provider Manual, Private Duty Nursing Acuity Grid attachment, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Utah Community Supports Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Non-Traditional Medicaid Plan Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016

- ◆ Updates Vision Care Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Laboratory Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates General Attachments (All Providers) for the Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Personal Care Utah Medicaid Provider Manual, Request for Prior Authorization: Personal Care and Capitated Programs, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Physician Services, Anesthesiology and Laboratory Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Section I: General Information Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals Age 65 or Older Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 07/01/2016

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool and hearings procedures described in the OIG manual do not create costs or savings to the Department or other state agencies.
- ◆ **LOCAL GOVERNMENTS:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool and hearings procedures described in the OIG manual do not create costs or savings to local governments.
- ◆ **SMALL BUSINESSES:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool and hearings procedures described in the OIG manual do not create costs or savings to small businesses.

- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool and hearings procedures described in the OIG manual do not create costs or savings to Medicaid recipients and to Medicaid providers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool and hearings procedures described in the OIG manual do not create costs or savings to a single Medicaid recipient or to a Medicaid provider.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business because all changes are already in the State Plan.

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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

R414-1. Utah Medicaid Program.

R414-1-5. Incorporations by Reference.

The Department incorporates the [April]July 1, 2016, versions of the following by reference:

- (1) Utah Medicaid State Plan, including any approved amendments, under Title XIX of the Social Security Act Medical Assistance Program;

- (2) Medical Supplies Utah Medicaid Provider Manual, Section 2, Medical Supplies, as applied in Rule R414-70, and the manual's attachment for Donor Human Milk Request Form;
- (3) Hospital Services Utah Medicaid Provider Manual with its attachments;
- (4) Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid;
- (5) Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual;
- (6) Hospice Care Utah Medicaid Provider Manual, and the manual's attachment for the Utah Medicaid Prior Authorization Request for Hospice Services;
- (7) Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments;
- (8) Personal Care Utah Medicaid Provider Manual and the manual's attachment for the Request for Prior Authorization: Personal Care and Capitated Programs;
- (9) Utah Home and Community-Based Waiver Services for Individuals Age 65 or Older Utah Medicaid Provider Manual;
- (10) Utah Home and Community-Based Waiver Services for Individuals with an Acquired Brain Injury Utah Medicaid Provider Manual;
- (11) Utah Community Supports Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual;
- (12) Utah Home and Community-Based Services Waiver for Individuals with Physical Disabilities Utah Medicaid Provider Manual;
- (13) Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual;
- (14) Utah Home and Community-Based Services Waiver for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual;
- (15) Utah Home and Community-Based Waiver Services Medicaid Autism Waiver Utah Medicaid Provider Manual;
- (16) Office of Inspector General Administrative Hearings Procedures Manual;
- (17) Pharmacy Services Utah Medicaid Provider Manual with its attachments;
- (18) Coverage and Reimbursement Code Look-up Tool found at <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php> <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php>;
- (19) CHEC Services Utah Medicaid Provider Manual with its attachments;
- (20) Chiropractic Medicine Utah Medicaid Provider Manual;
- (21) Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual;
- (22) General Attachments (All Providers) for the Utah Medicaid Provider Manual;
- (23) Indian Health Utah Medicaid Provider Manual;
- (24) Laboratory Services Utah Medicaid Provider Manual with its attachments;
- (25) Medical Transportation Utah Medicaid Provider Manual;
- (26) Non-Traditional Medicaid Plan Utah Medicaid Provider Manual with attachment;

- (27) Licensed Nurse Practitioner Utah Medicaid Provider Manual;
- (28) Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, and the manual's attachment for Physical Therapy and Occupational Therapy Decision Tables;
- (29) Physician Services, Anesthesiology and Laboratory Services Utah Medicaid Provider Manual with its attachments;
- (30) Podiatric Services Utah Medicaid Provider Manual;
- (31) Primary Care Network Utah Medicaid Provider Manual with its attachments;
- (32) Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual;
- (33) Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual;
- (34) School-Based Skills Development Services Utah Medicaid Provider Manual;
- (35) Section I: General Information Utah Medicaid Provider Manual;
- (36) Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual;
- (37) Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual;
- (38) Vision Care Services Utah Medicaid Provider Manual;
- (39) Women's Services Utah Medicaid Provider Manual;
- (40) Medically Complex Children's Waiver Utah Medicaid Provider Manual; and
- (41) Autism Spectrum Disorder Related Services for EPSDT Eligible Individuals Utah Medicaid Provider Manual.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: 2016
Notice of Continuation: March 2, 2012
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-34-2

**Human Services, Child and Family
 Services
 R512-10
 Youth Mentor Program**

**NOTICE OF PROPOSED RULE
 (Repeal)**
 DAR FILE NO.: 40587
 FILED: 07/07/2016

RULE ANALYSIS
 PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to repeal the Youth Mentor Program.

SUMMARY OF THE RULE OR CHANGE: In this repeal, Child and Family Services has determined that the Youth Services Program has not been part of the services offered

by Child and Family Services since 2006, and it is not required by state statute. The rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-106

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There will be no increase in cost or savings to the state budget because these proposed changes do not increase nor decrease workload that would require additional staff or other costs.

◆ LOCAL GOVERNMENTS: Local governments have no responsibility for services offered by Child and Family Services and are, therefore, not affected by this rule and will have no fiscal impact.

◆ SMALL BUSINESSES: Small businesses have no responsibility for services offered by Child and Family Services and are, therefore, not affected by this rule and will have no fiscal impact.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no expected fiscal impact for "persons other than small businesses, businesses, or local government entities" because funding requests for services offered by Child and Family Services come out of already-existing budgets.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Child and Family Services determined that there will be no compliance costs for affected persons because there are no specific costs involved with the changes being made to this rule.

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:

HUMAN SERVICES
CHILD AND FAMILY SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov

◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonessrobbins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2016

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.

[R512-10. Youth Mentor Program:

R512-10-1. Purpose and Authority:

_____ (1) The purpose of this rule is to establish criteria for a Youth Mentor Program.

_____ (2) This rule is authorized by Section 62A-4a-102.

R512-10-2. Definition:

_____ (1) Level One: The Youth Mentor Program is an advocacy service for youth and families which provides support and socialization activities, and assists in building self-esteem of youth who are at risk of or have been neglected or abused or who are ungovernable.

_____ (2) Level Two: In areas of the state where parent education programs do not exist, the youth mentor funds may pay for parent education services. The parent education services would be used for the purpose of working with a parent(s) who is lacking in parenting, socialization, and homemaking skills.

_____ (3) Level Three: This level of the Youth Mentor Program is characterized by providing intensive services to youth who may be seriously out of control, may have serious behavioral or emotional problems, may be substance abusers, may be preparing for independent living, or may require stringent costly out-of-home placements if less restrictive interventions are not provided. Intensive youth mentors provide one-on-one intensive supervision that may include assistance to the out-of-home provider in monitoring of behavior, basic living skills training, crisis intervention, as well as linkage to educational, vocational, employment, and recreational services.

R512-10-3. Conditions for Approval:

_____ (1) The youth mentor shall meet the following standards:

_____ (a) The youth mentor shall submit fingerprints to be cleared through the Bureau of Criminal Investigation (BCI) as authorized by Section 62A-4a-202.4. This check must show that the applicant has not been convicted of a felony or certain misdemeanors, which may have an impact in working with children. The Child and Family Services database (USSDS or SAFE) shall be checked for any occurrences of child abuse. If the applicant has a substantiated child abuse report, this information, along with other information, will be taken into consideration during the application process.

_____ (b) The youth mentor will receive a copy of the Department of Human Services "Code of Conduct" and will act accordingly. A signed copy of the Statement of Understanding will be included in the youth mentor's file.

_____ (c) The youth mentor will sign a Motor Vehicle Insurance Certification form in which the youth mentor will certify that no fault property damage and liability coverage insurance will be maintained on any automobile used in the program.

_____ (d) Compliance with these standards will be monitored by Child and Family Services' regional staff and/or the youth mentor coordinator, based on interviews, collateral contacts, and other appropriate documentation.

R512-10-4. Characteristics and Requirements of Youth Mentor:

_____ (a) The youth mentor shall not discriminate against the youth because of race, color, national origin, sex, religion, or handicap. The youth mentor shall respect the religious and cultural practices of the youth.

~~(b) The youth mentor shall have the physical health necessary to perform the responsibilities of the position.~~

~~(c) The youth mentor shall have no unresolved emotional or mental health needs which impede the youth mentor in performing the responsibilities of the position.~~

~~(d) The youth mentor shall be 21 years of age or older.~~

~~(e) While working with youth, the youth mentor shall demonstrate maturity, flexibility, the ability to modify expectations and attitudes, and the ability to accept and respond to the needs of youth.~~

~~(f) The youth mentor shall respect the relationship the youth has with the natural parents and Child and Family Services, and shall encourage those relationships.~~

~~(g) The youth mentor shall have experience fostering the development of children or shall have the personal characteristics and temperament suited to working with children.~~

~~(h) The youth mentor shall not be dependent on the youth mentor payments as the primary source of household income.~~

~~(i) A Child and Family Services employee shall not be approved as a youth mentor.~~

~~(j) The youth mentor shall not be on probation, parole, or under indictment for a criminal offense, and shall have no history of crimes involving youth.~~

~~(k) The youth mentor shall work cooperatively with Child and Family Services, the Juvenile Court, the Guardian ad Litem, the Attorney General, and law enforcement officials as authorized by the supervising caseworker.~~

~~(l) The youth mentor shall understand and abide by the requirements that information must be kept confidential.~~

~~(m) The youth mentor shall notify the caseworker and guardian of concerns.~~

~~(n) The youth mentor shall be trained to provide for the needs of the youth they work with. The training shall be approved by Child and Family Services and may be provided by the youth mentor coordinator or by other educational or social agencies in the community.~~

~~(o) The youth mentor shall not use any type of corporal punishment in working with youth. Infliction of bodily pain, discomfort, or degrading/humiliating punishment shall be prohibited.~~

R512-10-5. Revocation of the Youth Mentor Agreement.

~~(1) Child and Family Services may revoke certification upon any of the following grounds:~~

~~(a) Violation of standards, agreement conditions, or the Department of Human Services Code of Conduct.~~

~~(b) Conduct in the provision of service that is or may be harmful to the health or safety of persons receiving the service.~~

~~(2) If the above conditions exist, the immediate suspension or revocation of the Youth Mentor Agreement shall be ordered. Written notice shall be sent to the youth mentor and shall contain a statement of the basis for the order. The letter must also inform the youth mentor of the right and procedure to request a reconsideration of the action.~~

KEY: child welfare, youth advocate

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

Notice of Continuation: April 14, 2016

Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-106]

Money Management Council, Administration **R628-10**

Rating Requirements to Be a Permitted Depository

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40603

FILED: 07/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to set a uniform standard for public treasurers to evaluate the financial condition of permitted depository institutions so that public funds are not exposed to undue risk. This rule has been in place and expired as Council discussed whether or not it needed to be in place as this type of investment instrument is not utilized. Council decided, as there is still a possibility that a public treasurer could find one of these types of investment products, that the rule should be in place. (Editor's Note: The expiration of Rule R628-10 was published in the May 1, 2016, Bulletin under Filing No. 40303 and was effective 04/12/2016.)

SUMMARY OF THE RULE OR CHANGE: This rule provides standards a permitted out-of-state depository must meet to hold Utah public funds.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 51-7-17(4) and Subsection 51-7-18(2)(b)(iv)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule does not affect the state budget because investing in securities is not a budgeted item. If the securities are purchased, there is a return on the investment that follows what the current markets are providing, but these types of instruments are not currently being used.

◆ **LOCAL GOVERNMENTS:** No local governments will be impacted by this rule because these are not a budgeted item; they are an investment. Currently, these types of instruments are not readily available or used.

◆ **SMALL BUSINESSES:** No small businesses will be impacted by this rule because this rule provides standards for a type of investment. It is not an oversight rule for small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other persons will be affected by this rule because this rule provides standards for a type of investment. It is not a compliance rule for other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs for this rule as it provides standards for the use of permitted depositories for public entities to use to gauge whether or not the depository may hold Utah public funds.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on any businesses, financial institutions, or any broker/dealer entities. The rule should not have any impact on local government or small businesses. The type of investment products described in the rule is rarely traded in the current market. If the market changes, the guidelines of the rule should allow for reasonable trades and commissions for broker/dealer entities.

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

MONEY MANAGEMENT COUNCIL
ADMINISTRATION
ROOM 180 UTAH STATE CAPITOL COMPLEX
350 N STATE ST
SALT LAKE CITY, UT 84114
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ann Pedroza by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at apedroza@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2016

AUTHORIZED BY: Marina Scott, Chair

R628. Money Management Council, Administration.

R628-10. Rating Requirements to Be a Permitted Depository.

R628-10-1. Purpose.

This rule establishes a uniform standard for public treasurers to evaluate the financial condition of a Permitted depository institutions to determine if acceptance of Utah public funds by those institutions would expose public treasurers to undo risk. The criteria is applicable to all Permitted depository institutions to determine if they are eligible to accept deposits of Utah public funds. The criteria established by this rule is designed to be flexible enough to ensure that public treasurers will be able to receive competitive market rates on deposits placed outside this state while maintaining sufficient protection from loss.

R628-10-2. Authority.

This rule is issued pursuant to Sections 51-7-17(4) and 51-7-18(2)(b)(iv).

R628-10-3. Definitions.

The terms used in this rule are defined in Section 51-7-3.

R628-10-4. Rating Requirements for Permitted Depositories.

(1) The Permitted depository must meet the following criteria to accept deposits from Utah public entities:

(a) The deposits must be federally insured;

(b) the total assets of the Permitted depository must equal \$5 billion or more as of December 31 of the preceding year, and;

(c) fixed rate negotiable deposits which meet the criteria of Section 51-7-11(3)(f) must, at the time of investment, have the equivalent of an "A" or better short term rating by at least two NRSRO's, or;

(d) variable rate negotiable deposits which meet the criteria of Section 51-7-11(3)(m) must, at the time of investment, have the equivalent of an "A" or better, long term rating, by at least two NRSRO's.

(2) Permitted depository institutions whose ratings drop below the minimum ratings established in R628-10-4(1), above, are no longer eligible to accept new deposits of Utah public funds. Outstanding deposits may be held to maturity, but may not be renewed and no additional deposits may be made by any public treasurer.

R628-10-5. Restrictions on Concentration of Deposits in Any One Permitted Depository Institution.

The maximum amount of any public treasurers portfolio which can be invested in any one Permitted depository institution shall be as follows:

(1) Portfolios of \$10,000,000 or less may not invest more than 10% of the total portfolio with a single issuer.

(2) Portfolios greater than \$10,000,000 but less than \$20,000,000 may not invest more than \$1,000,000 in a single issuer.

(3) Portfolios of \$20,000,000 or more may not invest more than 5% of the total portfolio with a single issuer.

The amount or percentages used in determining the amount of Permitted deposits a treasurer may purchase, shall be determined by the book value of the portfolio at the time of purchase.

KEY: public investments, banking law, depository, professional competency

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: 51-7-17(3); 51-7-18(2)(b)

Navajo Trust Fund, Trustees
R661-7
Utah Navajo Trust Fund Housing
Projects Policy

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40607

FILED: 07/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This addition was requested by Dine' Advisory Committee and approved by the Board of Trustees.

SUMMARY OF THE RULE OR CHANGE: This change adds a provision requiring approval from the Board of Trustees to sell any housing project funded by UNTF funds.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 51-10-205(4)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget because this amendment simply requires the beneficiary of UNTF funds to receive UNTF approval before selling anything built or acquired using UNTF funds.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government because this amendment simply requires the beneficiary of UNTF funds to receive UNTF approval before selling anything built or acquired using UNTF funds.

◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small business because this amendment simply requires the beneficiary of UNTF funds to receive UNTF approval before selling anything built or acquired using UNTF funds.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this amendment simply requires the beneficiary of UNTF funds to receive UNTF approval before selling anything built or acquired using UNTF funds.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs for affected persons. The amendment just requires the beneficiary to seek UNTF approval.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. The amendment just requires the beneficiary to seek UNTF approval.

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

NAVAJO TRUST FUND
TRUSTEES
ROOM 180
350 N STATE STREET
SALT LAKE CITY, UT 84114
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Suzette Alles by phone at 801-717-0821, or by Internet E-mail at salles@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2016

AUTHORIZED BY: David Damschen, State Treasurer

R661. Navajo Trust Fund, Trustees.

R661-7. Utah Navajo Trust Fund Housing Projects Policy.

R661-7-101. Requesting UNTF Housing Assistance.

(1) Individuals requesting UNTF housing assistance must apply to their respective Chapter and follow the Chapter's procedures for application, required documents, and prioritization. All requests, budget preparation, updates and progress reports will be processed initially through the Chapter.

(a) The requesting Chapter or organization has the primary responsibility to identify clients most in need of housing assistance and shall provide written confirmation that the applicant has not received funding to construct a new home from UNTF, Navajo Royalties Holding Fund, other housing agencies or funding source within the past 20 years.

(b) Chapters are required to maintain housing assistance policies and procedures and submit a copy of the policy to UNTF once every three (3) years, and when updated or amended.

(i) The Chapter policy should include a prioritization system in accordance with the Navajo Housing Services Department numbering system. If not already provided for in the Navajo Housing Services Department numbering system, disabled, elderly and veteran applicants shall be considered first on the housing priority assistance list.

(ii) The Chapter shall have a housing application review committee.

(c) The Chapter must submit an approved resolution along with the Housing priority list that supports the request.

(d) Applicants must meet UNTF residency criteria.

R661-7-201. Types of Housing Assistance.

(1) New House construction from footing to exterior and interior finish.

(2) Completion of construction on houses that were started but not completed.

(3) Additions of a room(s) such as a bedroom, bathroom, or kitchen.

(4) Remodel or Renovation includes:

(a) Renovation or retrofit to accommodate clients for handicapped accessibility, including but not limited to, additions/expansion for large bathrooms, walk-in, roll-in showers, widening of hallways and doorways, expansion of stoop or deck size, exterior ramps leading up to doorways.

(b) Improvement of an existing structure such as roof repair, floor installation or replacement.

(c) Weatherization measures, including replacement of broken windows or dilapidated doors, and installation of draft-proof windows, sealant, caulking, weather stripping, etc.

(d) Renovation of trailers or modular/manufactured homes, including the stabilization of the foundation with appropriate skirting and/or masonry foundation.

(e) Installation of house wiring, indoor plumbing, plumbing fixtures, kitchen cabinetry.

(f) Financial assistance for housing located off reservation land in San Juan County, Utah, is limited to renovation. The applicant must provide proof of ownership of the property.

R661-7-301. Housing Assistance Not Available.

- (1) To fund the purchase of trailers or modular/manufactured housing units.
- (2) For down payment assistance or closing costs are not eligible for UNTF funding.
- (3) For mortgage funding or payoff
- (4) For any type of loan payoffs.
- (5) For purchase of appliances such as a refrigerator, range, or microwave oven.

R661-7-401. Housing Assistance Eligible Purchases.

- (1) Water heaters if waterline is available and water is about to be turned on or, if the water heater is electric, electricity is functional.
- (2) Wood and/or coal stove, stove pad, stove pipe, and through the roof stove pipe kit.
- (3) One ceiling fan for distribution of heat.
- (4) UNTF staff will determine if the materials proposed to be purchased are reasonably priced quality building materials.
 - (a) A client who desires a more expensive item than what is approved by UNTF staff must purchase that item using their own funds. UNTF will not pay client the difference between the UNTF staff approved item and the item client desires to purchase.
 - (b) If the client does not purchase the item in time for construction crew installation the client must ~~to~~ install the item at their own cost.

R661-7-501. Required Documentation for Housing Projects.

- (1) A Navajo Nation Homesite Lease will be required of all new house construction and construction completion projects.
- (2) For other types of Housing Assistance applicants are strongly encouraged to have a homesite lease available for proof of ownership, utilities and other services.
- (3) Matching fund agencies shall be identified and commitment letters from each agency shall be included in the proposal package.
- (4) Applicants must provide documentation naming a successor owner/lessee who is permitted to occupy the residence and is obligated to maintain the property.
- (5) All new construction must be based on a floor plan showing all components of the dwelling unit to be constructed. Additionally, a specific list of all materials to be used and an estimate of total man-hours for construction is required.
- (6) Proof of the applicants contribution towards the construction, addition, or renovation of a dwelling in the form of receipts for the purchase of cement as well as proof of purchase of adequate waterproof material for protection from moisture damage to the bags of cement purchased.

R661-7-601. Purchases Shall Be Made on Separate Invoices for Separate Applicants.

Building materials shall not be purchased and delivered at commencement of construction.

- (1) Purchases and deliveries of materials shall be completed in phases according to the following schedule.

Phase 1: Foundation materials for footing, stem wall, piers, rebar, anchor bolts, and redwood or treated lumber

Phase 2: House Shell materials for framing, trusses, OSB plywood, siding, roofing, vents

- Phase 3: Exterior Doors and Windows
 Phase 4: Rough-in House wiring and Plumbing
 Phase 5: Insulation and Drywall
 Phase 6: Flooring
 Phase 7: Finish Carpentry: Cabinets, Casing and Baseboard, Exterior trim, Soffit, Interior and Exterior Painting
 Phase 8: Finish House wiring and Plumbing
- (2) Purchases for Stoops, Steps, or Decks can be performed at any point after Phase 1.
 - (3) All documentation must be submitted to the Chapter
 - (a) Requests for payment must include all materials receipts as well as verification signed by the homeowner, chapter representative, or UNTF representative picking up the items or signing for the delivery.
 - (b) The person signing the receipt shall deliver the receipt to the Chapter and/or UNTF office and shall safeguard materials from theft or damage.
 - (c) Upon receipt of material verification forms by the UNTF Administration, invoices will be processed for payment directly to the vendor.

R661-7-701. Funding.

- (1) UNTF preference is to fund projects ~~is~~ on a reimbursement basis. However, in exceptional circumstances the UNTF Administrator has the authority to make advance disbursements up to Five Thousand Dollars (\$5,000.00) for mobilization expenses.
- (2) UNTF will disburse approved funding directly to Chapters, or identified and approved contractors and/or vendors.
- (3) The Chapter or UNTF will retain ten percent (10%) of the approved contractor billings until proof of completion of the housing project is provided to UNTF.
- (4) The Chapter shall provide UNTF staff with an annual report identifying percentage of project completion and an explanation of what remains to be completed.

R661-7-801. Resale Approval Required.

Housing built or appliances purchased using UNTF funding shall not be sold without prior UNTF approval.

KEY: housing, chapter, Utah Navajo Trust Fund (UNTF), eligible purchases

Date of Enactment or Last Substantive Amendment: ~~February 29~~, 2016

Authorizing, and Implemented or Interpreted Law: 51-10

Navajo Trust Fund, Trustees
R661-13
Veterans' Housing Program Policy

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40608

FILED: 07/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The promulgation of this rule is required by Subsection 51-10-205(4)(a).

SUMMARY OF THE RULE OR CHANGE: This rule details the requirements to obtain UNTF funding for veterans' housing.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 51-10-205(4)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to state budget because this rule sets out the requirements for obtaining UNTF funds for veterans' housing.
 ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government because this rule sets out the requirements for obtaining UNTF funds for veterans' housing.
 ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses because this rule sets out the requirements for obtaining UNTF funds for veterans' housing.
 ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government because this rule sets out the requirements for obtaining UNTF funds for veterans' housing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because this rule sets out the requirements for obtaining UNTF funds for veterans' housing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact on business because this rule sets out the requirements for obtaining UNTF funds for veterans' housing.

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

NAVAJO TRUST FUND
 TRUSTEES
 ROOM 180
 350 N STATE STREET
 SALT LAKE CITY, UT 84114
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Suzette Alles by phone at 801-717-0821, or by Internet E-mail at salles@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2016

AUTHORIZED BY: David Damschen, State Treasurer

R661. Navajo Trust Fund, Trustees.**R661-13. Veterans' Housing Program Policy.****R661-13-1. Veterans' Housing Program Policy.**(1) Definitions

(a) "Veteran" is defined as a person who served in the active military, naval, coast guard, or air services, and who was discharged or released there from under conditions other than dishonorable, and who served (90) days or more during war time and 181 days or more during peace time. The definition of a Veteran as used herein includes Widows and Gold Star Mothers.

(b) A "widow" is defined as a surviving spouse who was validly married to and lived with the veteran continuously from the date of marriage to the date of the veteran's death and has not remarried. The term "widow" used in this guideline includes widowers.

(i) A "Gold Star Mother" is defined as a mother whose child was killed in the line of duty (killed in action) or has been declared missing in action.

(2) Program for eligible veterans requesting new house construction assistance.

(a) Applicants shall work directly with their respective Community Veterans Organization first then to the Chapter through which they are seeking housing assistance.

(i) All requests, budget preparation, updates and progress reports, will be processed through the Chapter.

(ii) Veterans' Housing projects will follow the regular Chapter project procedures for housing projects.

(b) The Applicant's Chapter shall identify match-funding sources in order to maximize the number of applicants that can be assisted with this program.

(i) UNTF will maintain a Veteran's Housing set aside with a limit of \$45,000 per applicant.

(ii) A Chapter may use their own chapter crew, contractor, or request the UNTF crew to build these houses for veterans.

(3) Types of Assistance

(a) New construction projects, assistance includes funding for building materials and/or labor.

(b) Individuals eligible to apply for assistance:

(i) veteran; and

(ii) recipient of the most priority points.

(4) Eligibility and Selection Criteria

(a) Applicants for UNTF housing assistance must first submit application to their Utah Chapter.

(b) A UNTF Veterans Housing Program application must be filled out and submitted to the Utah Chapter where the applicant resides, including homesite lease, allotment deed, leasehold interest, and/or other legal landownership documentation, and house size and floor plan that is acceptable to the Chapter.

(c) Applicant must be a Veteran as defined herein. Applicant must verify that he/she is a veteran by proof of separation papers (DD-214).

(d) Applicant must be a San Juan County, Utah resident as required by Rule R661-3.

(5) There must be proof that applicant's housing condition is substandard, dilapidated or is inadequate in terms of the capacity to meet the basic living standards of the veteran household.

(a) Proof that applicant is homeless or is living in borrowed housing or with relatives;

- (b) The Utah Chapter where the applicant resides shall make the initial determination of eligibility for UNTF assistance
- (6) The Chapter shall take into consideration:
 - (a) income;
 - (b) family size;
 - (c) age;
 - (d) health
 - (e) housing condition;
 - (f) Chapter priority listing; and,
 - (g) ineligibility for other housing programs.
- (7) The Chapter shall also use the following priority rating system in reviewing Veteran applications:
 - (a) Handicapped and Disabled (up to 25 points) applicants, Disabilities sustained from Military Service (up to 25 points), Nonservice-connected disabilities (up to 10 points)
 - (b) Elderly applicants (up to 25 points), 65 years of age or older (25 points), 59 – 64 years old (10 points).
 - (c) Family size and Overcrowded conditions (up to 25 points: 5 points for veteran, 5 points for every family member, but no more than 25 points).
 - (i) If the Veteran is living with relatives, only the immediate family members shall be eligible for points consideration.
 - (ii) Immediate family members are the applicant, the applicant's spouse, the applicant's biological son(s) and/or daughter(s), and any legally-adopted children that are living with the applicant on a full-time basis at the time of application.
 - (d) Housing/Dwelling Conditions (up to 25 points). If the existing house belongs to the veteran, the house condition shall be evaluated, taking into consideration the interior, exterior, roof, insulation, windows, doors, type of structure, year built (age of house).
 - (i) Good condition 0 points
 - (ii) Fair condition 5 points
 - (iii) Poor condition 15 points
 - (iv) Very Poor condition 25 points
 - (iv) Homeless 25 points
 - (6) Veteran Housing Projects shall be completed with 24 months of approval by the UNTF board.

KEY: veterans, veterans' housing
Date of Enactment or Last Substantive Amendment: 2016
Authorizing, Implemented, or Interpreted Law: 51-10-205(4)
(a)

Navajo Trust Fund, Trustees
R661-14
 Heavy Equipment Purchase and Repair
 Program

NOTICE OF PROPOSED RULE
 (New Rule)
 DAR FILE NO.: 40609
 FILED: 07/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is required by Subsection 51-10-205(4) (a).

SUMMARY OF THE RULE OR CHANGE: This rule details the requirements to obtain UNTF funds to purchase heavy equipment.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 51-10-205(4)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to state budget because this rule sets out the requirements for obtaining UNTF funds for the purchase of heavy equipment.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government because this rule sets out the requirements for obtaining UNTF funds for the purchase of heavy equipment.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small business because this rule sets out the requirements for obtaining UNTF funds for the purchase of heavy equipment.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities because this rule sets out the requirements for obtaining UNTF funds for the purchase of heavy equipment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because this rule sets out the requirements for obtaining UNTF funds for the purchase of heavy equipment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses because this rule sets out the requirements for obtaining UNTF funds for the purchase of heavy equipment.

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

NAVAJO TRUST FUND
 TRUSTEES
 ROOM 180
 350 N STATE STREET
 SALT LAKE CITY, UT 84114
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Katharine Kinsman by phone at 801-366-0140, or by Internet E-mail at kkinsman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2016

AUTHORIZED BY: David Damschen, State Treasurer

R661. Navajo Trust Fund, Trustees.

R661-14. Heavy Equipment Purchase and Repair Program.

R661-14-1. Heavy Equipment Purchase and Repair Program.

(1) Funding for purchase or repair of Heavy Equipment

(a) Heavy Equipment is equipment such as Graders, Backhoes, or Bobcat or Skidsteer, Fork Lift, One-ton flatbed truck, and attachments.

(b) Funds for this program will be allocated from Heavy Equipment allocation and/or Chapter Projects allocation funds for this program.

(i) UNTF will match up to 75% of the Heavy Equipment purchase with a cap of \$75,000 for any single item (\$50,000.00 piece of heavy equipment x 75% = \$37,500.00 UNTF Funding).

(ii) If a Chapter House is not located in Utah, a prorated amount will be applied in addition to the 75% based on the Chapter population in Utah compared to the Chapter population in the Arizona. The Dennehotso and Teecnospos Chapter Houses are located in Arizona, therefore the cap for purchases for those Chapter Houses are as follows:

(A) Dennehotso Chapter is 10% (for example, if heavy equipment cost \$20,000, the formula will be \$20,000 x 75% x 10% = \$1,500.00.)

(B) Teecnospos Chapter is 30% (for example, equipment cost of \$20,000 x 75% x 30% = \$4,500.00.)

(c) Minor Repairs and Maintenance for Heavy Equipment are the responsibility of the Chapter.

(2) Procedures

(a) UNTF is required to make heavy equipment purchased using the State of Utah Purchasing Department annual purchasing contracts.

(i) Chapters shall contact the UNTF staff to obtain the information regarding types of office equipment that is available under the state contract.

(ii) If equipment is purchased under the state contract, two price quotes are not required.

(b) If the equipment is not under state contract, the Chapter shall obtain cost quotations from at least two vendors or equipment repair service providers to get the best price; the quotes shall be attached to the proposal.

(c) The Chapter shall obtain a signed Chapter resolution supporting the proposal.

(d) The Chapter shall use the UNTF "Equipment Purchase/Repair Proposal" form and attendant checklist to submit the request for funding.

(e) The proposal and resolution shall be submitted to the UNTF Administration for consideration by the Dine' Advisory Committee and the Board of Trustees.

(f) If approved by the Board of Trustees, the Chapter will submit a UNTF Payment Request form to complete the purchase.

(3) The Chapter shall ensure that Heavy Equipment should only be operated by properly trained experienced operators.

(4) Heavy equipment purchased using UNTF funds shall not be sold without approval from UNTF.

KEY: heavy equipment purchases, repair program

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, Implemented, or Interpreted Law: 51-10-205(4)(a)

Navajo Trust Fund, Trustees
R661-15
Indemnification

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40610

FILED: 07/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is promulgated as required by Subsection 51-10-205(4)(a).

SUMMARY OF THE RULE OR CHANGE: This rule indemnifies the UNTF.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 51-10-205(4)(a)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no anticipated cost or savings to state budget as a result of this rule because this rule simply indemnifies the UNTF from any liability for funds allocated according to its rules.

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government as a result of this rule because this rule simply indemnifies the UNTF from any liability for funds allocated according to its rules.

♦ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses as a result of this rule because this rule simply indemnifies the UNTF from any liability for funds allocated according to its rules.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses or local government entities as a result of this rule because this rule simply indemnifies the UNTF from any liability for funds allocated according to its rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs for affected persons as a result of this rule because this rule simply indemnifies the UNTF from any liability for funds allocated according to its rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses as a result of this rule because this rule simply indemnifies the UNTF from any liability for funds allocated according to its rules.

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

NAVAJO TRUST FUND
TRUSTEES
ROOM 180
350 N STATE STREET
SALT LAKE CITY, UT 84114
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Katharine Kinsman by phone at 801-366-0140, or by Internet E-mail at kkinsman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2016

AUTHORIZED BY: David Damschen, State Treasurer

R661. Navajo Trust Fund, Trustees.

R661-15. Indemnification.

R661-15-1. Indemnification.

All recipients of Utah Navajo Trust Fund (UNTF) funds agree to indemnify, save harmless, and release UNTF and the State of Utah, and all their officers, agents, volunteers and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the use of UNTF funds by Recipient(s), their agents, heirs or assigns.

KEY: indemnification

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, Implemented, or Interpreted Law: 51-10-205(4)

(a)

Navajo Trust Fund, Trustees
R661-16
Health Care Systems Improvement
Program

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40611

FILED: 07/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is required pursuant to Subsection 51-10-205-(4)(a).

SUMMARY OF THE RULE OR CHANGE: This rule details the requirements for obtaining UNTF funding for health care facility improvements.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 51-10-205(4)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There is no anticipated cost or savings to state budget as a result of this rule because this rule sets forth the requirements to obtain UNTF funding to improve Navajo health systems.

◆ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government as a result of this rule because this rule sets forth the requirements to obtain UNTF funding to improve Navajo health systems.

◆ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses as a result of this rule because this rule sets forth the requirements to obtain UNTF funding to improve Navajo health systems.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities, as a result of this rule because this rule sets forth the requirements to obtain UNTF funding to improve Navajo health systems.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs for affected persons as a result of this rule because this rule sets forth the requirements to obtain UNTF funding to improve Navajo health systems.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses as a result of this rule because this rule sets forth the requirements to obtain UNTF funding to improve Navajo health systems.

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

NAVAJO TRUST FUND
TRUSTEES
ROOM 180
350 N STATE STREET
SALT LAKE CITY, UT 84114
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Katharine Kinsman by phone at 801-366-0140, or by Internet E-mail at kkinsman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2016

AUTHORIZED BY: David Damschen, State Treasurer

R661. Navajo Trust Fund, Trustees.

R661-16. Health Care Systems Improvement Program.

R661-16-1. Health Care Systems Improvement Program.

(1) The purpose of this program is to improve health care systems in Utah Navajo communities. This program is primarily intended for physical facility improvements and long-term equipment needs.

(a) Proposals submitted to UNTF under this program shall be for improvements or equipment and must be limited to buildings and/or land located in San Juan County, Utah.

(b) Financial assistance may be in the form of grants or loans.

(c) The amount of financial assistance for health care systems improvements from the Trust Fund may be limited to the amount budgeted and approved by the Dine' Advisory Committee and the UNTF Board of Trustees.

(d) Matching sources of funding are encouraged.

(2) Procedures

(a) The requesting organization shall complete a proposal and coordinate with the local Chapter(s) for support of the proposed project. Since health care facilities usually serve a large geographical area and several communities, it is strongly recommended to have surrounding Chapters provide resolutions of support.

(b) Proposal contents:

(i) Name and contact information of organization:

(A) including the organizational structure of proposing entity;

(B) members of the governing board;

(C) organizational budget and a copy of the most recent annual audited financial report; and

(D) staffing information.

(ii) Description of existing Health Care system:

(A) name of the facility;

(B) project location (include map for illustration);

(C) current condition of the facility; and,

(D) size and dimensions, and range and capacity of health services.

(iii) Description of proposed new construction or improvements to be made:

(A) designated Project Manager.

(B) proposed size;

(C) capacity;

(D) conceptual floorplan; and,

(E) type of facility (Hospital, Clinic, Nursing Home, Dialysis Center, Adult Care, Assisted Living, Hospice, Mobile Clinic, etc).

(iv) Description of how the proposed new construction or improvement(s) will result in the improvement of the health system (additional services, revenue generation, staff expansion, new technology, etc.)

(v) Support letters or agreements and Chapter resolutions, and other supporting documents for the proposed project.

(vi) The proposal will be reviewed by the Dine' Advisory Committee, if approved by the Dine' Advisory Committee, it will then be presented to the Board of Trustees for approval. UNTF has the discretion to request additional information from the applicant

(3) Additional Requirements

(a) If the proposal requires a loan, the entity must comply with the terms and conditions of the loan agreement and the scheduled repayments of the loan.

(i) The entity shall not list UNTF as a co-signer nor as a guarantor.

(ii) UNTF will require a security interest in any projects financed by UNTF loans.

(b) UNTF will periodically review the progress of the project development and submitted financial reports.

(i) UNTF may deny any requesting organization's future funding allocations in cases of non-compliance or non-conformance to UNTF policies, procedures, or contractual commitments made to obtain UNTF funding.

(ii) UNTF may deny or cease payments for a project based upon non-compliance with the terms of the UNTF grant or loan by the borrower or grantee.

(c) Organizations that receive funding through this program are required to provide annual reports to UNTF, detailing how UNTF funds and other matching funds were used.

KEY: Navajo health systems

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, Implemented, or Interpreted Law: 51-10-205(4)

(a)

Navajo Trust Fund, Trustees
R661-17
Office Equipment Purchase Program

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40612

FILED: 07/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is required by Subsection 51-10-205(4) (a).

SUMMARY OF THE RULE OR CHANGE: This rule details requirements for obtaining UNTF funding for office equipment purchases.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 51-10-205(4)(a)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no anticipated cost or savings to state budget as a result of this rule because this rule sets forth the requirements to obtain UNTF funding to purchase office equipment.

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government as a result of this rule because this rule sets forth the requirements to obtain UNTF funding to purchase office equipment.

♦ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses as a result of this rule because this rule sets forth the requirements to obtain UNTF funding to purchase office equipment.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities, as a result of this rule because this rule sets forth the requirements to obtain UNTF funding to purchase office equipment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs for affected persons as a result of this rule because this rule sets forth the requirements to obtain UNTF funding to purchase office equipment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses as a result of this rule because this rule sets forth the requirements to obtain UNTF funding to purchase office equipment.

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

NAVAJO TRUST FUND
TRUSTEES
ROOM 180
350 N STATE STREET
SALT LAKE CITY, UT 84114
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Katharine Kinsman by phone at 801-366-0140, or by Internet E-mail at kkinsman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2016

AUTHORIZED BY: David Damschen, State Treasurer

R661. Navajo Trust Fund, Trustees.

R661-17. Office Equipment Purchase Program.

R661-17-1. Office Equipment Purchase Program.

(1) The purpose of this program to provide Chapters with funds to purchase office equipment or software.

(a) The funds for this program are not allocated to individual Chapters; the funds are provided for in the annual budget and can be disbursed to a Chapter if requested and approved by the DAC and the Board.

(b) This Program is intended for the purchase of new office equipment, generally in an amount exceeding \$300.00.

(c) "Office equipment" is equipment used in an office setting, such as computers, fax machines, photocopiers, printers, typewriters, and furniture.

(d) Software funding is limited to one-time purchase of computer software or software upgrades.

(e) Ineligible Purchases:

(i) Ink cartridges, toners, ribbons, paper, staples, or maintenance programs.

(ii) Portable office equipment such as laptop computers, iPads, cell phones, calculators, and other equipment that can be easily stolen, borrowed and not returned, misplaced, or otherwise lost.

(2) Amount of Funding available

(A) UNTF will match up to 75% of the Office Equipment purchase with a cap of \$10,000 for any single item (\$2,000.00 piece of office equipment x 75% = \$1,500.00 UNTF Funding). Higher price proposals may be entertained under a Chapter Project request.

(B) If a Chapter House is not located in Utah, a prorated amount will be applied in addition to the 75% based on the Chapter population in Utah compared to the Chapter population in the Arizona. The Dennehotso and Teecnospos Chapter Houses are located in Arizona, therefore the cap for purchases for those Chapter Houses are as follows:

(i) Dennehotso 10% (for example, if a new piece of office equipment cost \$2,000, the formula will be \$2,000 x 75% x 10% = \$150.00.)

(ii) Teecnospos 30% (for example, equipment cost of \$2,000 x 75% x 30% = \$450.00.)

(3) Procedures

(A) UNTF is required to make office equipment purchases using the Division of Purchasing and when applicable, the Department of Technology Services purchasing contract.

(i) Chapters shall contact the UNTF staff to obtain the information regarding types of office equipment available under state contract.

(ii) If equipment is purchased under a state contract two price quotes are not required.

(B) Chapters shall use the UNTF "Equipment Purchase Proposal" form and attendant checklist to submit the request for funding.

(i) Applicants shall obtain a signed Chapter resolution supporting the proposal.

(ii) Chapters shall submit the form and the Chapter resolution to UNTF staff for consideration by the Dine' Advisory Committee and the Board of Trustees.

(iii) If approved by the Board, the Chapter then submits a UNTF Payment Request form to the UNTF staff to complete the purchase.

(iv) Purchased office equipment will be shipped to the UNTF office in Blanding. The Chapter must arrange to pick up the equipment.

(4) Office equipment purchased with UNTF funds shall not be sold without prior UNTF approval.

KEY: office equipment, office equipment purchase program

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, Implemented, or Interpreted Law: 51-10-205(4)

(a)

Navajo Trust Fund, Trustees
R661-18
Outstanding Senior Award Program

ROOM 180
 350 N STATE STREET
 SALT LAKE CITY, UT 84114
 or at the Office of Administrative Rules.

NOTICE OF PROPOSED RULE
 (New Rule)
 DAR FILE NO.: 40613
 FILED: 07/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is required by Subsection 51-10-205(4) (a).

SUMMARY OF THE RULE OR CHANGE: This rule details the requirements to nominate a Utah Navajo high school senior for an award.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 51-10-205(4)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to state budget as a result of this rule because this rule sets forth the requirements to nominate a Utah Navajo high school senior for an award.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government as a result of this rule because this rule sets forth the requirements to nominate a Utah Navajo high school senior for an award.
- ◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses as a result of this rule because this rule sets forth the requirements to nominate a Utah Navajo high school senior for an award.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities as a result of this rule because this rule sets forth the requirements to nominate a Utah Navajo high school senior for an award.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs for affected persons as a result of this rule because this rule sets forth the requirements to nominate a Utah Navajo high school senior for an award.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses as a result of this rule because this rule sets forth the requirements to nominate a Utah Navajo high school senior for an award.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Katharine Kinsman by phone at 801-366-0140, or by Internet E-mail at kkinsman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2016

AUTHORIZED BY: David Damschen, State Treasurer

R661. Navajo Trust Fund, Trustees.
R661-18. Outstanding Senior Award Program.
R661-18-1. Outstanding Senior Award Program.

(1) The Outstanding Senior Award Program (OSAP) is established to identify and acknowledge excellence exhibited by eligible Navajo high school seniors.

(a) Eligibility

(i) Applicants must have a GPA of 2.5 or higher.

(ii) Applicants can attend school outside of San Juan County and/or Utah, however, an applicant's parents must be eligible for UNTF funding.

(b) Maximum Award is \$600.00

(i) \$100.00 will be awarded at graduation with a Certificate of Recognition.

(ii) The remaining \$500.00 will be sent to the student after he/she has registered and has verified enrollment in a post-secondary school.

(2) Each Utah Chapter, including the Blue Mountain Dine' Community, may recommend students to UNTF for consideration for receipt of the award by the Selection Committee. The applicant, or a Chapter, may also contact the student's high school or UNTF Staff to make recommendations of award recipients to the Selection Committee.

(a) Selection Process

(i) The Selection Committee is be comprised of at least one of the Dine' Advisory Committee Education Sub-Committee members, a local high school administration official, and UNTF staff.

(ii) The Selection Committee shall review applications and shall select students from each Chapter and the Blue Mountain Dine community as follows:

(A) Aneth (2)

(B) Dennehotso (1)

(C) Mexican Water (1)

(D) Navajo Mountain (1)

(E) Oljato (2)

(F) Red Mesa (1)

(G) Teec Nos Pos (1)

(H) Blue Mt Dine Community

The distribution is related to Chapter affiliation, not location of the high school.

(iii) The Selection Committee must have three committee members present to conduct interviews and evaluations.

(iv) The Selection Committee shall forward the number of selectees from each Chapter to the Dine' Advisory Committee, which will forward its recommendations to the UNTF Board of Trustees for approval.

(b) Application Process

(i) The student must submit a portfolio which shall include:

(A) Residency Verification form signed by the student's Chapter;

(B) A high school transcript showing the student's GPA;

(C) A copy of college acceptance letter(s);

(D) A list of and explanation of student's extracurricular activities and/or voluntary service projects performed during high school (grades 9-12);

(E) A typed essay with a maximum of 1,500 words describing the student's: 1. Post-high school educational plans; 2. Statement on career ambitions; 3. Two or three of the following topics: a) Statement of knowledge of Navajo culture and Navajo people in general; b) Navajo traditions, language, and folklore; or, c) explanation of an interesting event in Navajo history.

(ii) At least one letter of recommendation from either a high school official, community member, or elected official.

(iii) A resume.

(c) The Selection Committee will interview the student and ask the student to:

(i) Express his/her opinion, in Navajo, on the importance of maintaining the Navajo culture;

(ii) Express what a post-secondary education means to the student;

(iii) Express how the student may help the Navajo community after completing his/her college education;

(iv) Discuss the student's goals and how does he/she plan to reach them;

(v) Describe student's character qualities, including honesty, trustworthy, hard-working, respectful, humble and teachable, determined, self-confident, responsible, etc.

(3) Application Deadlines

(a) Announcements and information regarding the program will be made available during the first month of the start of the school year and again during the first week of January.

(b) The Application deadline is the FIRST Friday in March.

(c) The Selection Committee will conduct interviews by the THIRD Wednesday of March.

(4) Award

(a) Each Selection Committee member will review and assess the Application and the student's responses to the interview questions, and record weighted scores on the "Selection Committee OSAP Scoring Sheet". The individual committee scores will then be added up, totaled, and averaged on one "OSAP SELECTED CANDIDATE Form".

(b) The Selection Committee will forward an "OSAP SELECTED CANDIDATE Form" to UNTF staff for presentation to the Dine' Advisory Committee at its regularly scheduled April meeting.

(c) The Dine' Advisory Committee will make its recommendation to the Board of Trustees at its April regularly scheduled meeting.

(d) All awards, certificates, and the initial check will be prepared by the THIRD Friday of April.

(5) Award recipients shall be tracked by UNTF Staff to determine whether the recipients of the awards enroll in a post-secondary program.

KEY: high school senior award, students

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, Implemented, or Interpreted Law: 51-10-205(4)

(a)

Navajo Trust Fund, Trustees R661-19 Student Educational Enrichment Program

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40614

FILED: 07/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is required by Subsection 51-10-205(4) (a).

SUMMARY OF THE RULE OR CHANGE: This rule provides UNTF funding for extracurricular educational opportunities.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 51-10-205(4)(a)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no anticipated cost or savings to state budget as a result of this rule because this rule sets forth the requirements to obtain UNTF funding for extracurricular educational opportunities.

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government as a result of this rule because this rule sets forth the requirements to obtain UNTF funding for extracurricular educational opportunities.

♦ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses as a result of this rule because this rule sets forth the requirements to obtain UNTF funding for extracurricular educational opportunities.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities as a result of this rule because this rule sets forth the requirements to obtain UNTF funding for extracurricular educational opportunities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs for affected persons as a result of this rule because this rule sets forth the requirements to obtain UNTF funding for extracurricular educational opportunities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses as a result of this rule because this rule sets forth the requirements to obtain UNTF funding for extracurricular educational opportunities.

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

NAVAJO TRUST FUND
TRUSTEES
ROOM 180
350 N STATE STREET
SALT LAKE CITY, UT 84114
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Katharine Kinsman by phone at 801-366-0140, or by Internet E-mail at kkinsman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2016

AUTHORIZED BY: David Damschen, State Treasurer

**R661. Navajo Trust Fund, Trustees.
R661-19. Student Educational Enrichment Program.
R661-19-1. Student Educational Enrichment Program.**

(1) The Student Educational Enrichment Program (SEEP) is established to assist students in grades 9-12. The objective of the SEEP program is to augment student interests in academic and/or career endeavors. SEEP funds are to be used for participation in education-related events or programs, and/or competitive educational expositions including, but not limited to, college summer prep programs, math, science, and technology expositions, job-shadowing, and industry production methods which are recommended by a school counselor(s) or principal.

(a) The intent of SEEP is to enrich students academically and only expenses related to the academic program are eligible for UNTF funds.

(b) SEEP is restricted to academic programs and/or events held in the contiguous United States.

(c) Each Utah Chapter may select and/or recommend eligible students to participate in the SEEP.

(i) The Chapter's Community Services Coordinator and a member of the Dine' Advisory Committee will coordinate with the school events coordinator or contact person to ensure that the proposed event is eligible for SEEP funds.

(ii) Only academic events or activities coordinated with the school events coordinator or contact person are eligible for SEEP funds. The school events coordinator or contact person shall

be responsible for the proposal and for coordinating with the Chapter for submittal to UNTF.

(2) SEEP provides supplemental funding for group activities. The applicant must provide proof that the SEEP funds will be matched with other funding sources. Individual expenses will not be covered by SEEP.

(3) Application Process

(a) The UNTF Student Educational Enrichment proposal form shall be used to apply for UNTF SEEP Funds.

(b) The proposal shall contain the following:

(i) A list of participants approved by the chapter and verified to be on UNTF's Census Database;

(ii) A program activity description and how it will meet the objectives of the SEEP program; ;

(iii) A budget showing total program costs, including tuition or program fees, travel, meals, and other costs;

(iv) Match-funding participation from tribal, state, county or other agencies as part of overall budget, and amounts requested from UNTF;

(v) School events coordinator or contact person telephone number and mailing address

(vi) School's statement or other proof of liability insurance for the group activity;

(vii) Approval by the Principal; and,

(viii) A Chapter resolution.

(4) UNTF matching funds shall not exceed 25% of the total cost and shall not exceed \$500.00 per eligible student.

(a) Checks will be payable to the school.

(b) The principal is required to sign the "Request for Payment" form.

(5) Each funded group shall submit a report to UNTF Staff demonstrating how the activity met the objectives of the SEEP program.

**KEY: students, Student Educational Enrichment Program
Date of Enactment or Last Substantive Amendment: 2016
Authorizing, Implemented, or Interpreted Law: 51-10-205(4)
(a)**

**Navajo Trust Fund, Trustees
R661-20
Photovoltaic (Solar) Systems Program**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40615

FILED: 07/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is required by Subsection 51-10-205(4) (a).

SUMMARY OF THE RULE OR CHANGE: This rule details the requirements to obtain UNTF funding for photovoltaic systems.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 51-10-205(4)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There is no anticipated cost or savings to state budget as a result of this rule because this rule sets forth the requirements to obtain UNTF funding for photovoltaic systems.

◆ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government as a result of this rule because this rule sets forth the requirements to obtain UNTF funding for photovoltaic systems.

◆ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses as a result of this rule because this rule sets forth the requirements to obtain UNTF funding for photovoltaic systems.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities as a result of this rule because this rule sets forth the requirements to obtain UNTF funding for photovoltaic systems.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs for affected persons as a result of this rule because this rule sets forth the requirements to obtain UNTF funding for photovoltaic systems.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses as a result of this rule because this rule sets forth the requirements to obtain UNTF funding for photovoltaic systems.

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

NAVAJO TRUST FUND
TRUSTEES
ROOM 180
350 N STATE STREET
SALT LAKE CITY, UT 84114
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Katharine Kinsman by phone at 801-366-0140, or by Internet E-mail at kkinsman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 09/08/2016

AUTHORIZED BY: David Damschen, State Treasurer

R661. Navajo Trust Fund, Trustees.

R661-20. Photovoltaic (Solar) Systems Program.

R661-20-1. Photovoltaic (Solar) Systems Program.

(1) Funding for this Program comes from the annual Chapter Project Allocation.

(a) UNTF funding is limited to \$15,000.00.

(b) The Chapter shall identify other match-funding sources in order to maximize the number of applicants that can receive assistance from UNTF.

(2) Objective of the Photovoltaic (Solar) Systems Policy is to provide financial assistance to individuals and entities for development of photovoltaic systems, installation and maintenance.

(a) Eligible applicants for the Photovoltaic Systems Program are individuals/families not served by a regular power line extension. Individuals or families who are included on a regular power line project to be completed within two years are not eligible for this program.

(b) Funding will be provided for photovoltaic packages which may include: panels; wiring; connections; receptacles; light fixtures; batteries; protective fencing; small buildings to house batteries and controls and to mount the equipment on; installation (labor); and, a maintenance plan.

(c) The maintenance plan shall include orientation for the applicant on care and maintenance of the system and troubleshooting.

(3) Procedure

(a) The applicant or the Chapter shall obtain at least two (2) quotes from qualified, certified/licensed photovoltaic system installers which specify all costs associated with the required package.

(b) The Chapter shall provide a project description that includes a list of the dwelling units of all families to be included in the proposed project.

(i) The description shall include the technical instruments and quality of photovoltaic system components which will be included in the wiring to be installed at each dwelling unit and may be depicted by an itemized material and instrument cost list.

(ii) The cost for each dwelling unit installation must be detailed in the proposed project description.

(c) Proof of licensing, insurance, certifications and warranties for all contractors, sub-contractors, or installers hired by the Chapter or applicant to install photovoltaic systems is required.

(d) Installers of photovoltaic systems shall ensure the systems are installed in accordance with the codes and standards of the National Fire Protection Association.

(e) An executed resolution from the Chapter, along with any priority listings, shall be submitted in support of the application.

(4) Ten percent (10%) of UNTF funding shall be retained until a final inspection is made. The Chapter may request final payment of the 10% retainage amount once the Chapter provides a copy of the warranty and written documentation to UNTF staff confirming that the Chapter is satisfied with the completed work.

KEY: photovoltaic (solar) systems

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, Implemented, or Interpreted Law: 51-10-205(4)

(a)

Public Safety, Fire Marshal
R710-2
Rules Pursuant to the Utah Fireworks
Act

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40601

FILED: 07/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to comply with the adoption of the 2015 International Fire Code by the Utah State Legislature and make formatting changes.

SUMMARY OF THE RULE OR CHANGE: The rule has been renumbered to meet the requirements of the Rulewriting Manual. The purpose of the rule has been restated to meet the requirements of the Rulewriting Manual. The authority of the rule has been restated to meet the requirements of the Rulewriting Manual. Redundant definitions have been removed. IFC Chapter references have been updated. Rule R710-2 references have been updated. NFPA Standards have been removed from the purpose statement and placed under Section R710-2-8. This change clarifies when re-examination is required. In Section R710-2-11, IFC Chapter 33, Sections 3301.2.1 and 3301.2.2 have been changed to IFC Chapter 56, Sections 5601.2.1 and 5601.2.2.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There will not be an anticipated cost or savings to the state budget because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.

◆ **LOCAL GOVERNMENTS:** There will not be an anticipated cost or savings to local budgets because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.

◆ **SMALL BUSINESSES:** There will not be an anticipated cost or savings to small businesses budgets because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will not be an anticipated cost or savings to person's budget because the changes made to the rule are specific to incorporation of the 2015 International Fire Code

specifications and other formatting change and do not involve changes to fees or equipment requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will not be an anticipated cost or savings because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the amendment and found that this rule change will not have a fiscal impact on business.

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

PUBLIC SAFETY
 FIRE MARSHAL
 ROOM 302
 5272 S COLLEGE DR
 MURRAY, UT 84123-2611
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
 ◆ Ted Black by phone at 801-284-6352, or by Internet E-mail at tblack@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2016

AUTHORIZED BY: Coy Porter, State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-2. Rules Pursuant to the Utah Fireworks Act.

R710-2-1. [Adoption]Purpose.

~~[Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts rules]The purpose of this rule is to establish [establishing]the minimum safety standards for retail storage, handling, and sale of class C common state approved explosives indoor or outdoor; and requirements for licensing of importer, wholesaler, display operator, special effects operator, flame effects operator, and flame effect performing artist.~~

~~[There is further adopted as part of these rules the following codes which are incorporated by reference:~~

~~1.1 International Fire Code (IFC), 2009 edition, as published by the International Code Council, Inc. (ICC), and as enacted and amended by the Utah State Legislature in Sections 102 and 201 of the State Fire Code Adoption Act.~~

~~1.2 National Fire Protection Association (NFPA), Standard 1123, Code for Fireworks Display, 2006 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-10, et seq.~~

~~1.3 National Fire Protection Association (NFPA), Standard 1126, Standard for the Use of Pyrotechnics Before a Proximate Audience, 2006 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-10, et seq.~~

~~1.4 National Fire Protection Association (NFPA), Standard 160, Standard for the Use of Flame Effects Before an Audience, 2011 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-10, et seq.~~

~~1.5 Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal's Office.]~~

R710-2-2. Authority.

This rule is authorized by Section 53-7-204.

R710-2-[2]3. Definitions.

~~[2-1](1) "[Authority having jurisdiction (AHJ)]" means authority having jurisdiction, and includes such county and municipal officers who are charged with the enforcement of state and municipal laws; consisting of all fire enforcement officials including designated staff from the Utah State Department of Public Safety.~~

~~[2-2](2) "Aerial device" means a cake that is a collection of mine/shell tubes that has a single covered fuse which is used to light several tubes in sequence. A cake may also be defined as an aerial repeater or multi-shot aerial and does not exceed more than 500 grams of pyrotechnic composition.~~

~~[2-3](3) "Bin" means a container or enclosed space for storing or displaying aerial fireworks that would reasonably limit the effect of the pyrotechnic material if ignited, and would not allow rapid spread of the fire to areas away from the immediate area of ignition.~~

~~[2-4](4) "Constant Visual Supervision" means that visual supervision is continually occurring or regularly recurring.~~

~~[2-5](5) "Covered fuse" means a fuse or designed point of ignition that is protected against accidental ignition by contact with a spark, smoldering item or small open flame.~~

~~[2-6](6) "Designated Store Employee" means a specific employee assigned that title or the employee who works at the work station where the measurement was taken to the aerial fireworks display.~~

~~[2-7](7) "Direct Line of Sight" means there is a clear unobstructed view to the aerial fireworks display.~~

~~[2-8](8) "Flame Effects" means Flame Effects Operator or Flame Effects Performing Artist.~~

~~[2-9](9) "Flame Effects Performing Artist" means a fire spinner, fire dancer or fire performer who is paid to perform professionally in a public location.~~

~~[2-10](10) "ICC" means International Code Council, Inc.~~

~~[2-11](11) "IFC" means International Fire Code, 2015 edition.~~

~~[2-12](12) "Licensed Operator" means any person who discharges, ignites, supervises, manages, oversees or directs the discharge of display fireworks, special effects fireworks, flame effects or flame effects performing artist.~~

~~[2-13](13) "NAFAA" means the North American Fire Arts Association.~~

~~[2-14](14) "NFPA" means National Fire Protection Association.~~

~~[2-15](15) "Permanent structure" means a non-movable building, securely attached to a foundation, housing a business.~~

~~[2-16](16) "Person" means an individual, company, partnership or corporation.~~

~~[2-17](17) "Pre-packaged" means that the product is wrapped in a clear plastic wrap or other equivalent material to prevent the fuse of the class C common state approved explosive from being accessible to the customer.~~

~~[2-18](18) "Resale" means the act of reselling class B or C explosives to a new party.~~

~~[2-19](19) "SFM" means the State Fire Marshal.~~

~~[2-20](20) "Tent" means a temporary structure, enclosure or shelter constructed of fabric or pliable material supported by any manner except by air or the contents it protects.~~

~~[2-21](21) "Temporary Stands and Trailers" means a non-permanent structure used exclusively for the sale of fireworks.~~

~~[2-22] "UCA" means Utah Code Annotated.]~~

R710-2-[3]4. General Requirements.

~~[3-1](1) No person shall engage in any type of retail storage or sale of class C common state approved explosives, without first having obtained a license to sell fireworks from the authority having jurisdiction, if required.~~

~~[3-2](2) If a municipality or county in which fireworks are offered for sale, requires a seller to obtain a license, it shall be available at the store or stand for presentation upon request to authorized public safety officials.~~

~~[3-3](3) All fireworks retail sales locations shall be under the direct supervision of a responsible person who is 18 years of age or older.~~

~~[3-4](4) Those selling fireworks at retail sales locations shall be at least 16 years of age or older.~~

~~[3-5](5) A salesperson shall remain at the sales location at all times unless suitable locking devices or secured metal storage containers are provided to prevent the unauthorized access to the merchandise by others.~~

~~[3-6](6) Class C common state approved explosives shall not be sold to any person under the age of 16 years, unless accompanied by an adult.~~

~~[3-7](7) All retail sales locations shall be kept clear of dry grass or other combustible material for a distance of at least 25 feet in all directions.~~

~~[3-8](8) Storage of class C common state approved explosives shall not be located in residences to include attached garages.~~

~~[3-9](9) "No Smoking" signs shall be conspicuously posted at all sales and storage locations.~~

~~[3-10](10) A sign, clearly visible to the general public, shall be posted at all fireworks sales locations, indicating the legal dates for discharge of fireworks.~~

~~[3-11](11) All retail sales locations shall be equipped with an approved, portable fire extinguisher having a minimum 2A rating.~~

~~[3-12](12) Class C common state approved explosives shall only be stored, handled, displayed, and sold as packaged units with covered fuses.~~

R710-2-[4]5. Indoor Sales.

[4-1](1) Display of class C common state approved explosives inside of buildings shall be so located to ensure constant visual supervision.

[4-2](2) In all retail sales locations in permanent structures, the area where class C common state approved explosives are displayed or stored shall be at least 50 feet from any flammable liquid or gas, or other highly combustible material.

[4-3](3) In permanent structures, retail sales displays of Class C common state approved explosives shall not be placed in locations that would impede egress from the building.

[4-4](4) Display of Class C common state approved explosives inside of buildings protected throughout with an automatic fire sprinkler system shall not exceed 25 percent of the area of the retail sales floor or exceed 600 square feet, whichever is less.

[4-5](5) Display of Class C common state approved explosives inside of buildings not protected with an automatic fire sprinkler system shall not exceed 125 pounds of pyrotechnic composition. Where the actual weight of the pyrotechnic composition is not known, 25 percent of the gross weight of the consumer fireworks, including packaging, shall be permitted to be used to determine the weight of the pyrotechnic composition.

[4-6](6) Display of Class C common state approved explosives inside of buildings shall not exceed a height greater than six feet above the floor surface.

[4-7](7) Rack storage of Class C common state approved explosives inside of buildings is prohibited.

R710-2-[5]6. Temporary Stands, Trailers and Tents.

[5-1](1) Temporary stands, trailers and tents less than 200 square feet used for the retail sales of class C common state approved explosives shall be constructed in compliance with local rules, or if none, in accordance with nationally recognized practice. Tents having an area in excess of 200 square feet shall comply with IFC, Chapter [24]31.

[5-2](2) The general public shall not be allowed to enter a temporary stand or trailer.

[5-3](3) Each stand, trailer or tent less than 200 square feet shall have a minimum three foot wide unobstructed aisle, running the length of the stand, trailer or tent.

[5-4](4) All tents where customers enter inside shall have a minimum three foot wide unobstructed aisle and two separate exits located a reasonable distance apart and so located that if one is blocked the other will be available.

[5-5](5) The area used for sales of class C common state approved explosives in stands, trailers or tents shall be arranged to permit the customer to only touch or handle pre-packaged class C common state approved explosives. All non pre-packaged class C common state approved explosives shall be displayed in a manner which prevents the fireworks from being handled by the customer without the direct intervention of the retailer who shall be able to maintain visual contact with the customer.

[5-6](6) Temporary stands, trailers or tents for the sale of class C common state approved explosives shall be located at least 50 feet from other stands, trailers, tents, LPG, flammable liquid or gas storage and dispensing units.

[5-7](7) If the stand or trailer is used for the overnight storage of class C common state approved explosives, it shall be equipped with suitable locking devices to prevent unauthorized entry.

(a) Tents shall not be used for overnight storage of class C common state approved explosives unless on site security is provided.

[5-8](8) No person shall be allowed to sleep in any temporary stand, trailer or tent in which class C common state approved explosives are stored or sold.

[5-9](9) Stands, trailers or tents shall not be illuminated or heated by any device requiring an open flame or exposed heating elements.

(a) All heaters shall be approved by the [authority having jurisdiction (AHJ)].

[5-10](10) All illumination shall be installed in accordance with the temporary wiring section of the National Electric Code and approved by the [authority having jurisdiction (AHJ)].

R710-2-[6]7. Display, Sale, and Signage of Aerial Devices.

[6-1](1) In addition to those requirements in [R710-2-3,] Sections R710-2-4 [and R710-2-5,] through R710-2-6, all aerial devices shall be packaged and displayed for sale in a manner that would provide public safety by completing one of the following:

[6-1-1](a) [P]provide constant visual supervision by direct line of sight by a designated store employee where the aerial display is not more than 25 feet from the designated employee's work station[-];

[6-1-2](b) [P]provide constant visual supervision by direct line of sight by a store employee when all of the following requirements are met:

[6-1-2-1](i) [F]the aerial display shall not be more than 40 feet from the designated employee's work station.

[6-1-2-2](ii) [F]the aerial devices are restrained by using at least one of the following methods:

[6-1-2-2-1](A) [F]the aerial devices are placed in a bin or bins that meets the definition stated in Section [2-3 of these rules-]R710-2-3; or

[6-1-2-2-2](B) [F]the aerial device shall have an additional layer of packaging requiring that the additional layer of packaging be punctured or torn to gain access to the fuse cover[-]; or

[6-1-3](c) [P]place the aerial devices in an area that is physically separated from the public so that the customer cannot handle the aerial devices without the assistance of an employee.

[6-2](2) Where aerial devices are sold in permanent structures, the aerial device display shall be placed in a location that gives the customer access to the aerial devices just before the customer checks out and exits the store.

[6-3](3) Wherever aerial devices are sold, there shall be signage with a minimum font of one inch, to warn and inform the customer of the dangers of aerial devices and the signage shall state the following:

[6-3-1](a) [A]aerial fireworks are designed to travel up to 150 feet into the air and then explode[-];

[6-3-2](b) [A]aerial fireworks shall be placed on a hard level surface outdoors, in a clear and open area prior to ignition[-];

~~[6-3-3](c)~~ ~~[A]~~ anyone under the age of 16 shall not handle or operate aerial fireworks[-];

~~[6-3-4](d)~~ ~~[I]~~ ignition of aerial fireworks shall be a minimum of 30 feet from any structure or vertical obstruction[-];

~~[6-3-5](e)~~ ~~[A]~~ aerial fireworks shall not be ignited within 150 feet of the point of sale[-]; and

~~[6-3-6](f)~~ ~~[P]~~ please read and obey all safe handling instructions before using aerial fireworks.

R710-2-~~[7]8~~. Display Operator, Special Effects Operator, Flame Effects Operator, or Flame Effects Performing Artist Licenses.

~~[7-1](1)~~ Application for a display operator, special effects operator, flame effects operator, or flame effects performing artist license shall be made in writing on forms provided by the SFM.

~~[7-2](2)~~ Application for a license shall be signed by the applicant.

~~[7-3](3)~~ Original licenses shall be valid from the date of issuance through December 31st of the year in which issued.

~~(a)~~ Original licenses issued on or after October 1st, will be valid through December 31st of the following year.

~~[7-4](4)~~ Application for renewal of license shall be made before January 1st of each year.

~~(a)~~ Application for renewal shall be made in writing on forms provided by the SFM.

~~[7-5](5)~~ The SFM may refuse to renew any license pursuant to Section ~~[9 of these rules]~~ R710-2-10.

~~(a)~~ The applicant, upon such refusal, shall also have those rights as are granted by Section ~~[9 of these rules]~~ R710-2-10.

~~[7-6](6)~~ Every licensee shall notify the SFM, in writing, within ~~[thirty - (30)]~~ days[-] of any change of his address or location.

~~[7-7](7)~~ No licensee shall conduct his licensed business under a name other than the name which appears on his license.

~~[7-8](8)~~ No license shall be issued to any person as licensee who is under ~~[twenty-one - (21)]~~ years of age.

~~[7-9](9)~~ The holder of any license shall submit such license for inspection upon request of the SFM, his duly authorized deputies, or any authorized enforcement official.

~~[7-10](10)~~ The applicant shall indicate on the application which license the applicant wishes to apply for:

~~[7-10-1](a)~~ Display Operator;

~~[7-10-2](b)~~ Special Effects Operator;

~~[7-10-3](c)~~ Flame Effects Operator; or

~~[7-10-4](d)~~ Flame Effects Performing Artist.

~~[7-11](11)~~ Every person who wishes to secure a display licensed operator, special effects licensed operator, or flame effects licensed operator original license shall demonstrate proof of competence by:

~~[7-11-1](a)~~ ~~[S]~~ successfully passing an open book written examination and obtaining a minimum grade of ~~[seventy percent - (70%)]~~[-];

~~[7-11-2](i)~~ ~~[F]~~ the applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination[-];

~~[7-11-3](b)~~ ~~[S]~~ submit written verification with the application of having completed a display operators safety class, a special effects operators safety class, a flame effects operator safety class or demonstrate previous experience acceptable to the SFM[-]; and

~~[7-11-4](c)~~ ~~[S]~~ submit written verification with the application that the applicant has worked with a licensed display operator, special effects operator, or a flame effects operator for at least three shows or demonstrate previous experience acceptable to the SFM.

~~[7-12](12)~~ Every person who wishes to secure an original flame effects performing artist operator license shall demonstrate proof of competence by:

~~[7-12-1](a)~~ Successfully passing an open book written examination and obtaining a minimum grade of ~~[seventy percent - (70%)]~~[-].

~~[7-12-2](b)~~ The applicant is allowed to use the statute, the administrative rule, NFPA 160, and the Artisan and Performer Safety Standards prepared by the SFM.

~~[7-12-3](c)~~ Submit written verification with the application of having received a flame effects performing artist safety class or demonstrate previous experience acceptable to the SFM.

~~[7-12-4](d)~~ Submit written verification with the application that the applicant has worked with a licensed flame effects performing artist for at least five training meetings or practice sessions or demonstrate previous experience acceptable to the SFM.

~~[7-13]~~ ~~The written examination stated in Section 7-11-1 or 7-12-1 shall be valid for five years from the date of the examination.~~

~~(13)~~ Every holder of a valid license identified in Subsections R710-02-7(11) and R710-02-07(12) shall take a re-examination every five years, from date of original issuance.

~~[7-14](14)~~ Applicants seeking an original license as stated in ~~[Sections 7-11 of these rules]~~ Subsection R710-2-8(11), may perform the various acts while under the direct supervision of a person holding a valid license for a period not to exceed 45 days.

~~(a)~~ By the end of the 45[-] day period, the applicant shall have taken and passed the required examination and completed all other licensing requirements.

~~[7-15](15)~~ At the end of the five[-] year period the licensed display operator, special effects operator, flame effects operator, or flame effects performing artist shall take a re-examination.

~~(a)~~ The re-examination shall be open book and sent to the license holder at least 60 days before the renewal date.

~~(b)~~ The re-examination shall focus on the changes in the last 5 years to the adopted standards.

~~(c)~~ The license holder is responsible to complete the re-examination and return it to the ~~[D]~~ division in time to renew and also comply with the requirements listed in ~~[Section 7-16 of these rules]~~ Subsection R710-2-8(16).

~~[7-16](16)~~ After the issuance of the original license, and each year thereafter, the display operator, special effects operator, flame effects operator, or flame effects performing artist shall complete a minimum of one of the following:

~~[7-16-1](a)~~ ~~[C]~~ complete one show or performance annually;

~~[7-16-2](b)~~ ~~[A]~~ attend an operator safety class or flame effects performing artist meeting annually; and

~~[7-16-3](c)~~ ~~[W]~~ work with another licensed display operator, special effects operator, flame effects operator, or flame

effects performing artist with a show annually to demonstrate proof of competence.

[7-17](17) When the license has expired for more than one year, an application shall be made for an original license and the initial requirements shall be completed as required in [Sections 7-11 or 7-12 of these rules]Subsections R710-2-8(11) and R710-2-8(12).

[7-18](18) Every person who wishes to secure a display operator, special effects operator, flame effects operator, or flame effects performing artist license shall be at least 21 years of age.

[7-19](19) Every licensed display operator, special effects operator, flame effects operator, or flame effects performing artist shall complete an After Action Report within ten [(10)] working days after the conclusion of any show and send it to the State Fire Marshal.

(a) If there are more than one licensed operator involved in the show, only one After Action Report needs to be sent to the State Fire Marshal for that show.

R710-2-[8]9. Importer or Wholesaler License.

[8-1](1) Application for an importer or wholesaler license shall be in writing on forms provided by the SFM.

[8-2](2) Application for a license shall be signed by the applicant.

(a) If the application is made by a partnership, it shall be signed by all partners.

(b) If the application is made by a corporation or association, it shall be signed by a principal officer.

[8-3](3) Original licenses shall be valid from the date of issuance through December 31st of the year in which issued.

(a) Original licenses issued on or after October 1st, will be valid through December 31st of the following year.

[8-4](4) The SFM may refuse to renew any license pursuant to Section [9 of these rules]R710-2-10.

(a) The applicant, upon such refusal, shall also have those rights as are granted by Section [9 of these rules]R710-2-10.

[8-5](5) Every licensee shall notify the SFM within [thirty-(30)] days of any change of address or location.

[8-6](6) No licensee shall conduct his licensed business under a name other than the name which appears on his license.

[8-7](7) No license shall be issued to any person as licensee who is under [twenty-one-(21)] years of age.

[8-8](8) The holder of any license shall submit such license for inspection upon request of the SFM, his duly authorized deputies, or any authorized enforcement official.

R710-2-[9]10. Adjudicative Proceedings.

[9-1](1) All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by [UCA,]Sections 63G-4-202 and 63G-4-203.

[9-2](2) The issuance, renewal, or continued validity of a license may be denied, suspended or revoked, if the SFM, or his authorized deputies finds that the applicant, licensee, person employed for, the person having authority and management of a concern commits any of the following violations:

[9-2-1](a) [F]the person or applicant is not the real person in interest[-];

[9-2-2](b) [F]the person of applicant provides material misrepresentation or false statement on the application[-];

[9-2-3](c) [F]the person or applicant refuses to allow inspection by the AHJ[-];

[9-2-4](d) [F]the person or applicant for a license does not possess the qualifications of skill or competence to conduct operations for which application is made, as evidenced by failure to pass the written examination, demonstrate practical skills or complete the safety class[-];

[9-2-5](e) [F]the person or applicant has been convicted of one or more federal, state or local laws[-];

[9-2-6](f) [F]failure to accurately complete the After Action Report[-];

[9-2-7](g) [F]the person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules[-];

[9-2-8](h) [A]ny offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a license or certificate of registration[-]; or

[9-2-9](i) [F]there are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of being an importer, wholesaler, display operator, special effects operator, flame effects operator or flame effects performing artist.

[9-3](3) A person may request a hearing on a decision made by the AHJ, by filing an appeal to the [B]board within 20 days after receiving final notice from the AHJ.

[9-4](4) All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with [UCA,]Section 63G-4-201.

[9-5](5) The [B]board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

[9-6](6) The [B]board shall direct the SFM to issue a signed order to the parties involved giving the decision of the [B]board within a reasonable time of the hearing pursuant to [UCA,]Section 63G-4-203.

[9-7](7) Reconsideration of the [B]board's decision may be requested in writing within 20 days of the date of the decision pursuant to [UCA,]Section 63G-4-302.

[9-8](8) After a period of three years from the date of revocation, the [B]board shall review the submitted written application of a person whose license or certificate of registration has been revoked.

(a) After timely notice to all parties involved, the [B]board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the [B]board.

(b) After the hearing, the [B]board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

[9-9](9) Judicial review of all final [B]board actions resulting from informal adjudicative proceedings shall be conducted pursuant to [UCA,]Section 63G-4-402.

R710-2-[10]11. Amendments and Additions.

[10-1](1) The following are amendments and additions to the codes and standards adopted to regulate class C common state

approved explosives, placement and discharge of display fireworks, and importer, wholesaler, display or special effects operator licenses, ~~as adopted in Section 1 of these rules:~~

~~[40.2](2) IFC, Chapter [33]56, Sections [3301.2.1]5601.2.1 and [3301.2.2 is]5601.2.2 are deleted, and rewritten to read as follows:~~

~~[40.2.1](a) For the following periods of time: June 1 through July 31; December 1 through January 5; and 30 days before and up to 5 days after the Chinese New Year; class C common state approved explosives may be stored for retail sale as follows:~~

~~[40.2.1.1](i) [F]the retail seller shall notify the local fire authority to where the class C common state approved explosives are to be stored[-];~~

~~[40.2.1.2](ii) [E]class C common state approved explosives shall not be stored in residences to include attached garages[-]; and~~

~~[40.2.1.3](iii) The local fire authority shall approve the storage site of the class C common state approved explosives and may use the following guidelines for acceptable places of storage:~~

~~[40.2.1.3.1](A) [F]in self storage units where the owner allows it[-];~~

~~[40.2.1.3.2](B) [F]in a temporary stand or trailer used for the retail sales of Class C common state approved explosives, which must be locked or secured when not open for business[-];~~

~~[40.2.1.3.3](C) [F]in a locked or secured truck, trailer, or other vehicle at an approved location[-];~~

~~[40.2.1.3.4](D) [F]in a locked or secured container, garage, shed, barn, or other building, which is detached from an inhabited building[-];~~

~~[40.2.1.3.5](E) [W]a wholesalers warehouse[-];~~

~~[40.2.1.3.6](F) [A]an approved Group M occupancy[-];~~

~~[40.2.1.3.7](G) [F]in a locked or secured metal container adjacent to the temporary stand, trailer or tent that is acceptable to the authority having jurisdiction[-]; or~~

~~[40.2.1.3.8](H) [A]any other structure or location approved by the authority having jurisdiction.~~

~~[40.2.2](b) During [A]all other periods of time, except those stated in [Section 9.2.1 of these rules]Subsection R710-2-11(2)(a), the storage, use, and handling of fireworks are prohibited, except as follows:~~

~~[40.2.2.1](i) [F]the storage and handling of fireworks are allowed as required in IFC, Chapter [33]56 and these rules[-]; and~~

~~[40.2.2.2](ii) [F]the use of fireworks for display is allowed as set forth in IFC, Chapter [33]56 and these rules.~~

R710-2-~~[H]~~12. Fire Department Displays.

~~[41.1](1) As required in [UCA]Subsection 53-7-223(1) and as allowed for fire departments in [UCA]Subsection 53-7-202(9)(b), the fire department's involvement in the discharge of display fireworks is allowed only for the discharge of display fireworks in that fire departments community or communities it has a contract to protect.~~

~~[41.2](2) Within 10 working days after the conclusion of a fireworks display, the fire chief or an assigned fire department member shall complete an After Action Report and send it to the State Fire Marshal.~~

~~[41.3](3) Any fire department member that will be involved in the discharge site as defined in NFPA 1123, shall complete a fireworks display safety class and examination on-line yearly to be allowed in the discharge area during the display.~~

~~_____ (a) A copy of the completed certificate shall be sent to the SFM yearly to be placed in the fire department file.~~

~~[41.4](4) Any fireworks purchased by a community or fire department outside of the State of Utah shall require the securing of an annual importers license as required in [UCA]Section 53-7-224.~~

KEY: fireworks

Date of Enactment or Last Substantive Amendment: ~~[March 9, 2012]2016~~

Notice of Continuation: May 21, 2012

Authorizing, and Implemented or Interpreted Law: 53-7-204

Public Safety, Fire Marshal **R710-6** Liquefied Petroleum Gas Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40602

FILED: 07/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to comply with the adoption of the 2015 International Fire Code by the Utah State Legislature and make formatting changes; adopt the additional National Fire Protection Association (NFPA), Standard 54, National Fuel Gas Code, 2012 edition not specified in law; update the adopted edition of National Fire Protection Association (NFPA), Standard 1192, Standard on Recreational Vehicles, from 2008 edition to the 2011 Edition' and increase required insurance minimums to meet industry standard.

SUMMARY OF THE RULE OR CHANGE: The rule has been renumbered to meet the requirements of the Rulewriting Manual. The purpose of the rule has been restated to meet the requirements of the Rulewriting Manual. The authority of the rule has been restated to meet the requirements of the Rulewriting Manual. Section R710-6-3 has been added, adopting the applicable NFPA Standards. This information was previously included in the purpose statement. Redundant definitions have been removed. The changes also add definitions for "Container" and "Dispenser"; increase insurance amounts from 100,000/300,000 to 1,000,000/3,000,000; reference applicable sections of NFA Standards; and add online testing. The changes also state that re-examination tests will no longer be mailed out; clarifies that the State Fire Marshal or the LP Gas Board Chair may sign a Certificate of Registration; references to fee amounts found in the Utah State Fee Schedule have been removed; corrects code section numbers; and adds Sections R710-6-11 and R710-6-12.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-305

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There will not be an anticipated cost or savings to the state budget because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.
- ◆ LOCAL GOVERNMENTS: There will not be an anticipated cost or savings to local budgets because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.
- ◆ SMALL BUSINESSES: There will not be an anticipated cost or savings to small businesses budgets because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements. Current required levels of insurance of 100,000/300,000 are much lower than what is commonly offered by insurance companies and does not provide adequate coverage for today's industry standards. As the majority of the companies that the agency is aware of already insures to these levels and due to the fact that there was no opposition to this change in public meeting, the agency has not counted it as additional cost.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will not be an anticipated cost or savings to person's budgets because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements. Current required levels of insurance of 100,000/300,000 are much lower than what is commonly offered by insurance companies and does not provide adequate coverage for today's industry standards. As the majority of the companies that the agency is aware of already insures to these levels and due to the fact that there was no opposition to this change in public meeting, the agency has not counted it as additional cost.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will not be an anticipated cost or savings because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the amendment and found that this rule change will not have a fiscal impact on business.

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

FIRE MARSHAL
ROOM 302
5272 S COLLEGE DR
MURRAY, UT 84123-2611
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
- ◆ Ted Black by phone at 801-284-6352, or by Internet E-mail at tblack@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2016

AUTHORIZED BY: Coy Porter, State Fire Marshal

R710. Public Safety, Fire Marshal.
R710-6. Liquefied Petroleum Gas Rules.
R710-6-1. [Adoption, Title, Purpose] and Scope.

[Pursuant to Title 53, Chapter 7, Section 305, Utah State Code Annotated 1953, the Liquefied Petroleum Gas (LPG) Board ~~adopts~~] The purpose of this rule is to establish the minimum rules to provide regulation to those who distribute, transfer, dispense or install LP Gas and/or its appliances in the State of Utah.
[~~There is adopted as part of these rules the following codes which are incorporated by reference:~~
~~1.1 National Fire Protection Association (NFPA), Standard 58, LP Gas Code, 2011 edition, except as amended by provisions listed in R710-6-8, et seq.~~
~~1.2 National Fire Protection Association (NFPA), Standard 54, National Fuel Gas Code, 2009 edition, except as amended by provisions listed in R710-6-8, et seq.~~
~~1.3 National Fire Protection Association (NFPA), Standard 1192, Standard on Recreational Vehicles, 2011 Edition, except as amended by provisions listed in R710-6-8, et seq.~~
~~1.4 International Fire Code (IFC), Chapter 38, 2009 edition, as published by the International Code Council, Inc. (ICC), and as enacted and amended by the Utah State Legislature in Sections 102 and 201 of the State Fire Code Adoption Act.~~
~~1.5 A copy of the above codes are on file with the Division of Administrative Rules, and the State Fire Marshal's Office. The definitions contained in the afore referenced codes shall also pertain to these rules.~~
~~1.6 Title.~~
~~These rules shall be known as "Rules Governing LPG Operations in the State of Utah" and may be cited as such, and will be hereinafter referred to as "these rules".~~
~~1.7 Validity.~~
~~If any article, section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the LPG Board such decision shall not affect the validity of the remaining portion of these rules.~~

~~1.8 Conflicts.~~

~~In the event where separate requirements pertain to the same situation in the same code, or between different codes or standards as adopted, the more restrictive requirement shall govern, as determined by the enforcing authority.]~~

R710-6-2. Authority.

~~This rule is authorized by Section 53-7-305.~~

R710-6-2]3. Definitions.

~~(1) "ASME" means the American Society of Mechanical Engineers.~~

~~(2) "AHJ" means authority having jurisdiction, and includes such county and municipal officers who are charged with the enforcement of state and municipal laws; consisting of all fire enforcement officials including designated staff from the Utah State Department of Public Safety.~~

~~[2-1](3) "ASME Stamp" means the symbol used to designate that the container has been built to the [American Society of Mechanical Engineers] (ASME); Boiler and Pressure Vessel Code, Section VIII, Divisions 1 or 2, Rules for the Construction of Unfired Pressure Vessels.~~

~~[2-2](4) "Board" means the Liquefied Petroleum Gas Board.~~

~~[2-3](5) "Concern" means a person, firm, corporation, partnership, or association, licensed by the [B]board.~~

~~(6) "Container" means the propane tank.~~

~~(7) "Dispenser" means pump assemblies, transfer hoses, meters and associated equipment that is mounted or anchored or may be installed inside of a steel cabinet. Note: Both the dispenser and container may be installed on a common base, or separate base, or separate location.~~

~~[2-4](8) "Dispensing System" means equipment in which LP Gas is transferred from one container to another in liquid form.~~

~~[2-5](9) "Division" means the Division of the State Fire Marshal.~~

~~[2-6](10) "Enforcing Authority" means the division, the municipal or county fire department, other fire prevention agency acting within its respective fire prevention jurisdiction, or the building official of any city or county.~~

~~[2-7](11) "ICC" means International Code Council, Inc.~~

~~[2-8](12) "IFC" means International Fire Code.~~

~~[2-9](13) "License" means a written document issued by the Division authorizing a concern to be engaged in an LPG business.~~

~~[2-10](14) "LPG" means Liquefied Petroleum Gas.~~

~~[2-11](15) "LPG Certificate" means a written document issued by the Division to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.~~

~~[2-12](16) "NFPA" means the National Fire Protection Association.~~

~~[2-13](17) "Possessory Rights" means the right to possess LPG, but excludes broker trading or selling.~~

~~[2-14](18) "Public Place" means a highway, street, alley or other parcel of land, essentially unobstructed, which is deeded, dedicated or otherwise appropriated to the public for public use, and where the public exists, travels, traverses or is likely to frequent.~~

~~[2-15](19) "Qualified Instructor" means a person holding a valid LPG certificate in the area in which he is instructing.~~

~~[2-16] "Transferred by the final consumer" means the act of moving an LP Gas cylinder from one place to another.~~

~~[2-17] "UCA" means Utah State Code Annotated 1953 as amended.]~~

R710-6-3]4. Licensing.

~~[3-1](1) Type of license.~~

~~[3-1-1](a) Class I: A licensed dealer who is engaged in the business of installing gas appliances or systems for the use of LPG and who sells, fills, refills, delivers, or is permitted to deliver any LPG.~~

~~[3-1-2](b) Class II: A business engaged in the sale, transportation, and exchange of cylinders, but not transporting or transferring gas in liquid.~~

~~[3-1-3](c) Class III: A business not engaged in the sale of LPG, but engaged in the sale and installation of gas appliances, or LPG systems.~~

~~[3-1-4](d) Class IV: Those businesses listed below:~~

~~[3-1-4-1](i) [D]dispensers;~~

~~[3-1-4-2](ii) [S]sale of containers greater than 96 pounds water capacity; and~~

~~[3-1-4-3](iii) [O]other LPG businesses not listed above.~~

~~[3-2](2) The application for a license to engage in the business of LPG as required in [3-1 of these rules] Subsection R710-6-5(1), shall be accompanied with proof of general liability insurance.~~

~~(a) The general liability insurance shall be issued by a general liability insurance carrier showing coverage of at least [\$100,000]\$1,000,000 for each incident, and [\$300,000]\$2,000,000 in total coverage.~~

~~(b) The licensee shall notify the SFM within [thirty]30 days after the general liability insurance coverage required is no longer in effect for any reason.~~

~~[3-3 Signature on Application.]~~

~~(3) The application shall be signed by an authorized representative of the applicant.~~

~~(a) If the application is made by a partnership, it shall be signed by at least one partner.~~

~~(b) If the application is made by a corporation or association other than a partnership, it shall be signed by the principal officers, or authorized agents.~~

~~[3-4 Issuance.]~~

~~(4) Following receipt of the properly completed application, an inspection, completion of all inspection requirements, and compliance with the provision of the statute and these rules, the Division shall issue a license.~~

~~[3-5 Original, Valid Date.]~~

~~(5) Original licenses shall be valid for one year from the date of application. Thereafter, each license shall be renewed annually and renewals thereof shall be valid for one year from issuance.~~

~~[3-6 Renewal.]~~

~~(6) Application for renewal shall be made on forms provided by the SFM.~~

~~[3-7 Refusal to Renew.]~~

~~(7) The [B]board may refuse to renew any license in the same manner, and for any reason, that they are authorized, pursuant to Article 5 of these rules to deny a license.~~

~~(a) The applicant shall, upon such refusal, have the same rights as are granted by [Article 5 of this article] Section R710-6-7 to an applicant for a license which has been denied by the [B]board.~~

~~3.8 Change of Address.~~

(8) Every licensee shall notify the Division, in writing, within ~~thirty~~ (30) days of any change of his address.

~~3.9 Under Another Name.~~

(9) No licensee shall conduct his licensed business under a name other than the name or names which appears on his license.

~~3.10 List of Licensed Concerns.~~

~~3.10.1~~(10) The ~~D~~division shall make available, upon request and without cost, to the ~~E~~enforcing ~~A~~authority, the name, address, and license number of each concern that is licensed pursuant to these rules.

~~3.10.2~~(a) Upon request, single copies of such list shall be furnished, without cost, to a licensed concern.

~~3.11 Inspection.~~

(11) The holder of any license shall submit such license for inspection upon request of the Division or the ~~E~~enforcing ~~A~~authority.

~~3.12 Notification and LPG Certificate.~~

(12) Every licensed concern shall, within ~~twenty~~ (20) days of employment, and within ~~twenty~~ (20) days of termination of any employee, report to the ~~D~~division, the name, address, and LPG certificate number, if any, of every person performing any act requiring an LPG certificate for such licensed concern.

~~3.13 Posting.~~

(13) Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the premises of the licensed location.

~~3.14 Duplicate License.~~

(14) A duplicate license may be issued by the Division to replace any previously issued license, which has been lost or destroyed, upon the submission of a written statement from the licensee to the Division.

(a) Such statement shall attest to the fact that the license has been lost or destroyed.

(b) If the original license is found it shall be surrendered to Division within 15 days.

~~3.15 Registration Number.~~

(15) Every license shall be identified by a number, delineated as P-~~(number)~~.

~~3.16 Accidents, Reporting.~~

(16) Any accident where a licensee and LPG are involved must be reported to the ~~B~~board in writing by the affected licensee within 3 days upon receipt of information of the accident.

(a) The report must contain any pertinent information such as the location, names of persons involved, cause, contributing factors, and the type of accident.

(b) If death or serious injury of persons~~(s)~~, or property damage of \$5000~~(-00)~~ or more results from the accident, the report must be made immediately by telephone and followed by a written report.

~~3.17 Board investigation of accidents.~~

(17) At their discretion, the ~~B~~board will investigate, or direct the ~~D~~division to investigate, all serious accidents ~~as defined in Subsection 3.15~~.

R710-6-4.5. LP Gas Certificates.

~~4.1 Application.~~

(1) Application for an LPG certificate shall be made in writing to the ~~D~~division.

(a) The application shall be signed by the applicant.

~~4.2 Examination.~~

(2) Every person who performs any act or acts described in ~~UCA~~ Section 53-7-308, shall pass an initial examination in accordance with the provisions of this article.

~~4.3~~(3) Types of ~~F~~initial ~~E~~examinations:

~~4.3.1~~(a) Carburetion;

~~4.3.2~~(b) Dispenser;

~~4.3.3~~(c) HVAC/Plumber;

~~4.3.4~~(d) Recreational Vehicle Service;

~~4.3.5~~(e) Serviceman; and

~~4.3.6~~(f) Transportation and Delivery.

~~4.4 Initial Examinations.~~

~~4.4.1~~(4) The initial examination shall include an open book written test or online test of the applicant's knowledge of the work to be performed by the applicant.

(a) The applicant is allowed to use the adopted statute, administrative rules, NFPA 54, NFPA 1192, and NFPA 58.

(b) Any other materials to include cellular telephones or related cellular equipment are prohibited in the examination room.

~~4.4.2~~(c) The initial examination may also include a practical or actual demonstration of some selected aspects of the job to be performed by the applicant if so warranted by the test administrator.

~~4.4.3~~(d) Leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant.

~~4.4.4~~(e) To successfully complete the written or online and practical initial examinations, the applicant must obtain a minimum grade of ~~seventy percent~~ (70%) in each portion of the examination taken.

(i) Each portion of the examination will be graded separately.

(ii) Failure of any one portion of the examination will not delete the entire test.

~~4.4.5~~(f) Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.

~~4.4.6~~(g) Examinations may be given at various field locations as deemed necessary by the Division.

(a) Appointments for field examinations are required.

~~4.4.7~~(h) ~~As required in Sections 4.2 and 4.3 of these rules, those~~ [a] Applicants that have successfully completed the requirements of the Certified Employee Training Program~~(-CETP)~~, as written by the National Propane Gas Association, and that corresponds to the work to be performed by the applicant, shall have the requirement for initial examination waived~~(-)~~ after appropriate documentation is provided to the Division by the applicant.

~~4.4.8~~(i) As required in ~~Sections 4.2 and 4.3.6 of these rules~~ Subsections R710-6-6(2) and R710-6-6(3)(f), those applicants that have successfully completed the requirements in Code of Federal Regulations, ~~(CFR)~~ 49, Parts 172.700, 172.704, 177.800 and 177.816, that correspond~~(s)~~ to the work to be performed by the applicant, shall have the requirement for initial examination waived, after appropriate documentation is provided to the ~~D~~division by the applicant.

~~4.4.9~~(j) As required in ~~Sections 4.2 and 4.3.3 of these rules~~ Subsections R710-6-6(2) and R710-6-6(3)(c), those applicants that have successfully completed the Rocky Mountain Gas

Association, Natural Gas Technician Certification Exam with a passing score, shall have the requirement for initial examination waived, after appropriate documentation is provided to the [D]division by the applicant.

~~[4.4.10](k)~~ As required in ~~[Sections 4.2 and 4.3.3 of these rules]~~R710-6-6(2) and R710-6-6(3)(c), those applicants that are licensed journeyman plumbers as required in the Constructions Trades Licensing Act Plumber Licensing Rules, R156-55c, shall have the requirement for initial examination waived, after appropriate documentation is provided to the [D]division by the applicant.

~~[4.5 Original and Renewal Date.]~~

(5) Original LPG certificates shall be valid for one year from the date of issuance.

(a) Thereafter, each LPG certificate shall be renewed annually and renewals thereof shall be valid ~~[from]~~ for one year from issuance.

~~[4.6 Renewal Date.]~~

(6) Application for renewal shall be made on forms provided by the Division.

~~[4.7 Re-examination.]~~

(7) Every holder of a valid LPG Certificate shall take a re-examination every five years from the date of original certificate issuance, to comply with the provisions of ~~[Section 4.3 of these rules]~~Subsection R710-6-6(3) as follows:

~~[4.7.1](a)~~ [F]the re-examination to comply with the provisions of ~~[Section 4.3 of these rules]~~Subsection R710-6-6(3) shall consist of an open book examination~~[-, to be mailed to the certificate holder at least 60 days before the renewal date.];~~

~~[4.7.2](b)~~ [F]the open book re-examination will consist of questions that focus on changes in the last five years to NFPA 54, NFPA 58, the statute, ~~[or]~~and the adopted administrative rules~~[-];~~

(i) The re-examination may also consist of questions that focus on practices of concern as noted by the [B]board or [D]division~~[-];~~

~~[4.7.3](c)~~ [F]the certificate holder is responsible to complete the re-examination ~~[and return it to the Division]~~in sufficient time to renew~~[-];~~

~~[4.7.4](d)~~ [F]the certificate holder is responsible to ~~[return]~~submit to the [D]division ~~[with the re-examination]~~the correct renewal fees to complete that certificate renewal~~[-];~~

~~[4.7.5](e)~~ [A]as required in ~~[Section 4.7 of these rules]~~Subsection R710-6-6(7), those applicants that have successfully completed the requirements in Code of Federal Regulations ~~[4]CFR~~ 49, Parts 172.700, 172.704, 177.800 and 177.816, that corresponds to the work to be performed by the applicant, shall have the requirement for re-examination waived, after appropriate documentation is provided to the Division by the applicant~~[-]; and~~

~~[4.7.6](f)~~ [A]as required in ~~[Section 4.7 of these rules]~~Subsection R710-6-6(7), those applicants that provide the [D]division with written verification of the completion of 40 hours of continuing training over the previous five-year period shall have the requirement for re-examination waived.

~~[4.8 Refusal to Renew.]~~

(8) The [D]division may refuse to renew any LPG certificate in the same manner and for any reason that is authorized pursuant to ~~[Section 5.2 of these rules]~~Subsection R710-6-7(2).

~~[4.9 Inspection.]~~

(9) The holder of a LPG certificate shall submit such certificate for inspection, upon request of the Division or the enforcing authority.

~~[4.10](10)~~ Type.

~~[4.10.1](a)~~ Every LPG certificate shall indicate the type of act or acts to be performed and for which the applicant has qualified.

~~[4.10.2](b)~~ Any person holding a valid LPG certificate shall not be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

~~[4.10.3](c)~~ It is the responsibility of the LPG certificate holder to insure that the concern they are employed by is licensed under this act.

~~[4.10.4](d)~~ The requirements listed in Sections 4.10.2 and 4.10.3 of these rules do not apply to licensed journeyman plumbers who meet the requirements listed in 4.4.10 of these rules.

~~[4.10.5](e)~~ The requirements listed in Sections 4.10.2 and 4.10.3 of these rules do not apply to those final consumers that meet the requirements stated in ~~[UCA]~~Section 53-7-308.

~~[4.11 Change of Address.]~~

(11) Any change in home address of any holder of a valid LPG certificate shall be reported by the registered person to the Division within ~~[thirty]~~[30] days of such change.

~~[4.12 Duplicate.]~~

(12) A duplicate LPG certificate may be issued by the Division to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the Division from the certified person.

(a) Such statement shall attest to the certificate having been lost or destroyed.

(b) If the original is found, it shall be surrendered to the Division within 15 days.

~~[4.13 Contents of Certificate of Registration.]~~

(13) Every LPG certificate issued shall contain the following information:

~~[4.13.1](a)~~ [F]the name and address of the applicant~~[-];~~

~~[4.13.2](b)~~ [F]the physical description of applicant~~[-];~~

~~[4.13.3](c)~~ [F]the signature of the LP Gas Board Chair~~[man]~~ or the State Fire Marshal~~[-];~~

~~[4.13.4](d)~~ [F]the date of issuance~~[-];~~

~~[4.13.5](e)~~ [F]the expiration date~~[-];~~

~~[4.13.6](f)~~ [F]type of service the person is qualified to perform~~[-]; and~~

~~[4.13.7](g)~~ [H]have printed on the card the following: "This certificate is for identification only, and shall not be used for recommendation or advertising".

~~[4.14 Minimum Age.]~~

(14) No LPG certificate shall be issued to any person who is under ~~[sixteen]~~[16] years of age.

~~[4.15](15)~~ Restrictive Use.

~~[4.15.1](a)~~ No LPG certificate shall constitute authorization for any person to enforce any provisions of these rules.

~~[4.15.2](b)~~ A LPG certificate may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

~~[4.15.3](c)~~ Regardless of the acts for which the applicant has qualified, the performance of only those acts authorized under the licensed concern employing such applicant shall be permissible.

~~[4.15.4](d)~~ Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the

applicant for a LPG certificate has qualified shall be permissible by such applicant.

~~[4.16.1] Right to Contest.~~

~~[4.16.1](16)~~ Every person who takes an examination for a LPG certificate shall have the right to contest the validity of individual questions of such examination.

~~[4.16.2](a)~~ Every contention as to the validity of individual questions of an examination that cannot be reasonably resolved, shall be made in writing to the ~~[D]~~division within 48 hours after taking said examination.

~~(i)~~ Contentions shall state the reason for the objection.

~~[4.16.3](b)~~ The decision as to the action to be taken on the submitted contention shall be by the ~~[B]~~board, and such decision shall be final.

~~[4.16.4](c)~~ The decision made by the ~~[B]~~board, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

~~[4.17 Non-Transferable.]~~

~~(17)~~ LPG Certificates shall not be transferable to another individual.

~~(a)~~ Individual LPG certificates shall be carried by the person to whom issued.

~~[4.18 New Employees.]~~

~~(18)~~ New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid LPG certificate for a period not to exceed 45 days from the initial date of employment.

~~(a)~~ By the end of such period, new employees shall have taken and passed the required examination.

~~(b)~~ In the event the employee fails the examination, re-examination shall be taken within 30 days.

~~(c)~~ The employee shall remain under the direct supervision of an employee holding a valid LPG certificate, until certified.

~~[4.19 Certificate Identification.]~~

~~(19)~~ Every LPG certificate shall be identified by a number, delineated as PE-[number].

~~(a)~~ Such number shall not be transferred from one person to another.

R710-6-5[6]. Adjudicative Proceedings.

~~[5.1](1)~~ All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by ~~[UCA,]~~ Sections 63G-4-202 and 63G-4-203.

~~[5.2](2)~~ The issuance, renewal, or continued validity of a license or LPG certificate may be denied, suspended or revoked by the ~~[D]~~division if the ~~[D]~~division finds that the applicant, person employed for, or the person having authority and management of a concern commits any of the following violations:

~~[5.2.1](a)~~ ~~[F]~~the person or applicant is not the real person in interest[-];

~~[5.2.2](b)~~ ~~[F]~~the person or applicant provides material misrepresentation or false statement in the application, whether for an original or renewal certificate[-];

~~[5.2.3](c)~~ ~~[F]~~the person or applicant refuses to allow inspection by the ~~[D]~~division or enforcing authority on an annual basis to determine compliance with the provisions of these rules[-];

~~[5.2.4](d)~~ ~~[F]~~the person, applicant, or concern for a license does not have the proper or necessary facilities, including qualified personnel[-] to conduct the operations for which application is made[-];

~~[5.2.5](e)~~ ~~[F]~~the person or applicant for a LPG certificate does not possess the qualifications of skill or competence to conduct the operations for which application is made[-];

~~(i)~~ ~~[F]~~this can also be evidenced by failure to pass the examination and/or practical tests[-];

~~[5.2.6](f)~~ ~~[F]~~the person or applicant refuses to take the examination[-];

~~[5.2.7](g)~~ ~~[F]~~the person or applicant has been convicted of a violation of one or more federal, state or local laws[-];

~~[5.2.8](h)~~ ~~[F]~~the person or applicant has been convicted of a violation of the adopted rules or has been found by a [B]board administrative proceeding to have violated the adopted rules[-];

~~[5.2.9](i)~~ ~~[A]~~any offense ~~[of]~~or finding of unlawful conduct, or there is or may be[-] a threat to the public's health or safety if the person or applicant were granted a license or certificate of registration[-];

~~[5.2.10](j)~~ ~~[F]~~there are other factors upon which a reasonable and prudent person would rely to determine the suitability of the person or applicant to safely and competently distribute, transfer, dispense or install LP Gas and/or its appliances[-];

~~[5.2.11](k)~~ ~~[F]~~the person or applicant does not complete the re-examination process ~~[by the person or applicants]~~before the certificate or license expiration date[-]; or

~~[5.2.12](l)~~ ~~[F]~~the person or applicant fails to pay ~~[the license fee, certificate of registration fee, examination fee or other fees]~~any fee as required in Section ~~[6 of these rules]~~R710-6-8.

~~[5.3](3)~~ A person whose license or certificate of registration is suspended or revoked by the ~~[D]~~division shall have an opportunity for a hearing before the LPG Board if requested by that person within 20 days after receiving notice.

~~[5.4](4)~~ All adjudicative proceedings, other than criminal prosecution, taken by the ~~[E]~~enforcing ~~[A]~~authority to enforce the Liquefied Petroleum Gas Section, Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with ~~[UCA,]~~ Section 63G-4-201.

~~[5.5](5)~~ The ~~[B]~~board shall act as the hearing authority, and shall convene after timely notice to all parties involved.

~~(i)~~ The ~~[B]~~board shall be the final authority on the suspension or revocation of a license or certificate of registration.

~~[5.6](6)~~ The ~~[B]~~board shall direct the ~~[D]~~division to issue a signed order to the parties involved giving the decision of the ~~[B]~~board within a reasonable time of the hearing pursuant to ~~[UCA,]~~ Section 63G-4-203.

~~[5.7](7)~~ Reconsideration of the ~~[B]~~board's decision may be requested in writing within 20 days of the date of the decision pursuant to ~~[UCA,]~~ Section 63G-4-302.

~~[5.8](8)~~ After a period of three ~~[3]~~ years from the date of revocation, the ~~[B]~~board may review the written application of a person whose license or certificate of registration has been revoked.

~~[5.9](9)~~ Judicial review of all final ~~[B]~~board actions resulting from informal adjudicative proceedings is available pursuant to ~~[UCA,]~~ Section 63G-4-402.

R710-6-6[7]. Fees.

~~[6.1 Fee Schedule.]~~

~~6.1.1 License and LPG Certificates (new and renewals):~~

~~6.1.1.1 License~~

~~6.1.1.1.1 Class I - \$450.00~~

~~6.1.1.1.2 Class II - \$450.00~~

- ~~6.1.1.1.3 Class III - \$105.00~~
~~6.1.1.1.4 Class IV - \$150.00~~
~~6.1.1.2 Branch office license - \$338.00~~
~~6.1.1.3 LPG Certificate - \$40.00~~
~~6.1.1.4 LPG Certificate (Dispenser - Class B) - \$20.00~~
~~6.1.1.5 Duplicate - \$30.00~~
~~6.1.2 Examinations:~~
~~6.1.2.1 Initial examination - \$30.00~~
~~6.1.2.2 Re-examination - \$30.00~~
~~6.1.2.3 Five year examination - \$30.00~~
~~6.1.3 Plan Reviews:~~
~~6.1.3.1 More than 5000 water gallons of LPG - \$150.00~~
~~6.1.3.2 5,000 water gallons or less of LPG - \$75.00~~
~~6.1.4 Special Inspections:~~
~~6.1.4.1 Per hour of inspection - \$50.00~~
~~(charged in half hour increments with part half hours charged as full half hours):~~
~~6.1.5 Re-inspection (3rd Inspection or more) - \$250.00~~
~~6.1.6 Private Container Inspection (More than one container) - \$150.00~~
~~6.1.7 Private Container Inspection (One container) - \$75.00~~
~~6.2 Payment of Fees:]~~
~~(1) The required fee shall accompany the application for license or LPG certificate or submission of plans for review.~~
~~[6.3 Late Renewal Fees:~~
~~6.3.1 Any license or LPG certificate not renewed on or before one year from the original date of issuance will be subject to an additional fee equal to 10% of the required fee.]~~
~~6.3.2(2) When an LPG certificate has expired for more than one year, an application shall be made for an original certificate as if the application was being taken for the first time.~~
~~(a) Examinations will be retaken with initial examination fees.~~

R710-6-[7]8. Board Procedures.

- ~~[7-1](1) The [B]board will review the [D]division and [E]nforcing [A]uthorities activities since the last meeting, and review and act on license and permit applications, review financial transactions, consider recommendations of the Division, and all other matters brought to the [B]board.~~
~~[7-2](2) The [B]board may be asked to serve as a review board for items under disagreement.~~
~~[7-3](3) Board meetings shall be presided over and conducted by the chair[man] and in his absence the vice chair[man].~~
~~[7-4](4) Meetings of the [B]board shall be conducted in accordance with an agenda, which shall be submitted to the members by the [D]division, not less than [twenty-one-(21)] days before the regularly scheduled [B]board meeting.~~
~~[7-5](5) The chair[man] of the [B]board and [B]board members shall be entitled to vote on all issues considered by the [B]board. A [B]board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.~~
~~[7-6](6) Public notice of [B]board meetings shall be made by the [D]division as prescribed in [UCA]Section 52-4-6.~~
~~[7-7](7) The [D]division shall provide the [B]board with a secretary, who shall prepare minutes and shall perform all secretarial duties necessary for the [B]board to fulfill its responsibility.~~

~~(a) The minutes of [B]board meetings shall be completed and sent to [B]board members at least [twenty-one-(21)] days prior to the scheduled [B]board meeting.~~

~~[7-8](8) The [B]board may be called upon to interpret codes adopted by the [B]board.~~

~~[7-9](9) The [B]board Chair[man] may assign member(s) various assignments as required to aid in the promotion of safety, health and welfare in the use of LPG.~~

R710-6-[8]19. Amendments and Additions.

~~[The following amendments and additions are hereby adopted by the Board:~~

~~8-1(1) All LP Gas facilities that are located in a public place shall be inspected by a certified LP Gas serviceman every five [(5)] years for leaks in all buried piping as follows:~~

~~[8-1.1 All buried piping shall be pressure tested and inspected for leaks as set forth in NFPA Standard 54, Sections 4.1.1 through 4.3.4].~~

~~[8-1.2(a) If a leak is detected and repaired, the buried piping shall again be pressure tested for leaks.~~

~~[8-1.3(b) The certified LP Gas serviceman shall keep a written record of the inspection and all corrections made to the buried piping located in a public place.~~

~~[8-1.4(c) The inspection records shall be available to be inspected on a regular basis by the [D]division.~~

~~[8-2(2) Whenever the [D]division is required to complete more than two inspections to receive compliance on an LP Gas System, container, apparatus, appliance, appurtenance, tank or tank trailer, or any pertinent equipment for the storage, transportation or dispensation of LP Gas, the [D]division shall charge to the owner for each additional inspection, the re-inspection fee [as stated in R710-6-6-1(e)].~~

~~[8-3(3) All LP Gas containers of more than 5000 water gallons shall be inspected at least biannually for compliance with the adopted statute and rules. The following containers are exempt from this requirement:~~

~~[8-3-1(a) [F]those excluded from the act in [UCA]Section 53-7-303[-];~~

~~[8-3-2(b) [E]containers under federal control[-];~~

~~[8-3-3(c) [E]containers under the control of the U.S. Department of Transportation and used for transportation of LP Gas[-]; and~~

~~[8-3-4(d) [E]containers located at private residences.~~

~~[8-4(4) Those using self-serve key or card services shall be trained in safe filling practices by the licensed dealer providing the services.~~

~~(a) A letter shall be sent to the [D]division by the licensed dealer stating that those using the self-serve key or card service have been trained.~~

~~[8-5 IFC Amendments:~~

~~8-5.1 IFC, Chapter 38, Section 3801.2 Permits. On line 2 after the word "105.7" add "and the adopted LPG rules":~~

~~8-5.2 IFC, Chapter 38, Section 3803.1 is deleted and rewritten as follows: General. LP Gas equipment shall be installed in accordance with NFPA 54, NFPA 58, the adopted LP Gas Administrative Rules, and the International Fuel Gas Code, except as otherwise provided in this chapter.~~

~~8-5.3 IFC, Chapter 38, Section 3809.12 is deleted and rewritten as follows: In Table 3809.12, Doorway or opening to a~~

building with two or more means of egress, with regard to quantities 720 or less and 721-2,500, the currently stated "5" is deleted and replaced with "10".

~~8.5.4 IFC, Chapter 38, Section 3810.1 is amended as follows: On line two after the word "discontinued" add the words "for more than one year or longer as allowed by the Authority Having Jurisdiction (AHJ)".~~

[8-6-5] NFPA, Standard 58 Amendments:

[8-6-1(a)] NFPA, Standard 58, Section 5.2.1.1 is amended to add the following section: (d) All new, used or existing containers of 5000 water gallons or less, installed in the State of Utah or relocated within the State of Utah shall be marked with the ASME stamp as defined in Section 2.1 of these rules. All new, used or existing containers of more than 5000 water gallons, installed in the State of Utah or relocated within the State of Utah, shall be marked with the ASME stamp as defined in Section 2.1 of these rules, and shall be inspected for approval by the Division. If the Division has concerns about the integrity or condition of the container, additional nondestructive testing may be required to include but not limited to hydrostatic testing, ultrasonic metal thickness testing or any other testing as determined necessary by the Division. All incurred costs for additional testing required by the Division shall be the responsibility of the owner.

[8-6-2(b)] NFPA, Standard 58, Section 5.2.1.1 is amended to add the following section: (e) If an existing U68, U69, U200 or U201 specification container, more than 5000 water gallons, is relocated within the State of Utah, and does not bear the required ASME stamp as defined in Section 2.1 of these rules, the container cannot be reinstalled unless the container has received a "Special Classification Permit" from the Division. Specifications of the type of container, container history if known, material specifications and calculations, and condition of the container shall be submitted to the Division by the person seeking the "Special Classification Permit". The Division shall inspect the container for approval. If the Division has concerns about the integrity or condition of the container, additional nondestructive tests such as hydrostatic testing, ultrasonic metal thickness testing or any other testing as determined necessary by the Division. All incurred costs of testing and evaluations shall be the responsibility of the owner. The Division will approve or disapprove the proposed container. Approval by the Division shall be obtained before the container is set or filled with LP Gas.

[8-6-3(c)] NFPA, Standard 58, Section 5.2.1.6 is amended to add the following sentence at the end of the section: (A) Repairs and alterations shall only be made by those holding a National Board "R" Certificate of Authorization commonly known as an R Stamp.

[8-6-4(d)] NFPA Standard 58, Sections 5.9.3.2(2)(a) and (b) are deleted and rewritten as follows:
Type K copper tubing without joints below grade may be used in exterior LP Gas piping systems only.

[8-6-5(e)] NFPA, Standard 58, Section 6.6.1.2 is amended to add the following at the end of the section: When guard posts are installed they shall be installed meeting the following requirements:

[8-6-5-1(i)] [C]constructed of steel not less than four inches in diameter and filled with concrete[-];

[8-6-5-2(ii)] [S]set with spacing not more than four feet apart[-];

[8-6-5-3(iii)] [B]buried three feet in the ground in concrete not less than 15 inches in diameter[-]; and

[8-6-5-4(iv)] [S]set with the tops of the posts not less than three feet above the ground.

[8-6-6(f)] NFPA, Standard 58, Section 6.6.3 is amended to add the following section: 6.6.3.9 Skid mounted ASME horizontal containers greater than 2000 water gallons, with non-fireproofed steel mounted attached supports, resting on concrete, pavement, gravel or firm packed earth, may be mounted on the attached supports to a maximum of 12 inches from the top of the skid to the bottom of the container.

[8-6-7(g)] NFPA, Standard 58, Section 6.6.6 is amended to add the following: [(P)](N) All metallic equipment and components that are buried or mounded shall have cathodic protection installed to protect the metal and shall meet the following requirements:

[8-6-7-1(i)] [S]sacrificial anodes shall be installed as required by the size of the container. If more than one sacrificial anode is required they shall be evenly distributed around the container[-];

[8-6-7-2(ii)] [S]sacrificial anodes shall be connected to the container or piping as recommended by the manufacturer or using accepted engineering practices[-]; and

[8-6-7-3(iii)] [S]sacrificial anodes shall be placed as near the bottom of the container as possible and approximately two feet away from the container.

[8-6-8(h)] NFPA, Standard 58, Section [6-24-3-16]6.25.3.19 is added as follows: On dispensing installations, 1000 gallon water capacity or less, where the dispensing cabinet is located next to the LP Gas container, stainless steel wire braid hose of more than 36 inches in length may be used on vapor and liquid return lines only. The hose shall be secured and routed in a safe and professional manner, marked with the date of installation, and shall be replaced every five years from that installation date.

[8-6-9(i)] NFPA, Standard 58, Section [6-25-3-2]6.27.3.2, the last sentence of the section is deleted and rewritten as follows: Existing installations shall comply with this requirement by March 31, 2011.

[8-6-10(j)] NFPA, Standard 58, Section 8.4.1.1(1) is amended as follows: On line one remove "5ft (1.5m)" and replace it with "10 ft (3m)".

R710-6-11. Validity.

If any article, section, subsection, sentence, clause, or phrase, of these rules is for any reason held to be unconstitutional, contrary to statute, or exceeding the authority of the LPG Board, such decision shall not affect the validity of the remaining portion of these rules.

R710-6-12. Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes or standards as adopted, the more restrictive requirement shall govern, as determined by the enforcing authority.

R710-6-9]13. Penalties.

[9-1](1) Civil penalties for violation of any rule or referenced code shall be as follows:

[9-1-1(a)] [C]concern failure to license - \$210[-00] to \$900[-00];

- ~~(i) double the fee plus the cost of the license;~~
~~[9-1-2](b) [P]erson failure to obtain LPG Certificate - \$30[-00] to \$90[-00];~~
~~(i) double the fee plus the cost of the certificate;~~
~~[9-1-3](c) [F]ailure of concern to obtain LPG Certificate for employees who dispense LPG - \$210[-00] to \$900[-00];~~
~~(i) double the fee plus the cost of the license;~~
~~[9-1-4](d) [E]concern doing business under improper class - \$140[-00] to \$600[-00];~~
~~(i) double the fee;~~
~~[9-1-5](e) [F]ailure to notify SFM of change of address - \$60[-00];~~
~~(i) based on two hours of inspection fee at \$30 per hour; and~~
~~[9-1-6](f) [V]iolation of the adopted Statute or Rules - \$210[-00] to \$900[-00];~~
~~(i) triple the license fee.~~
~~[~~
~~9.2 Rationale.~~
~~9.2.1 Double the fee plus the cost of the license.~~
~~9.2.2 Double the fee plus the cost of the certificate.~~
~~9.2.3 Double the fee plus the cost of the license.~~
~~9.2.4 Double the fee.~~
~~9.2.5 Based on two hours of inspection fee at \$30.00 per hour.~~
~~9.2.6 Triple the fee.]~~

KEY: liquefied petroleum gas

Date of Enactment or Last Substantive Amendment: 2016

Notice of Continuation: March 16, 2011

Authorizing, and Implemented or Interpreted Law: 53-7-305

Public Safety, Fire Marshal R710-7 Concerns Servicing Automatic Fire Suppression Systems

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40598

FILED: 07/12/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to comply with the adoption of the 2015 International Fire Code by the Utah State Legislature and make formatting changes.

SUMMARY OF THE RULE OR CHANGE: The rule has been renumbered to meet the requirements of the Rulewriting Manual. The purpose of the rule has been restated to meet the requirements of the Rulewriting Manual. The authority of the rule has been restated to meet the requirements of the Rulewriting Manual. Section R710-4 has been added adopting the applicable NFPA Standards. This information was previously included in the purpose statement.

Redundant definitions have been removed. This amendment clarifies the licensee's responsibility to notify the SFM if required insurance is no longer in effect; deletes dates that are no longer applicable; corrects a reference to the Uniform Fire Code; requires technicians to have the manufacturers specifications for each system they service; requires that a concern license certify that one of their employees testing for certificate of registration has been properly trained; clarifies electronic devices that cannot be in the testing area; clarifies that renewal is the responsibility of the concern license or certificate of registration holder; adds that re-examinations will no longer be mailed; clarifies permission to enter; adds that non-compliance tags shall remain in place until corrections are complete; specifies replacement schedule for fusible links; adds Section R710-7-10; and removes fee amounts for fees included in the Utah State Fee Schedule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There will not be an anticipated cost or savings to the state budget because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.

♦ **LOCAL GOVERNMENTS:** There will not be an anticipated cost or savings to local budgets because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.

♦ **SMALL BUSINESSES:** There will not be an anticipated cost or savings to small businesses budgets because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will not be an anticipated cost or savings to person's budget because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will not be an anticipated cost or savings because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the amendment and found that this rule change will not have a fiscal impact on business.

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

PUBLIC SAFETY
FIRE MARSHAL
ROOM 302
5272 S COLLEGE DR
MURRAY, UT 84123-2611
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
◆ Ted Black by phone at 801-284-6352, or by Internet E-mail at tblack@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2016

AUTHORIZED BY: Coy Porter, State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-7. Concerns Servicing Automatic Fire Suppression Systems.

R710-7-1. [Adoption of Codes] Purpose.

[Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah State Fire Prevention Board adopts rules to provide] The purpose of this rule is to establish [regulation to] regulations governing those concerns that service Automatic Fire Suppression Systems. These rules [do not] apply to [standpipe systems, deluge systems, or automatic fire sprinkler systems.] systems regulated by the state adopted editions of National Fire Protection Association, Standard 12, Standard on Carbon Dioxide Extinguishing Systems; N.F.P.A., Standard 12A, Halon 1301 Fire Extinguishing Systems, 2009 edition; N.F.P.A., Standard 12B, Halon 1211 Fire Extinguishing Systems, 1990 edition; N.F.P.A., Standard 17, Standard for Dry Chemical Extinguishing Systems; N.F.P.A., Standard 17A, Standard for Wet Chemical Extinguishing Systems; N.F.P.A., Standard 96, Ventilation Control and Fire Protection of Commercial Cooking Operations; N.F.P.A., Standard 2001, Clean Agent Fire Extinguishing Systems.

[There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association, Standard 12, Standard on Carbon Dioxide Extinguishing Systems, 2008 edition; N.F.P.A., Standard 12A, Halon 1301 Fire Extinguishing Systems, 2004 edition; N.F.P.A., Standard 12B, Halon 1211 Fire Extinguishing Systems, 1990 edition; N.F.P.A., Standard 17, Standard for Dry Chemical Extinguishing Systems, 2002 edition; N.F.P.A., Standard 17A, Standard for Wet Chemical Extinguishing Systems, 2002

edition; N.F.P.A., Standard 96, Ventilation Control and Fire Protection of Commercial Cooking Operations, 2008 edition; N.F.P.A., Standard 2001, Clean Agent Fire Extinguishing Systems, 2008 edition. The definitions contained in these pamphlets shall pertain to these regulations.

1.2 Validity

If any section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the SFM, such decision shall not affect the validity of the remaining portion of these rules.

1.3 Systems Prohibited

No person shall market, distribute, sell, install or service any automatic fire suppression system in this state, unless it meets the following:

1.3.1 It complies with these rules.

1.3.2 It has been tested by, and bears the label of a testing laboratory which is accepted by the SFM as qualified to test automatic fire suppression systems.

1.3.3 All existing automatic fire suppression systems using dry chemical shall be removed and replaced with a UL300 listed system by January 1, 2006 or before that date when any of the following occurs:

1.3.3.1 Six year internal maintenance service;

1.3.3.2 Recharge;

1.3.3.3 Hydrostatic test date as indicated on the manufacturer date of the cylinders;

1.3.3.4 Reconfiguration of the system piping.

1.3.4 All existing wet chemical automatic fire suppression systems not UL300 listed shall be removed, replaced or upgraded to a UL300 listed system by January 1, 2006 or before that date when any of the following occurs:

1.3.4.1 Six year internal maintenance service;

1.3.4.2 Recharge;

1.3.4.3 Hydrostatic test date as indicated on the manufacturer date of the cylinders;

1.3.4.4 Reconfiguration of the system piping.

1.4 Copies of the above listed codes are on file in the Office of Administrative Rules and the Office of the State Fire Marshal.]

R710-7-2. Authority.

This rule is authorized by Section 53-7-204.

R710-7-[2]3. Definitions.

[2-1](1) "Annual" means a period of one year or 365 days.

[2-2](2) "Board" means Utah Fire Prevention Board.

[2-3](3) "Branch Office" means any location, other than the primary business location, where business license, telephone, advertising and servicing equipment is utilized.

[2-4](4) "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of

granting permission to such person to perform any act or acts for which authorization is required.

[2-5](5) "Concern" means a person, firm, corporation, partnership, or association, licensed by the SFM.

[2-6](6) "Employee" means those persons who work for a licensed concern which may include but are not limited to assigned agents and others who work on a contractual basis with a licensee using service tags of the licensed concern.

[2-7](7) "Hydrostatic Test" means subjecting any cylinders requiring periodic pressure testing procedures specified in these rules.

[2-8](8) "Inspection Authority" means the local fire authority, or the SFM, and their authorized representatives.

[2-9](9) "License" means a written document issued by the SFM authorizing a concern to engage in the business of servicing automatic fire suppression systems.

[2-10](10) "N.F.P.A." means National Fire Protection Association.

[2-11](11) "Recognized Testing Laboratory" means a State Fire Marshal list of acceptable labs.

[2-12](12) "Service" means a complete inspection of an automatic fire suppression system to include maintenance, repair, modification, testing, or cleaning, as set forth in the adopted N.F.P.A. standards.

[2-13](13) "System" means an Automatic Fire Suppression System.

[2-14](14) "SFM" means Utah State Fire Marshal or authorized deputy.

~~2-15 "UCA" means Utah State Code Annotated, 1953 as amended.~~

R710-7-4. Adoption of Codes.

(1) The following standards are adopted as code:

(a) the National Fire Protection Association, N.F.P.A., Standard 12A, Halon 1301 Fire Extinguishing Systems, 2009 edition; N.F.P.A., Standard 12B, Halon 1211 Fire Extinguishing Systems, 1990 edition;

(b) all existing wet chemical automatic fire suppression systems not UL300 listed shall be removed, replaced or upgraded to a UL300 listed system; and

(c) no person shall market, distribute, sell, install or service any automatic fire suppression system in this state, unless it meets the following:

(A) it complies with these rules; and

(B) it has been tested by, and bears the label of a testing laboratory which is accepted by the SFM as qualified to test automatic fire suppression systems.

R710-7-[3]5. Licensing.

~~[3-1 License Required]~~

(1) No person or concern shall engage in the business of selling, installing, servicing, repairing, testing or modifying any automatic fire suppression system without obtaining a

license from the SFM, pursuant to these rules, expressly authorizing such concern to perform such acts.

~~[3-2 Type of License]~~

~~[3-2.1](2) Every license shall be identified by type. The type of license shall be determined on the basis of the act or acts performed by the licensee or any of the employees. Every licensed concern shall be staffed by qualified personnel and shall be properly equipped to perform the act or acts for the type of license issued.~~

~~[3-2.2](3) Licenses shall be any one, or combination of the following:~~

~~[3-2.2.1](a) Class H1 - A licensed concern which is engaged in the installation, modification, service, or maintenance of engineered and/or pre-engineered automatic fire suppression systems.~~

~~[3-2.2.2](b) Class H2 - A licensed concern which is engaged in service and maintenance only of automatic fire suppression systems to include hydrostatic testing.~~

~~[3-3 Application]~~

~~[3-3.1](4) Application for a license to conduct business as an automatic fire suppression system concern[.] shall be made in writing to the SFM on forms provided by the SFM.~~

~~(a) A separate application for license shall be made for each branch office, or separate place or business location of the applicant[-(branch office)].~~

~~[3-3.2](b) The application for a license to conduct business as an automatic fire suppression system concern, shall be accompanied with proof of public liability insurance.~~

~~(i) The public liability insurance shall be issued by a public liability insurance carrier showing coverage of at least \$100,000 for each incident, and \$300,000 in total coverage.~~

~~(ii) The licensee shall notify the SFM within thirty days after the public liability insurance coverage required is no longer in effect for any reason.~~

~~[3-4 Signature of Applicant]~~

~~(c) The application shall be signed by the applicant.~~

~~(i) If the application is made by a partnership, it shall be signed by all partners.~~

~~(ii) If the application is made by a corporation or association other than a partnership, it shall be signed by a principal officer.~~

~~[3-5 Equipment Inspection]~~

~~(5) The applicant or licensee shall allow the SFM and any of his authorized deputies to enter, examine, and inspect any premises, building, room or vehicle used by the applicant in the service of automatic fire suppression systems to determine compliance with the provisions of these rules.~~

~~(a) The inspection will be conducted during normal business hours, and the owner or manager shall be given a minimum of 24-[-]hours notice before the appointed inspection.~~

~~(b) The equipment inspection may be conducted on an annual basis, and consent to inspect will be obtained.~~

(c) The applicant, license holder or certified employee of the license holder, may be asked during the inspection by the SFM or any of his deputies, to demonstrate skills or knowledge used in servicing of automatic fire suppression systems.

~~[3.6 Issuance and Posting of License]~~

 (6) Following receipt of the properly completed application, and compliance with the provisions of the statute and these rules, the SFM shall issue a license.

 (a) Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the premises of the licensed concern.

~~[3.7 Original License and Inspection]~~

 (7) Original licenses shall be valid for one year from the date of ~~[application]~~ issuance.

 (a) Thereafter, each license shall be renewed annually and renewals shall be valid for one year from the previous date of expiration ~~[issuance]~~.

 (b) No original license will be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM.

 (c) In the event that a license is not renewed prior to the expiration date, the applicant shall be required to apply for an original license with a new license number.

~~[3.8 Renewal License and Inspection]~~

 (8) Application for renewal shall be made as directed by the SFM.

 (a) The failure to renew the license will cause the license and license number to become invalid.

 (b) No renewal license will be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM. ~~[Beginning March 4, 2003 through February 29, 2004, renewal dates for licensed concerns will be based upon the inspection date and valid for a one-year period of time. Renewal license fees shall be prorated monthly, and monthly fees already paid in that time period shall be credited towards the renewal license fee.]~~

 (c) A renewed license shall be valid for one year from the previous date of expiration.

~~[3.9 Duplicate License]~~

 (9) A duplicate license may be issued by the SFM to replace any previously issued license, which has been lost or destroyed, upon request.

~~[3.10 Refusal to Renew]~~

 (10) SFM may refuse to renew any license that is authorized, pursuant to Section 8 of these rules. The applicant will, upon such refusal, have the same rights as are granted by Section 8 of these rules to an applicant for an original license which has been denied by the SFM.

~~[3.11 Change of Address]~~

 (11) Every licensee shall notify the SFM, in writing, within ~~[thirty-]~~ [30] days, of any change of address or location of business.

~~[3.12 Under Another Name]~~

 (12) No licensee shall conduct the licensed business under a name other than the name or names which appear[s] on the license.

~~[3.13 Hiring and Termination]~~

 (13) Every licensed concern shall, within ~~[thirty-~~ [30] days of employment or termination of an employee or contracted agent, ~~[shall-]~~ notify the SFM of the name, address, and certification number of that person.

~~[3.14 Minimum Age]~~

 (14) No license shall be issued to any person as licensee who is under ~~[eighteen-]~~ [18] years of age.

~~[3.15 Employer Responsibility]~~

 (15) Every concern is responsible for the acts of its employees or assigned agents relating to installation and servicing of automatic fire suppression systems.

~~[3.16 Restrictive Use]~~

 (16) No license shall constitute authorization for any licensee, or any of the employees or contracted agents, to enter upon, or into, any property, building, or machinery without the consent of the owner or manager.

 (a) No license shall grant authorization to enforce the ~~[Uniform]~~ International Fire Code or these rules.

~~[3.17 Non-Transferable]~~

 (17) No license issued pursuant to this section shall be transferred from one concern to another.

~~[3.18 Registration Number]~~

 (18) Every license shall be identified by a number, delineated as H-~~[number]~~.

 (a) Such number may only be transferred from one concern to another when approved by the SFM.

~~[3.19 Minimum Materials and Equipment Required]~~

~~At each business location or vehicle of the applicant where servicing work is performed~~

 (19) The following minimum material and equipment requirements shall be maintained at each business location or vehicle of the applicant where servicing work is performed:

~~[3.19.1]~~ (a) ~~[C]~~ calibrated scales with ability to:

~~[3.19.1.1]~~ (i) ~~[W]~~ weigh gas cartridges to within 1/4 ounce of manufacturers specifications~~[-];~~ and

~~[3.19.1.2]~~ (ii) ~~[W]~~ weigh cylinders accurately for systems being serviced~~[-];~~

 (b) manufacturers specifications for each system serviced:

~~[3.19.2]~~ (c) ~~[N]~~ nitrogen ~~[P]~~ pressure ~~[F]~~ filling ~~[E]~~ equipment;

~~[3.19.2.1]~~ (i) ~~[N]~~ nitrogen ~~[S]~~ supply;

~~[3.19.2.2]~~ (ii) ~~[P]~~ pressure ~~[R]~~ regulator - 750 p.s.i. minimum; and

~~[3.19.2.3]~~ (iii) ~~[F]~~ filling ~~[A]~~ adapters;

~~[3.19.3]~~ (d) ~~wet and~~ ~~[D]~~ dry ~~[C]~~ chemical ~~[S]~~ systems;

~~[3.19.3.1]~~ (i) ~~[E]~~ extinguishing agents, compatible with systems serviced;

[3-19-3-2](ii) [F]fusible links;
 [3-19-3-3](iii) [S]safety pins;
 [3-19-3-4](iv) [A]an assortment of gaskets and ["Ø"
 R]o-rings compatible with systems serviced;
 [3-19-3-5](v) [G]gas cartridges as required according
 to manufacture's specifications;
 [3-19-3-6](vi) [E]current reference manuals, to
 include manufacture's service manuals; and
 [3-19-3-7](vii) [C]cocking or [E]lockout [F]tool;
 [3-19-4](e) clean agent, [H]halon and CO2
 [S]systems
 [3-19-4-1](i) [H]have access to, or meet the
 requirements for a U.L. approved filling station[-];
 [3-19-4-2](ii) [H]have available in inventory, or have
 immediate access to, detectors compatible with systems
 serviced[-];
 [3-19-4-3](iii) [E]calibration equipment such as
 electrical testers and detector testers[-];
 [3-19-4-4](iv) [E]control panel components;
 [3-19-4-5](v) [R]release valves; and
 [3-19-4-6](vi) [E]current reference manuals.
 (f) This list does not, however, include all items that
 may be necessary in order to conduct a complete system
 installation, modification or service.
 [-----3-20-Records]
 (20) Accurate records shall be maintained for five
 years [~~back~~]by the licensee, of all service work performed.
 (a) These records shall be made available to the SFM,
 or authorized deputies, upon request.
 (b) These records shall include the following:
 [3-20-1](a) [F]the name and address of all serviced
 locations;
 [3-20-2](b) [F]type of service performed; and
 [3-20-3](c) [Ø]date and name of person performing
 the work.

R710-7-[4]6. Certificates of Registration.

[-----4.1-Required-Certificates-of-Registration]

(1) No person shall service any automatic fire
 suppression system without a certificate of registration issued
 by the SFM pursuant to these rules expressly authorizing such
 person to perform such acts.

[-----4.2-Application]

(2) Application for a certificate of registration to work
 on automatic fire suppression systems shall be made in writing
 to the SFM on forms provided by the SFM.

(a) The application shall be signed by the applicant.

(b) The concern license shall certify in writing to the
 SFM that the applicant has been trained and is qualified to
 perform all work authorized by the certificate of registration.

[-----4.3-Examination]

(3) The SFM shall require all applicants for a
 certificate of registration to take and pass a written

examination, which may be supplemented by practical tests to
 determine the applicant's knowledge to work on automatic fire
 suppression systems.

(a) Pictured identification of the applicant for a
 certificate of registration may be requested by the SFM or his
 deputies.

(b) Examinations will be given according to the
 following schedule~~and requirements~~:

[4-3-1](i) [Ø]on the first and third Tuesdays of each
 month[-]; or

(ii) [W]when holidays conflict with these days, the
 day immediately following will be used.

(c) An appointment will be made to take an
 examination at least 24 hours in advance of the examination
 date.

[4-3-2](d) Examinations may be given at various field
 locations as deemed necessary by the SFM. Appointments for
 field examinations are required.

[4-3-3](e) All certification examinations given are
 open book examinations.

(i) The applicant is allowed to use the statute, the
 administrative rule, and the NFPA standard that applies to the
 certification examination.

(ii) Any other materials to include cellular telephones,
lap tops, IPads, IPods, note books or any other memory storage
 device are prohibited in the examination room.

[4-3-4](f) Completion of the certification examination
 will not be allowed if it appears to the test administrator that the
 applicant has not prepared to take the examination.

[4-3-5](g) Each certification examination taken has a
 time limit of two hours to completion.

(i) Leaving the office or testing location before the
 completion of the examination voids the examination and will
 require the examination to be retaken by the applicant.

[4-3-6](h) If there are different levels of proficiency in
 the subject matter, the lower proficiency level will be fully
 completed before the next higher proficiency will be
 administered.

[-----4.4-Examination-Passing-Grade]

(4) To successfully pass the written examination, the
 applicant must obtain a minimum grade of [~~seventy percent~~
 (]70%[)] in each portion of the examination taken.

[-----4.5-Contents-of-Examination]

(5) The examination required shall include a written
 test of the applicant's knowledge of the work to be performed,
 the provisions of these rules, and may include an actual
 demonstration of his ability to perform the acts indicated on the
 application.

[-----4.6-Right-to-Contest]

(6) Every person who takes an examination for a
 certificate of registration shall have the right to contest the
 validity of individual questions of such examination.

_____ (a) Every contention as to the validity of individual questions of the examination shall be made in writing within 48 hours after taking said examination.

_____ (b) The decision of the SFM shall be final.

[~~_____ 4.7 Issuancee]~~

(7) Following receipt of the completed application, compliance with the provisions of these rules, and the successful completion of the required examination, the SFM shall issue a certificate of registration.

[~~_____ 4.8 Original and Renewal Valid Date]~~

(8) Original certificates of registration will be valid for one year from the date of application.

_____ (a) Thereafter, each certificate of registration will be renewed annually and renewals will be valid for one year from [~~issuancee~~]the previous date of expiration.

_____ (b) In the event that a certificate of registration is not renewed prior to the expiration date, the applicant shall be required to apply for an original certificate of registration with a new license number.

_____ (c) The failure to renew a certificate of registration will cause the certificate of registration and the certificate of registration number to become invalid.

_____ (d) The holder of an invalid certificate of registration shall not perform any work on automatic fire suppression systems.

[~~_____ 4.9 Renewal Date]~~

_____ (9) Renewal is the responsibility of the holder of the Certificate of Registration.

_____ (a) Application for renewal will be made as directed by the SFM. [~~Beginning March 4, 2003 through February 29, 2004, renewal dates for certification of registrations will be based upon the license inspection date and valid for a one-year period of time. Renewal certificate of registrations shall be prorated monthly, and monthly fees already paid in that time period shall be credited towards the renewal fee.~~]

_____ (b) A renewed certificate of registration shall be valid for one year from the previous date of expiration.

[~~_____ 4.10 Re-examination]~~

(10) Every holder of a valid certificate of registration will take a re-examination every five [~~(5)~~] years, from the date of original certificate, [~~to comply with the provisions of Section 4.3 of these rules~~] as follows:

[~~4.10.1~~](a) [~~F~~]the re-examination [~~to comply with the provisions of Section 4.3 of these rules~~] shall consist of one [~~25-question~~] open book examination to be [~~mailed to the certificate holder~~]administered by the SFM at least 60 days before the renewal date[-];

[~~4.10.2~~](b) [~~F~~]the [~~25-question~~] re-examination will consist of questions that focus on changes in the last five years to the NFPA standards, the statute, and adopted practices of concerns noted by the [~~B~~]board or SFM[-];

[~~4.10.3~~](c) [~~F~~]the certificate holder is responsible to complete the re-examination [~~and return it to the SFM~~] prior to expiration and in sufficient time to renew[-]; and

[~~4.10.4~~](d) [~~F~~]the certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

[~~_____ 4.11 Refusal to Renew]~~

(11) The SFM may refuse to renew any certificate of registration for the reasons that [~~is~~]are authorized pursuant to Section [~~8 of these rules~~]R710-7-9.

_____ (a) The applicant will, upon such refusal, have the same rights as are granted by Section [~~8 of these rules~~]R710-7-9 to an applicant for an original certificate of registration which has been denied by the SFM.

[~~_____ 4.12 Inspection]~~

(12) The holder of a certificate of registration will submit such certificate for inspection, upon request of the SFM, any authorized deputies, or any local fire official.

[~~_____ 4.13 Change of Address]~~

(13) Any change of address of any holder of a certificate of registration will be reported by the registered person to the SFM within [~~thirty~~-(30)] days of such change.

_____ (a) Such change will also be made by the holder of the certificate of registration on the reverse side of the certificate of registration card.

[~~_____ 4.14 Duplicate]~~

(14) A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate which has been lost or destroyed.

[~~_____ 4.15 Minimum Age]~~

(15) No certificate of registration shall be issued to any person who is under [~~eighteen~~-(18)] years of age.

[~~4.16~~](16) Restrictive Use

[~~4.16.1~~](a) No certificate of registration will constitute authorization for any person to enter upon or into any property or building without expressed permission from an authorized individual.

[~~4.16.2~~](b) No certificate of registration will constitute authorization for any person to enforce any provisions of these rules or the [~~Uniform~~]International Fire Code.

[~~4.16.3~~](c) Regardless of the acts authorized to be performed by the licensed concern, only those acts for which the applicant for a certificate of registration has qualified will be permissible by such applicant.

[~~_____ 4.17 Non-Transferable]~~

(17) Certificates of registration will not be transferable.

_____ (a) Individual certificates of registration will be carried by the person to whom issued.

[~~_____ 4.18 Limited Issuancee]~~

(18) No certificate of registration will be issued to any person unless that person is a licensee or an employee of a licensed concern.

~~4.19 New Employees]~~

(19) New employees of a licensed concern may perform the various acts while under the direct supervision of a person holding a valid certificate of registration for a period not to exceed ~~[forty-five (45)]~~ days from the initial date of employment.

~~4.20 Certificate Identification]~~

(20) Every certificate will be identified by a number, delineated as HE-[number].

R710-7-~~5]7. Service Tags and Labels.~~

~~5.1 Size and Color]~~

(1) Tags shall be not more than five and one-half inches ~~[(5-1/2")]~~ in height, nor less than four and one-half inches ~~[(4-1/2")]~~ in height, and not more than three inches ~~[(3")]~~ in width, nor less than two and one-half inches ~~[(2-1/2")]~~ in width. Tags may be any color except red.

~~5.2 Attaching Tag]~~

(2) One service tag will be attached to each automatic fire suppression system in such a position as to be conveniently inspected.

~~5.3 Signature and Certificate Number]~~

~~5.3.1](3)~~ The signature and certificate of registration number of the person performing the work shall be signed legibly on the service tag.

~~5.3.2](a)~~ All information pertaining to complete date, type of servicing, and type of system will be indicated on the tag by perforations in the appropriate space provided.

~~5.4 New Tag]~~

(4) A new service tag will be attached to a properly functioning system each time service is performed.

(a) A system not in compliance shall not receive a service tag, but shall receive a non-compliance tag as required in Section ~~5.8]~~R710-7-7(9).

~~5.5 Tag Warning]~~

(5) The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

~~5.6 Removal]~~

(6) No person shall deface, modify, alter or remove any active service label or tag attached to or required to be attached to any automatic fire suppression system.

~~5.7 Service Tag Information]~~

(7) All service tags shall be designed as required by the SFM.

~~5.8 Six Year Maintenance and Hydrostatic Test Labels]~~

~~5.8.1](8)~~ Six year maintenance and hydrostatic test labels will be affixed by a heatless process[-]; and

(a) [F]the labels will be;

(i) applied only when the system is recharged or undergoes six year maintenance servicing or hydrostatic testing[-];

~~5.8.2](ii)~~ ~~[Six year maintenance and hydrostatic test labels shall be]~~ durable to withstand the effects of weather and adverse conditions[-]; and

~~5.8.3](iii)~~ ~~[Six year maintenance and hydrostatic test labels will be]~~ designed as directed by the SFM. ~~[shown below: EXAMPLE OF SIX YEAR AND HYDROSTATIC TEST LABEL]~~

~~5.9 Non-Compliance Tags]~~

~~5.9.1](9)~~ Non-compliance tags;

(a) will be affixed in a conspicuous location to any system failing to;

(i) meet service specifications; or ~~[and will be placed in a conspicuous location on that system.];~~

(ii) fully comply with manufacturers specifications or these rules;

~~5.9.2](b)~~ ~~[Non-compliance tags]~~ shall be red in color[-];

(c) will be designed as required by the SFM; and

(d) shall remain in place until corrections are complete.

~~5.9.3~~ A system shall receive a non-compliance tag when the system fails to fully comply with manufactures specifications or these rules.

~~5.9.4](e)~~ After placing the non-compliance tag on the system, the service person shall notify the local fire chief or his authorized representative.

(i) The service person shall also furnish a copy of the service report to the authority having jurisdiction.

~~5.9.5~~ Non-compliance tags will be designed as required by the SFM.]

R710-7-~~6]8. Requirements For All Approved Systems.~~

~~6.1 Service]~~

~~6.1.1](1)~~ Maintenance will be conducted on extinguishing systems at least every six months or immediately after use or activation.

~~6.1.2](a)~~ When fusible links are a required portion of the system, fusible links will be replaced ~~[yearly]~~ semiannually or as required by the manufacturer of the system.

~~6.1.3](b)~~ Fusible links will show the date when installed by year only.

~~6.1.4](c)~~ Fusible links will not be used after February 1 of the next year showing a previous years date.

~~6.2 Interchanging of Parts]~~

(2) Interchanging of parts from different manufactured systems is prohibited.

(a) Parts shall be specifically listed and compatible for use with the designed system.

~~6.3 Return of parts]~~

(3) All replaced parts to the system serviced will be returned to the system owner or manager after completion of the service.

(a) Parts that are required to be returned to the manufacturer due to warranty are exempt.

~~6.4 Restricted Service~~

(4) Any system requiring a hydrostatic test, will not be serviced until such system has been subjected to, and passed, the required test.

(a) A non-compliance tag will not be accepted to meet the requirements of this section.

~~6.5 Service~~

(5) At the time of installation, and during any service, all servicing will be done in accordance with the manufacturers instructions, adopted statutes, and these rules.

(a) Systems will be placed and remain in an operable condition, free from defects which may cause malfunctions.

(b) Discharge nozzles and piping will be free of obstructions or substances.

R710-7-7]9. Adjudicative Proceedings.

[7-1](1) All adjudicative proceedings performed by the agency shall proceed informally as authorized by [UCA,] Sections 63G-4-202 and 63G-4-203.

[7-2](2) The issuance, renewal, or continued validity of a license or certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant, person employed for, or the person having authority and management of a concern servicing automatic fire suppression systems commits any of the following violations:

[7-2-1](a) [F]the person or applicant is not the real person in interest[.];

[7-2-2](b) The person or applicant provides material misrepresentation or false statement on the application[.];

[7-2-3](c) [F]the person or applicant refuses to allow inspection by the SFM, his duly authorized deputies[.];

[7-2-4](d) [F]the person or applicant for a license or certificate of registration does not have the proper facilities and equipment, to conduct the operations for which application is made[.];

[7-2-5](e) [F]the person or applicant for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application was made, as evidenced by failure to pass the examination and practical tests pursuant to Section [4-2 of these rules.]R710-7-6;

[7-2-6](f) [F]the person or applicant has been convicted of one or more federal, state or local laws[.];

[7-2-7](g) [F]the person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules[.];

[7-2-8](h) [A]any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or

safety if the applicant or person were granted a license or certificate of registration[.]; or

[7-2-9](i) [F]there are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of servicing fire suppression systems.

[7-3](3) A person whose license or certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the [B]board if requested by that person within 20 days after receiving notice.

[7-4](4) All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with [UCA,]Section 63G-4-201.

[7-5](5) The [B]board shall act as the hearing authority, and shall convene after timely notice to all parties involved.

(a) The [B]board shall be the final authority on the suspension or revocation of a license or certificate of registration.

[7-6](6) The [B]board shall direct the SFM to issue a signed order to the parties involved giving the decision of the [B]board within a reasonable time of the hearing pursuant to [UCA,]Section 63G-4-203.

[7-7](7) Reconsideration of the [B]board decision may be requested in writing within 20 days of the date of the decision pursuant to [UCA,]Section 63G-4-302.

[7-8](8) After a period of three years from the date of revocation, the [B]board shall review the submitted written application of a person whose license or certificate of registration has been revoked.

(a) After timely notice to all parties involved, the [B]board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the [B]board.

(b) After the hearing, the [B]board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

[7-9](9) Judicial review of all final [B]board actions resulting from informal adjudicative proceedings is available pursuant to [UCA,]Section 63G-4-402.

R710-7-10. Validity.

If any section, subsection, sentence, clause, or phrase of these rules is for any reason held to be unconstitutional, contrary to statute, or exceeding the authority of the SFM, such decision shall not affect the validity of the remaining portion of these rules.

R710-7-8]11. Fees.

[8.1 Fee Schedule

~~8.1.1 Licenses (New and Renewals)~~

- ~~8.1.1.1 Type H1 (Marketing and Installation) \$300.00~~
~~If the concern currently is licensed to service portable fire extinguishers the fee is \$150.00.~~
- ~~8.1.1.2 Type H2 (Service Only) \$150.00~~
~~If the concern currently is licensed to service portable fire extinguishers the fee is \$75.00.~~
- ~~8.1.1.3 Branch Office License \$150.00~~
- ~~8.1.2 Certificates of Registration (New and Renewals)~~
 - ~~8.1.2.1 Certificate of Registration \$40.00~~
~~If the individual currently is certified as a portable fire extinguisher technician the fee is \$10.00~~
 - ~~8.1.3 License Transfer \$50.00~~
 - ~~8.1.4 Examinations~~
 - ~~8.1.4.1 Initial Examination \$30.00~~
 - ~~8.1.4.2 Re-Examination \$30.00~~
 - ~~8.1.4.3 Five (5) Year Examination \$30.00~~
- ~~8.2 Payment of Fees~~
 - ~~](1) The required fee will accompany the application for license or certificate of registration.~~
 - ~~(a) License or certificate of registration fees will be refunded if the application is denied.~~
 - ~~[8.3 Late Renewal Fees~~
 - ~~8.3.1 Any license or certificate of registration not renewed before January 1 will be subject to an additional fee equal to 10% of the required inspection fee.~~
 - ~~8.3.2](2) When a certificate of registration has expired for more than one year, an application will be made for an original certificate as if the application was being made for the first time.~~
 - ~~(a) Examinations will be re-taken with initial fees.~~

KEY: fire prevention, systems
Date of Enactment or Last Substantive Amendment: ~~July 10, 2012~~2016
Notice of Continuation: May 21, 2012
Authorizing, and Implemented or Interpreted Law: 53-7-204

**Workforce Services, Rehabilitation
R993-100
Authority, Purpose and Administrative
Review**

**NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 40591
FILED: 07/07/2016**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to comply with H.B. 325 which was passed during the 2016 General Session and which moves the Utah State Office of Rehabilitation (USOR) to the Department of Workforce Services (DWS).

SUMMARY OF THE RULE OR CHANGE: This rule explains USOR's purpose and the authority under which the rules for Title R993 are proposed. The rule also provides for an appeal procedure in the event an applicant or client disagrees with a decision made by USOR. While some of the language has changed, there is no substantive change to current rules or practice. USOR previously contracted with mediators and Administrative Law Judges (ALJs) in the event of a dispute. Those services will now be provided by mediators and ALJs who work for DWS. This proposed rule explains the hearing procedure in keeping with the Utah Administrative Procedures Act.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Section 35A-1-303 and Section 35A-13-102

- ANTICIPATED COST OR SAVINGS TO:**
- ◆ **THE STATE BUDGET:** This program is primarily funded by the federal government, and while there is state money, there are no costs or savings to the state budget from this new rule. This rule merely moves USOR from Education to DWS. Any costs incurred are already included in the USOR budget.
 - ◆ **LOCAL GOVERNMENTS:** This program is funded by state and federal government. There are no costs or savings to any local government from this new rule. This rule merely moves USOR from Education to DWS. Any costs for this program are already included in the USOR budget.
 - ◆ **SMALL BUSINESSES:** This program is funded by state and federal government. There are no costs or savings to any small businesses from this new rule. This rule merely moves USOR from Education to DWS. Any costs are already included in the USOR budget. There are no compliance costs associated with this rule.
 - ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or savings for persons other than small businesses, businesses, or local government entities as this proposed change merely moves USOR's current rules from under Education to be under DWS, as per H.B. 325 (2016).

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any affected person as this proposed change merely moves USOR's current rules from under Education to be under DWS, as per H.B. 325 (2016). The appeals process is completely without cost to any person, business, or government. Any costs of providing these services are already included in current funding.

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. These changes will have no impact on any employer's contribution tax rate.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 WORKFORCE SERVICES
 REHABILITATION
 140 E 300 S
 SALT LAKE CITY, UT 84111-2333
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2016

AUTHORIZED BY: Jon Pierpont, Executive Director

R993. Workforce Services, Rehabilitation.

R993-100. Authority, Purpose and Administrative Review.

R993-100-101. Authority and Purpose.

(1) This rule is authorized by Sections 35A-1-303 and 35A-13-102.

(2) The purpose of this rule is to specify standards and procedures for resolution and adjudication of disputes under the Vocational Rehabilitation Act.

R993-100-102. Review by the Field Service Director.

(1) If an applicant or client disagrees with any decision made by a vocation rehabilitation (VR) counselor or supervisor he or she may request the decision be reviewed by the Field Service Director under which the disputed determination was made. The request for review must be filed within 30 days of the decision to be reviewed. The request for review must be made in writing and must:

(a) be prepared by the applicant/client or his or her designated representative;

(b) include the name and address of the individual requesting the review;

(c) include the name of the VR counselor or supervisor whose decision is to be reviewed;

(d) describe the decision or decisions to be reviewed in sufficient detail to inform the USOR of the nature and consequences of the decision;

(e) describe the action or resolution desired; and

(f) be signed and dated by the applicant /client or his or her representative.

(2) This process may not be used to delay mediation or an impartial hearing. An applicant/client can choose not to participate in the review process by filing a request for mediation or an impartial hearing at any time. If such a request is filed, the Field

Service Director review will end however, the Field Service Director may complete a review summary to be used at later stages of the appeal, if any.

(3) The Field Service Director will conduct an investigation which will include reviewing the applicant/clients record, communication with the applicant/client and relevant USOR staff.

(4) The Field Service Director will issue a written decision within 15 days of receipt of the request for review. The decision will include appeal rights, list a summary of all evidence reviewed, explain the findings of the investigation, and the action to be taken.

R993-100-103. Mediation.

(1) At any point during or after the review process as provided in R993-100-102 an applicant/client may request mediation. A request for mediation does not waive his or her rights to an impartial hearing. The request for mediation must be made within 30 days of the date of the last decision made, whether by the VR, the supervisor, or the Field Service Director. A request for mediation must be made prior to the beginning of an impartial hearing by an Administrative Law Judge. A request for mediation must be in writing, filed with the Division Director, and:

(a) be prepared by the applicant/client or his or her designated representative;

(b) include the name and address of the individual requesting the review;

(c) include the name of the VR counselor or supervisor whose decision is to be reviewed;

(d) describe the decision or decisions to be reviewed in sufficient detail to inform the USOR of the nature and consequences of the decision;

(e) describe the action or resolution desired; and

(f) be signed and dated by the applicant /client or his or her representative.

(2) The mediation cannot be used to delay the right of the applicant/client to an impartial hearing and must be conducted by a qualified and impartial mediator in the Adjudication and Appeals Division of the Department of Workforce Services.

(3) Mediation sessions will be scheduled in a timely manner and will be held by telephone unless the applicant/client requests and needs accommodation for an in-person hearing. In-person hearings will be held at the Adjudication and Appeals Division offices in Salt Lake City.

(4) Any discussions that occur during the mediation process are considered confidential and may not be used in any subsequent hearing or civil proceeding.

(5) Either party or the mediator may elect to terminate the mediation at any time. Notice of the termination will be sent to all parties. In the event mediation is terminated, either party may pursue resolution through an impartial hearing.

(6) Nothing in the mediation process precludes the parties from informally resolving the dispute prior to completion of the process.

(7) The mediation agreement will be reduced to writing. If an agreement cannot be reached, the mediator will summarize the proceedings in writing.

(8) The director may review the request for mediation and if he or she deems it appropriate to deny the request for

mediation under 34 CFR 361.57 the parties will be notified in writing of the denial with instructions on how to proceed to an impartial hearing.

R993-100-104. The Right to a Hearing and How to Request a Hearing.

(1) A client or applicant has the right to a review of an adverse division decision or action by requesting a hearing. The request must be in writing and filed within 30 days of the agency decision being appealed, or in the event a mediation was terminated, the date of the notice of the termination. If the applicant/candidate/client requested a prior review or mediation, the request must be filed within 30 days of the decision by the Field Service Director or the mediator.

(2) Only a clear expression by the client to the effect that the client wants an opportunity to present his or her case is required.

(3) The request for a hearing can be made at the local office or the Division of Adjudication.

R993-100-105. How Hearings Are Conducted.

(1) Hearings are held at the state level and not at the local level.

(2) Where not inconsistent with federal law or regulation governing hearing procedure, the Department will follow the Utah Administrative Procedures Act.

(3) Hearings are conducted by an Administrative Law Judge (ALJ) in the Division of Adjudication.

(4) Hearings are scheduled as telephone hearings. Every party wishing to participate in the telephone hearing must call the Division of Adjudication before the hearing and provide a telephone number where the party can be reached at the time of the hearing. If the client fails to call in advance, as required by the notice of hearing, the appeal will be dismissed.

(5) If a client requires an in-person hearing, the client must contact an ALJ and request that the hearing be scheduled as an in-person hearing. The request should be made sufficiently in advance of the hearing so that all other parties may be given notice of the change in hearing type and the opportunity to appear in person also. Requests will only be granted if the client can show that an in-person hearing is necessary to accommodate a special need or if the ALJ deems an in-person hearing is necessary to ensure an orderly and impartial hearing which meets due process requirements. If the ALJ grants the request, all parties will be informed that the hearing will be conducted in person. Even if the hearing is scheduled as an in-person hearing, a party may elect to participate by telephone. In-person hearings are held in the offices of the Adjudication and Appeals Division unless the ALJ determines that another location is more appropriate.

(6) The Department is not responsible for any travel costs incurred by the client or any of his or her witnesses in attending an in-person hearing.

(7) The Division of Adjudication will permit collect calls from parties and their witnesses participating in telephone hearings.

R993-100-106. When a Client Needs an Interpreter at the Hearing and Procedure for Use of an Interpreter.

(1) If a client notifies the Department that an interpreter is needed at the time the request for hearing is made, the Department will arrange for an interpreter at no cost to the client.

(2) The ALJ will be assured that the interpreter:

(a) understands the English language; and

(b) understands the language of the client or witness for whom the interpreter will interpret.

(3) The ALJ will instruct the interpreter to interpret as accurately as possible given the communication modality.

(4) If an interpreter is needed to assist a deaf or hearing impaired party, the interpreter must be certified as provided in Rule R993-300 et seq.

(5) The interpreter will be sworn to truthfully and accurately translate all statements made, all questions asked, and all answers given.

(6) The interpreter will be instructed to translate to the client the explanation of the hearing procedures as provided by the ALJ.

R993-100-107. Notice of Hearing.

(1) All interested parties will be notified by mail at least 10 days prior to the hearing.

(2) Advance written notice of the hearing can be waived if the client and Department agree.

(3) The notice shall contain:

(a) the time, date, and place, or conditions of the hearing.

If the hearing is to be by telephone, the notice will provide the number for the client to call and a notice that the client can call the number collect;

(b) the legal issues or reason for the hearing;

(c) the consequences of not appearing;

(d) the procedures and limitations for requesting rescheduling; and

(e) notification that the client can examine the case file prior to the hearing.

(4) If a client has designated a person or professional organization as the client's agent, notice of the hearing will be sent to that agent. It will be considered that the client has been given notice when notice is sent to the agent.

(5) When a new issue arises during the hearing or under other unusual circumstances, advance written notice may be waived, if the Department and the client agree, after a full verbal explanation of the issues and potential results.

(6) The client must notify any representatives, including counsel and witnesses, of the time and place of the hearing and make necessary arrangements for their participation.

R993-100-108. Hearing Procedure.

(1) Hearings are not open to the public.

(2) A client may be represented at the hearing. The client may also invite friends or relatives to attend as space permits.

(3) Representatives from the Department or other state agencies may be present.

(4) All hearings will be conducted informally and in such manner as to protect the rights of the parties. The hearing may be recorded.

(5) All issues relevant to the appeal will be considered and decided upon.

(6) The decision of the ALJ will be based solely on the testimony and evidence presented at the hearing.

(7) All parties may testify, present evidence or comment on the issues.

(8) All testimony of the parties and witnesses will be given under oath or affirmation.

(9) Any party to an impartial hearing will be given an adequate opportunity to be heard and present any pertinent evidence of probative value and to know and rebut by cross-examination or otherwise any other evidence submitted.

(10) The ALJ will direct the order of testimony and rule on the admissibility of evidence.

(11) Oral or written evidence of any nature, whether or not conforming to the legal rules of evidence including hearsay, may be accepted and will be given its proper weight.

(12) Official records of the Department, including reports submitted in connection with any program administered by the Department or other State agency may be included in the record.

(13) The ALJ may request the presentation of and may take such additional evidence as the ALJ deems necessary.

(14) The parties, with consent of the ALJ, may stipulate to the facts involved. The ALJ may decide the issues on the basis of such facts or may set the matter for hearing and take such further evidence as deemed necessary to determine the issues.

(15) The ALJ may require portions of the evidence be transcribed as necessary for rendering a decision.

(16) Unless the client requests a continuance, the decision of the ALJ will be issued within 60 days of the date on which the client requests a hearing.

(17) A decision of the ALJ which results in a reversal of the Department decision shall be complied without unnecessary delay and according to standard of provision of services procedures.

R993-100-109. Rescheduling or Continuance of Hearing.

(1) The ALJ may adjourn, reschedule, continue or reopen a hearing on the ALJ's own motion or on the motion of the client or the Department.

(2) If a party knows in advance of the hearing that they will be unable to proceed with or participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time.

(a) The request must be received prior to the hearing.

(b) The request must be made orally or in writing to the ALJ who is scheduled to hear the case. If the request is not received prior to the hearing, the party must show cause for failing to make a timely request.

(c) The party making the request must show cause for the request.

(d) Normally, a party will not be granted more than one request for a continuance.

(3) The rescheduled hearing must be held within 30 days of the original hearing date.

R993-100-110. Default Order or Dismissal for Failure to Participate.

(1) If a hearing has been scheduled at the request of a client and the client fails to appear at or participate in the hearing, either in person or through a representative, the ALJ will, unless a continuance or rescheduling has been requested, dismiss the request for an impartial hearing.

(2) A default order will be based on the record and best evidence available at the time of the order.

R993-100-111. Setting Aside a Default or Dismissal and/or Reopening the Hearing After the Hearing Has Been Concluded.

(1) Any party who fails to participate personally or by authorized representative as defined may request that the default order or dismissal be set aside and a hearing or a new hearing be scheduled. If a party failed to participate in a hearing but no decision has yet been issued, the party may request that the hearing be reopened.

(2) The request must be in writing, must set forth the reason for the request and must be mailed, faxed or delivered to the ALJ or presiding officer who issued the default order or dismissal within ten days of the issuance of the default or dismissal. If the request is made after the expiration of the ten-day time limit, the party requesting reopening must show good cause for not making the request within ten days.

(3) The ALJ has the discretion to schedule a hearing to determine if a party requesting that a default order or dismissal be set aside or a reopening satisfied the requirements of this rule or may grant or deny the request on the basis of the record in the case.

(4) If a presiding officer issued the default or dismissal, the officer shall forward the request to the Division of Adjudication. The request will be assigned to an ALJ who will then determine if the party requesting that the default or dismissal be set aside or that the hearing be reopened has satisfied the requirements of this rule.

(5) The ALJ may, on his or her own motion, reschedule, continue or reopen a case if it appears necessary to take continuing jurisdiction based on a mistake as to facts or if the denial of a hearing would be an affront to fairness. An ALJ may also, on his or her own motion, set aside a default or dismissal on the same grounds.

(6) If a request to set aside the default or dismissal or a request for reopening is not granted, the ALJ will issue a decision denying the request to reopen. A copy of the decision will be given or mailed to each party, with a clear statement of the right of appeal or judicial review. A defaulted party may appeal a denial of a request to set aside a default or dismissal by following the procedure in R993-100-114. The appeal can only contest the denial of the request to set aside the default and not the underlying merits of the case. If the default or dismissal is set aside on appeal, the Executive Director or designee may rule on the merits or remand the case to an ALJ for a ruling on the merits on an additional hearing if necessary.

R993-100-112. What Constitutes Grounds to Set Aside a Default or Dismissal.

(1) A request to reopen or set aside for failure to participate:

(a) will be granted if the party was prevented from participating and/or appearing at the hearing due to circumstances beyond the party's control;

(b) may be granted upon such terms as are just for any of the following reasons: mistake, inadvertence, surprise, excusable neglect or any other reason justifying relief from the operation of the decision. The determination of what sorts of neglect will be considered excusable is an equitable one, taking into account all of the relevant circumstances including:

(i) the danger that the party not requesting reopening will be harmed by reopening.

(ii) the length of the delay caused by the party's failure to participate including the length of time to request reopening.

(iii) the reason for the request including whether it was within the reasonable control of the party requesting reopening.

(iv) whether the party requesting reopening acted in good faith, and

(v) whether the party was represented by another at the time of the hearing. Because they are required to know and understand Department rules, attorneys and professional representatives are held to a higher standard, and

(vi) whether based on the evidence of record and the parties' arguments or statements, setting aside the default and taking additional evidence might affect the outcome of the case.

(2) Requests to reopen or set aside are remedial in nature and thus must be liberally construed in favor of providing parties with an opportunity to be heard and present their case. Any doubt must be resolved in favor of granting reopening.

R993-100-113. Canceling an Appeal and Hearing.

When a client notifies the Division of Adjudication or the ALJ that the client wants to cancel the hearing and not proceed with the appeal, a decision dismissing the appeal will be issued. This decision will have the effect of upholding the Department decision. The client will have ten days in which to reinstate the appeal by filing a written request for reinstatement with the Division of Adjudication.

R993-100-114. Further Appeal from the Decision of the ALJ.

The decision of the ALJ will be final 30 days after issuance unless further appeal is filed. Either party has the option of appealing the decision of the ALJ to either the Executive Director or person designated by the Executive Director or to the District Court. The appeal must be filed, in writing, within 30 days of the issuance of the decision of the ALJ. If a request for a hearing is not timely filed under R993-100-104, there are no further appeal rights.

KEY: administrative procedures, complaint procedures
Date of Enactment or Last Substantive Amendment: 2016
Authorizing, and Implemented or Interpreted Law: 35A-1-303; 35A-13-102; 35A-1-104

Workforce Services, Rehabilitation **R993-200** Order of Selection

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40592

FILED: 07/07/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to comply with H.B. 325 which was passed during the 2016 General Session of the legislature, and which moved the Utah State Office of

Rehabilitation (USOR) to the Department of Workforce Services (DWS).

SUMMARY OF THE RULE OR CHANGE: Federal law requires USOR to provide for an order of selection in the event there is insufficient funding to serve to all eligible individuals. This proposed rule merely moves these provisions, with some unsubstantial changes, from the USOR rules that were under Education to DWS. This proposed rule explains how resources will be allocated.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Pub. L. No. 102-569 and Section 35A-1-104 and Section 35A-13-102 and Subsection 35A-1-104(4)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: This program is primarily funded by the federal government, and while there is state money, there are no costs or savings to the state budget from this proposed rule. This rule merely moves USOR from Education to DWS. Any costs incurred are already included in the USOR budget.

♦ LOCAL GOVERNMENTS: This program is funded by state and federal government. There are no costs or savings to any local government from this proposed rule. This rule merely moves USOR from Education to DWS. Any costs for this program are already included in the USOR budget.

♦ SMALL BUSINESSES: This program is funded by state and federal government. There are no costs or savings to any small businesses from this proposed rule. This rule merely moves USOR from Education to DWS. Any costs are already included in the USOR budget. There are no compliance costs associated with this rule.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no costs or savings for persons other than small businesses, businesses, or local government entities as this proposed change merely moves USOR's current rules from under Education to be under DWS, as per H.B. 325 (2016).

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any affected person as this proposed change merely moves USOR's current rules from under Education to be under DWS, as per H.B. 325 (2016).

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. These changes will have no impact on any employer's contribution tax rate.

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

WORKFORCE SERVICES
 REHABILITATION
 140 E BROADWAY
 SALT LAKE CITY, UT 84111-2333

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2016

AUTHORIZED BY: Jon Pierpont, Executive Director

R993. Workforce Services, Rehabilitation.

R993-200. Order of Selection.

R993-200-201. Definitions.

The following definitions apply to terms used in this rule:

(1) Multiple Services or Multiple Vocational Rehabilitation services means three or more services as listed in 29 CFR 723 and in this rule.

(2) Extended Period of Time means the estimated length of time services are to be provided is six months or more.

R993-200-202. Determining Need for and Order of Selection.

(1) An order of selection will be used in the event the division lacks the resources to provide all eligible individuals with services necessary to obtain, retain, or engage in employment. In that event, the order of selection for services will be provided based on the significance of disability. The order of selection will provide services to eligible individuals with the most significant disability first, followed by eligible individuals with significant disabilities, and finally, eligible individuals with disabilities that are not significant.

(2) Significance of disability is determined by a qualified vocational rehabilitation counselor (QVRC) at the time the eligibility determination is made. The determination will be based on medical, psychological, and other diagnostic documentation and a clinical assessment by the QVRC. The QVRC may use, but is not bound by, determinations made by other state or federal agencies.

R993-200-203. Individuals with the Most Significant Disability.

(1) Individuals who will require multiple vocational rehabilitation services over an extended period of time and who exhibit functional deficits in two or more of the following areas are considered to have the most significant disabilities:

(a) mobility;

(b) communication;

(c) self-care which is defined as the inability to perform normal activities of daily living without assistance;

(d) self-direction which is defined as the inability to provide informed consent for life issues without the assistance of a court-appointed legal representative or guardian, or has been declared legally incompetent;

(e) inter-personal skills;

(f) work tolerance;

(g) work skills.

(2) Functional deficits are further defined in policy.

R993-200-204. Individuals with Significant Disability.

An individual with a significant disability can be classified in any one of the following three categories at any time while he or she is in the vocational rehabilitation process:

(1) An individual:

(a) who has a severe physical or mental impairment or disability or combination of disabilities, as provided in policy, that is determined to cause substantial functional limitation, which seriously limits one or more functional capacities listed in Rule R993-200-203 in terms of an employment outcome; and

(b) whose vocational rehabilitation is expected to require multiple services over an extended period of time.

(2) A recipient of a Social Security Disability Insurance benefits (SSDI) who requires multiple vocational rehabilitation services over an extended period of time.

(3) A recipient of a Supplemental Security Income (SSI) payment by reason of blindness or disability who requires multiple vocational rehabilitation services over an extended period of time. Individuals who have been determined eligible for SSI/SSDI disability benefits by the Social Security Administration are considered to be at least Significantly Disabled.

R993-200-205. Individuals with Disabilities.

An individual with a disability means an individual who:

(1) has a physical or mental impairment which for that individual constitutes or results in a substantial impediment to employment;

(2) can benefit in terms of an employment outcome from receiving vocational rehabilitation services; and

(3) requires vocational rehabilitation services to prepare for, enter, engage in or retain gainful employment.

R993-200-206. Restrictions on Establishing Priorities.

The following factors cannot be used as criteria for establishing selection priorities:

(1) type of disability;

(2) age, sex, race, color, creed, or national origin;

(3) vocational expectation;

(4) income level;

(5) duration of residency;

(6) source of referral or cooperative agreements with other agencies/programs; or

(7) cost of services or availability of comparable services and benefits.

KEY: disabled persons, rehabilitation

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: Pub. L. No. 102-569; 35A-13-102; 35A-1-104; 35A-1-104(4)

Workforce Services, Rehabilitation
R993-300
 Certification Requirements for
 Interpreters for the Hearing Impaired

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40593

FILED: 07/07/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to comply with H.B. 325 which was passed during the 2016 General Session of the legislature, and which moved the Utah State Office of Rehabilitation (USOR) to the Department of Workforce Services (DWS).

SUMMARY OF THE RULE OR CHANGE: This rule sets forth the requirements and procedure for obtaining certification to act as an interpreter for the deaf or hard of hearing. The rule has been rewritten, but no substantive changes have been made. The procedure will remain the same when USOR moves to DWS.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-13-601 et seq.

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This program is primarily funded by the federal government, and while there is state money, there are no costs or savings to the state budget from this proposed rule. This rule merely moves USOR from Education to DWS. Any costs incurred are already included in the USOR budget.

◆ **LOCAL GOVERNMENTS:** This program is funded by state and federal government. There are no costs or savings to any local government from this proposed rule. This rule merely moves USOR from Education to DWS. Any costs for this program are already included in the USOR budget.

◆ **SMALL BUSINESSES:** This program is funded by state and federal government. There are no costs or savings to any small businesses from this proposed rule. This rule merely moves USOR from Education to DWS. Any costs are already included in the USOR budget. There are no compliance costs associated with this rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or savings for persons other than small businesses, businesses, or local government entities as this proposed change merely moves USOR's current rules from under Education to be under DWS, as per H.B. 325 (2016).

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any affected person as this proposed change merely moves USOR's current rules from under Education to be under DWS, as per H.B. 325 (2016).

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. These changes will have no impact on any employer's contribution tax rate.

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

WORKFORCE SERVICES
REHABILITATION
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2016

AUTHORIZED BY: Jon Pierpont, Executive Director

R993. Workforce Services, Rehabilitation.**R993-300. Certification Requirements for Interpreters for the Hearing Impaired.****R993-300-301. Authority and Purpose.**

(1) This rule is authorized by 35A-13-601 et seq.

(2) This rule is to establish standards and procedures for the certification of interpreters in the state of Utah.

R993-300-302. Definitions and Acronyms.

(1) "Certified interpreter" means a person who provides interpreter services and is certified or qualified as required by state or federal law.

(2) "Department" means the Department of Workforce Services.

(3) "Director" means the director of USOR.

(4) "Division" means the division of Services for the Deaf and Hard of Hearing.

(5) "Interpreter service" means a service that facilitates effective communication:

(a) between a hearing person and a person who is hearing impaired or deaf, including:

(i) a student to teacher;

(ii) a student to staff; or

(iii) a student to peer; and

(b) through:

(i) American Sign Language (ASL) or a language system or code that is modeled after or derived from ASL, in whole or in part; or

(ii) cued language.

(6) "ICB" means the Interpreters Certification Board.

(7) "Local education agency" or "LEA" means:

(a) a school district;

(b) a charter school; or

(c) the Utah Schools for the Deaf and the Blind.

(8) "USOR" means the Utah State Office of Rehabilitation.

R993-300-303. Certification Requirements.

(1) To be eligible for certification as an interpreter, a candidate must:

- (a) submit a completed, signed application;
- (b) be of good moral character;
- (c) have a high school diploma, GED, or equivalent;
- (d) be 18 years or older;
- (e) submit the appropriate certification examination application fees; and
- (f) successfully pass the necessary examinations.

(2) A person who provides interpreter service to an LEA shall complete a background check and submit to ongoing monitoring, prior to working in an LEA with a student:

- (a) through the person's employer, whether the employer is an LEA or an agency that contracts with an LEA; and
- (b) in accordance with the requirements of Title 53A, Chapter 15, Part 15, Background Checks.

(3) If requested by the division, an LEA shall identify and report all persons, including contractors, who provide interpreter services to a student of the LEA. The LEA must also report, if requested, all students who receive interpreter service and the provider of the service.

R993-300-304. Examination of Candidate for Certification.

The division will test and rate a candidate applying for interpreter certification consistent with the division's policy manual. A candidate must pass both a written knowledge examination and a performance examination. The knowledge examination must be successfully passed before a candidate is eligible to take the performance examination.

R993-300-305. Renewal and Reinstatement.

(1) A person holding a Professional interpreter certificate may have that certificate renewed every four years by paying a renewal fee and completing the requisite number of hours of qualified continuing education. A person holding a Novice level interpreter certificate may have that certificate renewed annually for up to three years by paying a renewal fee and completing the requisite number of hours of qualified continuing education. Qualified continuing education is defined as education that is relevant to the profession, enhances the skills of the interpreter and are approved by the director in consultation with the ICB. The requisite number of hours of qualified continuing education is set by the director in consultation with the ICB. The number of hours necessary for renewal is available at all division offices.

(2) A person whose interpreter certificate has been suspended or revoked for unlawful or unprofessional conduct may apply for reinstatement to the director. The director may, after consultation with the ICB, require the applicant for reinstatement to complete the procedure for certification or designate the areas of the application process that need to be completed.

R993-300-306. Temporary Exemptions from Certification.

With approval from the division, an individual may engage in the practice of a certified interpreter without being certified as provided in Section 35A-13-609.

R993-300-307. Unlawful and Unprofessional Conduct.

(1) Unprofessional conduct is conduct by a certified interpreter that:

- (a) violates, or aids or abets another in violating, generally accepted professional or ethical standards applicable to the profession of a certified interpreter;
- (b) physically, mentally, or sexually abuses or exploits an individual through conduct connected with a certified interpreter's practice; or
- (c) violates any provision of the NAD-RID Code of Professional Conduct which is available on National Association of the Deaf (NAD) website and the Registry of Interpreters for the Deaf, Inc. (RID) website.

(2) Unlawful conduct is defined in Section 35A-13-611.

(3) A complaint alleging unlawful or unprofessional conduct by a certified interpreter must be filed with the Department and referred to the director.

(4) The director or a designee will review and investigate each complaint. This includes contacting, or otherwise providing notice to, the interpreter if it appears the interpreter may have engaged in unlawful or unprofessional conduct.

(5) If it is determined the certified interpreter engaged in unlawful or unprofessional conduct, the director will issue a written decision which will include the appropriate discipline and appeal rights.

R993-300-308. Grounds for Denial of Certification and Disciplinary Proceedings.

(1) The director may, with the advice of the ICB:

- (a) refuse to issue a certification to an applicant;
- (b) refuse to renew a certificate;
- (c) revoke, suspend or restrict a certificate;
- (d) place a certified interpreter on probation; or
- (e) otherwise act on the certificate of a certified interpreter who does not meet the qualification for certification under the Interpreter Services for the Deaf and Hard of Hearing Act or these rules.

(2) The director will issue a decision if any of the actions described in subsection (1) of this section is taken. The decision will be in writing and will:

- (a) advise an applicant, translator on conditions under which he or she may obtain certification, reinstatement or renewal of certification if any. This may include completing the procedure for certification; and
- (b) notify the applicant or interpreter of his or her appeal rights.

(3) Within 30 days of the date the decision of the director is issued, the interpreter may appeal the decision by filing a written appeal with the Adjudication and Appeals Division. Hearings will be conducted in accordance with Department rules r993-100-104 through r993-100-114 and the Utah Administrative Procedures Act. Hearings are declared to be informal however the Department reserves the right to record hearings.

(4) Either party has the option of appealing the decision of the ALJ to either the Executive Director or person designated by the Executive Director or to the District Court. The appeal must be filed, in writing, within 30 days of the issuance of the decision of the ALJ.

R993-300-309. Different Certificate Levels.

(1) The division issues two types of certificates: Novice and Professional.

(2) Candidates for both types of certificate must pass a written examination and a performance examination.

(3) Candidates must pass the written examination before taking the performance examination.

(4) All components of the Novice performance examination must be passed at the same time to successfully acquire Novice Certification.

(5) Not all components of the Professional performance examination must be passed at the same time. A candidate for a Professional certificate who passes one or more component(s) of the professional performance examination has 12 months to pass all remaining components. If all examination components are not passed within the 12 month period, any passed components are no

longer valid and the entire exam, written and performance, must be taken again. A candidate who does not pass any portion of the exam must submit a new application and payment to continue in the examination process.

(6) Examination procedures, including penalties for not attending a schedule performance examination, are set by policy and are available in the manual on the division's website.

(7) The ICB sets the passing scores for all examinations.

KEY: certification, interpreters

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: 35A-13-601 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 August 31, 2016.

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 Office 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 Office of Administrative Rules.

From the end of the 30-day waiting period through November 29, 2016, an agency may notify the Office 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 Office 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, Waste
Management And Radiation Control,
Waste Management
R315-319
Coal Combustion Residuals
Requirements**

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 40266

FILED: 07/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is being changed in response to comments received.

SUMMARY OF THE RULE OR CHANGE: The phrase "not to exceed a height of six inches above the slope of the dike," is removed from Sections R315-319-73 and R315-319-74. The term "reach" is changed to "reached" in Section R315-319-1. All of Section R315-319-100 is removed except for "Inactive CCR surface impoundments are subject to all of the requirements of Sections R315-319-50 through R315-319-107 applicable to existing CCR surface impoundments." In addition to these changes, some numbering is corrected in Sections R315-319-73 and R315-319-74. (DAR NOTE: The original proposed new rule upon which this change in proposed rule (CPR) was based was published in the April 15, 2016, issue of the Utah State Bulletin, on page 32. Underlining in the rule below indicates text that has been added since the publication of the proposed new rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-108

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will not be any cost or savings to the state budget as the changes will not change the coal ash permit program within the Division of Waste Management and Radiation Control.
- ◆ **LOCAL GOVERNMENTS:** No local government is affected by this rule or the changes proposed. No local government operates a facility affected by this rule.
- ◆ **SMALL BUSINESSES:** No small businesses are affected by this rule or the changes proposed. No small business operates a facility affected by this rule.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The five coal-powered, electricity generating plants in Utah that are affected by this rule will not see any increase or

decrease in costs. The changes in Sections R315-319-73 and R315-319-74 will not change how the five electricity generating plants will conduct their dike maintenance operations; therefore, the facilities will not incur any costs or savings. The requirements that are removed from Section R315-319-100 did not apply to any facility in Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The five coal-powered, electricity generating plants in Utah that are affected by this rule will not see any increase in costs. The changes in Sections R315-319-73 and R315-319-74 will not change how the five electricity generating plants will conduct their dike maintenance operations; therefore, the facilities will not incur any costs. The requirements that are removed from Section R315-319-100 did not apply to any facility in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes to Rule R315-319 will have no fiscal impact on the five facilities in Utah that are covered by the rule. The changes in Sections R315-319-73 and R315-319-74 will not change how the five electricity generating plants will conduct their dike maintenance operations; therefore, the facilities will not incur any fiscal impacts. The requirements that are removed from Section R315-319-100 did not apply to any facility in Utah; therefore, no facility will incur a fiscal impact.

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

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, WASTE MANAGEMENT
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@utah.gov

THIS RULE MAY BECOME EFFECTIVE ON: 09/01/2016

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-319. Coal Combustion Residuals Requirements.

R315-319-1. Permit Required.

(a) All landfills disposing of coal combustion residuals and surface impoundments containing coal combustion residuals shall have a permit for a Class I, II, or V landfill in accordance with Rules R315-302 through 307 or a coal combustion residuals permit issued under Rule R315-319.

(b) An application for a permit for a coal combustion residual landfill or surface impoundment or multiple landfills and impoundments at a facility covered by one permit shall be made to the Director.

(c)(1) An application for a permit a Coal Combustion Residue (CCR) unit shall contain the information required in Sections R315-319-60 through 107. No information need be submitted for which the effective date in Sections R315-319-60 through 107 has not been ~~reach~~reached at the time of application submittal.

(2) All information required in Sections R315-319-60 through 107 with an effective date that falls later than the application submittal required in Subsection R315-319-1(c)(1) shall be submitted within six months of the effective date of the requirement found in Sections R315-319-60 through 107.

(d) Permit application procedures shall follow the requirements of Sections R315-310-1 and 2.

(e) Permit transfers shall follow the procedures of Section R315-310-11.

(f) Permit applicants shall follow the notification requirements of Subsection R315-310-3(2).

(g) Permit approvals shall follow the requirements of Rule R315-311.

(h) The Director approvals required in Sections R315-319-60 through 107 are satisfied by the issuance of a permit by the Director.

R315-319-73. Structural Integrity Criteria for Existing CCR Surface Impoundments.

(a) The requirements of Subsections R315-319-73(a)(1) through (4) apply to all existing CCR surface impoundments, except for those existing CCR surface impoundments that are incised CCR units. If an incised CCR surface impoundment is subsequently modified, e.g., a dike is constructed, such that the CCR unit no longer meets the definition of an incised CCR unit, the CCR unit is subject to the requirements of Subsections R315-319-73(a)(1) through (4).

(1) No later than, December 17, 2015, the owner or operator of the CCR unit shall place on or immediately adjacent to the CCR unit a permanent identification marker, at least six feet high showing the identification number of the CCR unit, if one has been assigned by the state, the name associated with the CCR unit and the name of the owner or operator of the CCR unit.

(2) Periodic hazard potential classification assessments.

(i) The owner or operator of the CCR unit shall conduct initial and periodic hazard potential classification assessments of the CCR unit according to the timeframes specified in Subsection R315-319-73(f). The owner or operator shall document the hazard potential classification of each CCR unit as either a high hazard potential CCR surface impoundment, a significant hazard potential CCR surface impoundment, or a low hazard potential CCR surface impoundment. The owner or operator shall also document the basis for each hazard potential classification.

(ii) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial hazard potential classification and each subsequent periodic classification specified in Subsection R315-319-73(a)(2)(i) was conducted in accordance with the requirements of Section R315-319-73.

(3) Emergency Action Plan (EAP)

(i) Development of the plan. No later than April 17, 2017, the owner or operator of a CCR unit determined to be either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment under Subsection R315-319-73(a)(2) shall prepare and maintain a written EAP. At a minimum, the EAP shall:

(A) Define the events or circumstances involving the CCR unit that represent a safety emergency, along with a description of the procedures that will be followed to detect a safety emergency in a timely manner;

(B) Define responsible persons, their respective responsibilities, and notification procedures in the event of a safety emergency involving the CCR unit;

(C) Provide contact information of emergency responders;

(D) Include a map which delineates the downstream area which would be affected in the event of a CCR unit failure and a physical description of the CCR unit; and

(E) Include provisions for an annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders.

(ii) Amendment of the plan.

(A) The owner or operator of a CCR unit subject to the requirements of Subsection R315-319-73(a)(3)(i) may amend the written EAP at any time provided the revised plan is has been submitted to and has received approval from the Director and placed in the facility's operating record as required by Subsection R315-319-105(f)(6). The owner or operator shall amend the written EAP whenever there is a change in conditions that would substantially affect the EAP in effect.

(B) The written EAP shall be evaluated, at a minimum, every five years to ensure the information required in Subsection R315-319-73(a)(3)(i) is accurate. As necessary, the EAP shall be updated and a revised EAP has been submitted to and has received approval from the Director and placed in the facility's operating record as required by Subsection R315-319-105(f)(6).

(iii) Changes in hazard potential classification.

(A) If the owner or operator of a CCR unit determines during a periodic hazard potential assessment that the CCR unit is no longer classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit is no longer subject to the requirement to prepare and maintain a written EAP beginning on the date the periodic hazard potential assessment documentation is has been submitted to and has received approval from the Director and placed in the facility's operating record as required by Subsection R315-319-105(f)(5).

(B) If the owner or operator of a CCR unit classified as a low hazard potential CCR surface impoundment subsequently determines that the CCR unit is properly re-classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit shall prepare a written EAP for the CCR unit as required by Subsection R315-319-73(a)(3)(i) within six months of completing such periodic hazard potential assessment and submit the EAP to the Director for approval.

(iv) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the

written EAP, and any subsequent amendment of the EAP, meets the requirements of Subsection R315-319-73(a)(3) and submit the certification to the Director.

(v) Activation of the EAP. The EAP shall be implemented once events or circumstances involving the CCR unit that represent a safety emergency are detected, including conditions identified during periodic structural stability assessments, annual inspections, and inspections by a qualified person.

(4) The CCR unit and surrounding areas shall be designed, constructed, operated, and maintained with vegetated slopes of dikes ~~not to exceed a height of 6 inches above the slope of the dike,~~ except for slopes which are protected with an alternate form(s) of slope protection.

(b) The requirements of Subsections R315-319-73(c) through (e) apply to an owner or operator of an existing CCR surface impoundment that either:

(1) Has a height of five feet or more and a storage volume of 20 acre-feet or more; or

(2) Has a height of 20 feet or more.

(c)(1) No later than October 17, 2016, the owner or operator of the CCR unit shall compile and submit to the Director a history of construction, which shall contain, to the extent feasible, the information specified in Subsections R315-319-73(c)(1)(i) through (xi).

(i) The name and address of the person(s) owning or operating the CCR unit; the name associated with the CCR unit; and the identification number of the CCR unit if one has been assigned by the state.

(ii) The location of the CCR unit identified on the most recent U.S. Geological Survey (USGS) 7 1/2 minute or 15 minute topographic quadrangle map, or a topographic map of equivalent scale if a USGS map is not available.

(iii) A statement of the purpose for which the CCR unit is being used.

(iv) The name and size in acres of the watershed within which the CCR unit is located.

(v) A description of the physical and engineering properties of the foundation and abutment materials on which the CCR unit is constructed.

(vi) A statement of the type, size, range, and physical and engineering properties of the materials used in constructing each zone or stage of the CCR unit; the method of site preparation and construction of each zone of the CCR unit; and the approximate dates of construction of each successive stage of construction of the CCR unit.

(vii) At a scale that details engineering structures and appurtenances relevant to the design, construction, operation, and maintenance of the CCR unit, detailed dimensional drawings of the CCR unit, including a plan view and cross sections of the length and width of the CCR unit, showing all zones, foundation improvements, drainage provisions, spillways, diversion ditches, outlets, instrument locations, and slope protection, in addition to the normal operating pool surface elevation and the maximum pool surface elevation following peak discharge from the inflow design flood, the expected maximum depth of CCR within the CCR surface impoundment, and any identifiable natural or manmade features that could adversely affect operation of the CCR unit due to malfunction or mis-operation.

(viii) A description of the type, purpose, and location of existing instrumentation.

(ix) Area-capacity curves for the CCR unit.

(x) A description of each spillway and diversion design features and capacities and calculations used in their determination.

(xi) The construction specifications and provisions for surveillance, maintenance, and repair of the CCR unit.

(xii) Any record or knowledge of structural instability of the CCR unit.

(2) Changes to the history of construction. If there is a significant change to any information compiled under Subsection R315-319-73(c)(1), the owner or operator of the CCR unit shall update the relevant information, submit it to the Director, and place it in the facility's operating record as required by Subsection R315-319-105(f)(9).

(d) Periodic structural stability assessments.

(1) The owner or operator of the CCR unit shall conduct initial and periodic structural stability assessments and document whether the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering practices for the maximum volume of CCR and CCR wastewater which can be impounded therein. The assessment shall, at a minimum, document whether the CCR unit has been designed, constructed, operated, and maintained with:

(i) Stable foundations and abutments;

(ii) Adequate slope protection to protect against surface erosion, wave action, and adverse effects of sudden drawdown;

(iii) Dikes mechanically compacted to a density sufficient to withstand the range of loading conditions in the CCR unit;

(iv) Vegetated slopes of dikes and surrounding areas ~~not to exceed a height of six inches above the slope of the dike,~~ except for slopes which have an alternate form or forms of slope protection;

(v) A single spillway or a combination of spillways configured as specified in Subsection R315-319-73(d)(1)(v)(A). The combined capacity of all spillways shall be designed, constructed, operated, and maintained to adequately manage flow during and following the peak discharge from the event specified in Subsection R315-319-73(d)(1)(v)(B).

(A) All spillways shall be either:

~~(+)~~(I) Of non-erodible construction and designed to carry sustained flows; or

~~(=)~~(II) Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) The combined capacity of all spillways shall adequately manage flow during and following the peak discharge from a:

~~(+)~~(I) Probable maximum flood (PMF) for a high hazard potential CCR surface impoundment; or

~~(=)~~(II) 1000-year flood for a significant hazard potential CCR surface impoundment; or

~~(=)~~(III) 100-year flood for a low hazard potential CCR surface impoundment.

(vi) Hydraulic structures underlying the base of the CCR unit or passing through the dike of the CCR unit that maintain structural integrity and are free of significant deterioration, deformation, distortion, bedding deficiencies, sedimentation, and

debris which may negatively affect the operation of the hydraulic structure; and

(vii) For CCR units with downstream slopes which can be inundated by the pool of an adjacent water body, such as a river, stream or lake, downstream slopes that maintain structural stability during low pool of the adjacent water body or sudden drawdown of the adjacent water body.

(2) The periodic assessment described in Subsection R315-319-73(d)(1) shall identify any structural stability deficiencies associated with the CCR unit in addition to recommending corrective measures. If a deficiency or a release is identified during the periodic assessment, the owner or operator unit shall remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken and submit the documentation to the Director.

(3) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment was conducted in accordance with the requirements of Section R315-319-73 and submit the certification to the Director.

(e) Periodic safety factor assessments.

(1) The owner or operator shall conduct and submit to the Director an initial and periodic safety factor assessments for each CCR unit and document whether the calculated factors of safety for each CCR unit achieve the minimum safety factors specified in Subsections R315-319-73(e)(1)(i) through (iv) for the critical cross section of the embankment. The critical cross section is the cross section anticipated to be the most susceptible of all cross sections to structural failure based on appropriate engineering considerations, including loading conditions. The safety factor assessments shall be supported by appropriate engineering calculations.

(i) The calculated static factor of safety under the long-term, maximum storage pool loading condition shall equal or exceed 1.50.

(ii) The calculated static factor of safety under the maximum surcharge pool loading condition shall equal or exceed 1.40.

(iii) The calculated seismic factor of safety shall equal or exceed 1.00.

(iv) For dikes constructed of soils that have susceptibility to liquefaction, the calculated liquefaction factor of safety shall equal or exceed 1.20.

(2) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment specified in Subsection R315-319-73(e)(1) meets the requirements of Section R315-319-73.

(f) Timeframes for periodic assessments

(1) Initial assessments. Except as provided by Subsection R315-319-73(f)(2), the owner or operator of the CCR unit shall complete the initial assessments required by Subsections R315-319-73(a)(2), (d), and (e) no later than October 17, 2016. The owner or operator has completed an initial assessment when the owner or operator has and submit to the Director and placed the assessment required by Subsections R315-319-73(a)(2), (d), and (e) in the facility's operating record as required by Subsections R315-319-105(f)(5), (10), and (12).

(2) Use of a previously completed assessment(s) in lieu of the initial assessment(s). The owner or operator of the CCR unit

may elect to use a previously completed assessment to serve as the initial assessment required by Subsections R315-319-73(a)(2), (d), and (e) provided that the previously completed assessment(s):

(i) Was completed no earlier than 42 months prior to October 17, 2016; and

(ii) Meets the applicable requirements of Subsections R315-319-73 (a)(2), (d), and (e).

(3) Frequency for conducting periodic assessments. The owner or operator of the CCR unit shall conduct and complete and submit to the Director the assessments required by Subsections R315-319-73 (a)(2), (d), and (e) every five years. The date of completing the initial assessment is the basis for establishing the deadline to complete the first subsequent assessment. If the owner or operator elects to use a previously completed assessment(s) in lieu of the initial assessment as provided by Subsection R315-319-73 (f)(2), the date of the report for the previously completed assessment is the basis for establishing the deadline to complete the first subsequent assessment. The owner or operator may complete any required assessment prior to the required deadline provided the owner or operator submits the assessment to the Director and places the completed assessment(s) into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent assessments is based on the date of completing the previous assessment. For purposes of Subsection R315-319-73(f)(3), the owner or operator has completed an assessment when the relevant assessment(s) required by Subsections R315-319-73 (a)(2), (d), and (e) has been submitted and approved by the Director and has been placed in the facility's operating record as required by Subsections R315-319-105(f)(5), (10), and (12).

(4) Closure of the CCR unit. An owner or operator of a CCR unit who either fails to complete a timely safety factor assessment or fails to demonstrate minimum safety factors as required by Subsection R315-319-73 (e) is subject to the requirements of Subsection R315-319-101(b)(2).

(g) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(f), the notification requirements specified in Subsection R315-319-106(f), and the internet requirements specified in Subsection R315-319-107(f).

R315-319-74. Structural Integrity Criteria for New CCR Surface Impoundments and Any Lateral Expansion of a CCR Surface Impoundment.

(a) The requirements of Subsections R315-319-74(a)(1) through (4) apply to all new CCR surface impoundments and any lateral expansion of a CCR surface impoundment, except for those new CCR surface impoundments that are incised CCR units. If an incised CCR surface impoundment is subsequently modified, e.g., a dike is constructed, such that the CCR unit no longer meets the definition of an incised CCR unit, the CCR unit is subject to the requirements of Subsections R315-319-74(a)(1) through (4).

(1) No later than the initial receipt of CCR, the owner or operator of the CCR unit shall place on or immediately adjacent to the CCR unit a permanent identification marker, at least six feet high showing the identification number of the CCR unit, if one has been assigned by the state, the name associated with the CCR unit and the name of the owner or operator of the CCR unit.

(2) Periodic hazard potential classification assessments.

(i) The owner or operator of the CCR unit shall conduct initial and periodic hazard potential classification assessments of the CCR unit according to the timeframes specified in Subsection R315-319-74(f). The owner or operator shall document the hazard potential classification of each CCR unit as either a high hazard potential CCR surface impoundment, a significant hazard potential CCR surface impoundment, or a low hazard potential CCR surface impoundment. The owner or operator shall also document the basis for each hazard potential classification.

(ii) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial hazard potential classification and each subsequent periodic classification specified in Subsection R315-319-74(a)(2)(i) was conducted in accordance with the requirements of Section R315-319-74.

(3) Emergency Action Plan (EAP)

(i) Development of the plan. Prior to the initial receipt of CCR in the CCR unit, the owner or operator of a CCR unit determined to be either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment under Subsection R315-319-74 (a)(2) shall prepare, and maintain a written EAP. At a minimum, the EAP shall:

(A) Define the events or circumstances involving the CCR unit that represent a safety emergency, along with a description of the procedures that will be followed to detect a safety emergency in a timely manner;

(B) Define responsible persons, their respective responsibilities, and notification procedures in the event of a safety emergency involving the CCR unit;

(C) Provide contact information of emergency responders;

(D) Include a map which delineates the downstream area which would be affected in the event of a CCR unit failure and a physical description of the CCR unit; and

(E) Include provisions for an annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders.

(ii) Amendment of the plan.

(A) The owner or operator of a CCR unit subject to the requirements of Subsection R315-319-74(a)(3)(i) may amend the written EAP at any time provided the revised plan is placed in the facility's operating record as required by Subsection R315-319-105(f)(6). The owner or operator shall amend the written EAP whenever there is a change in conditions that would substantially affect the EAP in effect.

(B) The written EAP shall be evaluated, at a minimum, every five years to ensure the information required in Subsection R315-319-74(a)(3)(i) is accurate. As necessary, the EAP shall be updated and a revised EAP placed in the facility's operating record as required by Subsection R315-319-105(f)(6).

(iii) Changes in hazard potential classification.

(A) If the owner or operator of a CCR unit determines during a periodic hazard potential assessment that the CCR unit is no longer classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit is no longer subject to the requirement to prepare and maintain a written EAP beginning on the date the periodic hazard potential assessment documentation has been submitted to and has received approval

from the Director and placed in the facility's operating record as required by Subsection R315-319-105(f)(5).

(B) If the owner or operator of a CCR unit classified as a low hazard potential CCR surface impoundment subsequently determines that the CCR unit is properly re-classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit shall prepare and submit to the Director a written EAP for the CCR unit as required by Subsection R315-319-74(a)(3)(i) within six months of completing such periodic hazard potential assessment.

(iv) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the written EAP, and any subsequent amendment of the EAP, meets the requirements of Subsection R315-319-74(a)(3).

(v) Activation of the EAP. The EAP shall be implemented once events or circumstances involving the CCR unit that represent a safety emergency are detected, including conditions identified during periodic structural stability assessments, annual inspections, and inspections by a qualified person.

(4) The CCR unit and surrounding areas shall be designed, constructed, operated, and maintained with vegetated slopes of dikes ~~not to exceed a height of six inches above the slope of the dike;~~ except for slopes which are protected with an alternate form(s) of slope protection.

(b) The requirements of Subsections R315-319-74(c) through (e) apply to an owner or operator of a new CCR surface impoundment and any lateral expansion of a CCR surface impoundment that either:

(1) Has a height of five feet or more and a storage volume of 20 acre-feet or more; or

(2) Has a height of 20 feet or more.

(c)(1) No later than the initial receipt of CCR in the CCR unit, the owner or operator unit shall compile the design and construction plans for the CCR unit, which shall include, to the extent feasible, the information specified in Subsection R315-319-74 (c)(1)(i) through (xi).

(i) The name and address of the person(s) owning or operating the CCR unit; the name associated with the CCR unit; and the identification number of the CCR unit if one has been assigned by the state.

(ii) The location of the CCR unit identified on the most recent U.S. Geological Survey (USGS) 7 1/2 minute or 15 minute topographic quadrangle map, or a topographic map of equivalent scale if a USGS map is not available.

(iii) A statement of the purpose for which the CCR unit is being used.

(iv) The name and size in acres of the watershed within which the CCR unit is located.

(v) A description of the physical and engineering properties of the foundation and abutment materials on which the CCR unit is constructed.

(vi) A statement of the type, size, range, and physical and engineering properties of the materials used in constructing each zone or stage of the CCR unit; the method of site preparation and construction of each zone of the CCR unit; and the dates of construction of each successive stage of construction of the CCR unit.

(vii) At a scale that details engineering structures and appurtenances relevant to the design, construction, operation, and maintenance of the CCR unit, detailed dimensional drawings of the CCR unit, including a plan view and cross sections of the length and width of the CCR unit, showing all zones, foundation improvements, drainage provisions, spillways, diversion ditches, outlets, instrument locations, and slope protection, in addition to the normal operating pool surface elevation and the maximum pool surface elevation following peak discharge from the inflow design flood, the expected maximum depth of CCR within the CCR surface impoundment, and any identifiable natural or manmade features that could adversely affect operation of the CCR unit due to malfunction or mis-operation.

(viii) A description of the type, purpose, and location of existing instrumentation.

(ix) Area-capacity curves for the CCR unit.

(x) A description of each spillway and diversion design features and capacities and calculations used in their determination.

(xi) The construction specifications and provisions for surveillance, maintenance, and repair of the CCR unit.

(xii) Any record or knowledge of structural instability of the CCR unit.

(2) Changes in the design and construction. If there is a significant change to any information compiled under Subsection R315-319-74 (c)(1), the owner or operator of the CCR unit shall update the relevant information and place it in the facility's operating record as required by Subsection R315-319-105(f)(13).

(d) Periodic structural stability assessments.

(1) The owner or operator of the CCR unit shall conduct initial and periodic structural stability assessments and document whether the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering practices for the maximum volume of CCR and CCR wastewater which can be impounded therein. The assessment shall, at a minimum, document whether the CCR unit has been designed, constructed, operated, and maintained with:

(i) Stable foundations and abutments;

(ii) Adequate slope protection to protect against surface erosion, wave action, and adverse effects of sudden drawdown;

(iii) Dikes mechanically compacted to a density sufficient to withstand the range of loading conditions in the CCR unit;

(iv) Vegetated slopes of dikes and surrounding areas [~~not to exceed a height of six inches above the slope of the dike,~~] except for slopes which have an alternate form or forms of slope protection;

(v) A single spillway or a combination of spillways configured as specified in Subsection R315-319-74(d)(1)(v)(A). The combined capacity of all spillways shall be designed, constructed, operated, and maintained to adequately manage flow during and following the peak discharge from the event specified in Subsection R315-319-74 (d)(1)(v)(B).

(A) All spillways shall be either:

[(+)](I) Of non-erodible construction and designed to carry sustained flows; or

[(2)](II) Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) The combined capacity of all spillways shall adequately manage flow during and following the peak discharge from a:

[(+)](I) Probable maximum flood (PMF) for a high hazard potential CCR surface impoundment; or

[(2)](II) 1000-year flood for a significant hazard potential CCR surface impoundment; or

[(3)](III) 100-year flood for a low hazard potential CCR surface impoundment.

(vi) Hydraulic structures underlying the base of the CCR unit or passing through the dike of the CCR unit that maintain structural integrity and are free of significant deterioration, deformation, distortion, bedding deficiencies, sedimentation, and debris which may negatively affect the operation of the hydraulic structure; and

(vii) For CCR units with downstream slopes which can be inundated by the pool of an adjacent water body, such as a river, stream or lake, downstream slopes that maintain structural stability during low pool of the adjacent water body or sudden drawdown of the adjacent water body.

(2) The periodic assessment described in Subsection R315-319-74(d)(1) shall identify any structural stability deficiencies associated with the CCR unit in addition to recommending corrective measures. If a deficiency or a release is identified during the periodic assessment, the owner or operator unit shall remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken.

(3) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment was conducted in accordance with the requirements of Section R315-319-74.

(e) Periodic safety factor assessments.

(1) The owner or operator shall conduct an initial and periodic safety factor assessments for each CCR unit and document whether the calculated factors of safety for each CCR unit achieve the minimum safety factors specified in Subsections R315-319-74(e)(1)(i) through (v) for the critical cross section of the embankment. The critical cross section is the cross section anticipated to be the most susceptible of all cross sections to structural failure based on appropriate engineering considerations, including loading conditions. The safety factor assessments shall be supported by appropriate engineering calculations.

(i) The calculated static factor of safety under the end-of-construction loading condition shall equal or exceed 1.30. The assessment of this loading condition is only required for the initial safety factor assessment and is not required for subsequent assessments.

(ii) The calculated static factor of safety under the long-term, maximum storage pool loading condition shall equal or exceed 1.50.

(iii) The calculated static factor of safety under the maximum surcharge pool loading condition shall equal or exceed 1.40.

(iv) The calculated seismic factor of safety shall equal or exceed 1.00.

(v) For dikes constructed of soils that have susceptibility to liquefaction, the calculated liquefaction factor of safety shall equal or exceed 1.20.

(2) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment specified in Subsection R315-319-74(e)(1) meets the requirements of Section R315-319-74.

(f) Timeframes for periodic assessments

(1) Initial assessments. Except as provided by Subsection R315-319-74 (f)(2), the owner or operator of the CCR unit shall complete the initial assessments required by Subsections R315-319-74(a)(2), (d), and (e) prior to the initial receipt of CCR in the unit. The owner or operator has completed an initial assessment when the owner or operator has placed the assessment required by Subsections R315-319-74 (a)(2), (d), and (e) in the facility's operating record as required by Subsection R315-319-105(f)(5), (10), and (12).

(2) Frequency for conducting periodic assessments. The owner or operator of the CCR unit shall conduct, complete the assessments required by Subsections R315-319-74 (a)(2), (d), and (e) every five years. The date of completing the initial assessment is the basis for establishing the deadline to complete the first subsequent assessment. The owner or operator may complete any required assessment prior to the required deadline provided the owner or operator places the completed assessment(s) into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent assessments is based on the date of completing the previous assessment. For purposes of Subsection R315-319-74 (f)(2), the owner or operator has completed an assessment when the relevant assessment(s) required by Subsections R315-319-74 (a)(2), (d), and (e) has been placed in the facility's operating record as required by Subsection R315-319-105(f)(5), (10), and (12).

(3) Failure to document minimum safety factors during the initial assessment. Until the date an owner or operator of a CCR unit documents that the calculated factors of safety achieve the minimum safety factors specified in Subsections R315-319-74 (e) (1)(i) through (v), the owner or operator is prohibited from placing CCR in such unit.

(4) Closure of the CCR unit. An owner or operator of a CCR unit who either fails to complete a timely periodic safety factor assessment or fails to demonstrate minimum safety factors as required by Subsection R315-319-74 (e) is subject to the requirements of Subsection R315-319-101(c).

(g) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(f), the notification requirements specified in Subsection R315-319-106(f), and the internet requirements specified in Subsection R315-319-107(f).

R315-319-100. Closure and Post-Closure Care Inactive CCR Surface Impoundments.

(a) ~~Except as provided by Subsection R315-319-100(b), inactive]~~Inactive CCR surface impoundments are subject to all of the requirements of Sections R315-319-50 through 107 applicable to existing CCR surface impoundments.

~~(b) An owner or operator of an inactive CCR surface impoundment that completes closure of such CCR unit, and meets all of the requirements of either Subsections R315-319-100(b)(1) through (4) or Subsection R315-319-100(b)(5) no later than April~~

~~17, 2018, is exempt from all other requirements of Sections R315-319-50 through 107.~~

~~(1) Closure by leaving CCR in place. If the owner or operator of the inactive CCR surface impoundment elects to close the CCR surface impoundment by leaving CCR in place, the owner or operator shall ensure that, at a minimum, the CCR unit is closed in a manner that will:~~

~~(i) Control, minimize or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters or to the atmosphere;~~

~~(ii) Preclude the probability of future impoundment of water, sediment, or slurry;~~

~~(iii) Include measures that provide for major slope stability to prevent the sloughing or movement of the final cover system; and~~

~~(iv) Minimize the need for further maintenance of the CCR unit.~~

~~(2) The owner or operator of the inactive CCR surface impoundment shall meet the requirements of Subsections R315-319-100(b)(2)(i) and (ii) prior to installing the final cover system required under Subsection R315-319-100(b)(3):~~

~~(i) Free liquids shall be eliminated by removing liquid wastes or solidifying the remaining wastes and waste residues.~~

~~(ii) Remaining wastes shall be stabilized sufficient to support the final cover system.~~

~~(3) The owner or operator shall install a final cover system that is designed to minimize infiltration and erosion, and at a minimum, meets the requirements of Subsection R315-319-100 (b) (3)(i), or the requirements of an alternative final cover system specified in Subsection R315-319-100(b)(3)(ii):~~

~~(i) The final cover system shall be designed and constructed to meet the criteria specified in Subsections R315-319-100(b)(3)(i)(A) through (D):~~

~~(A) The permeability of the final cover system shall be less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than 1×10^{-5} eentimeters/second, whichever is less.~~

~~(B) The infiltration of liquids through the CCR unit shall be minimized by the use of an infiltration layer that contains a minimum of 18 inches of earthen material.~~

~~(C) The erosion of the final cover system shall be minimized by the use of an erosion layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth.~~

~~(D) The disruption of the integrity of the final cover system shall be minimized through a design that accommodates settling and subsidence.~~

~~(ii) The owner or operator may select an alternative final cover system design, provided the alternative final cover system is designed and constructed to meet the criteria in Subsections R315-319-100(b)(3)(ii)(A) through (C):~~

~~(A) The design of the final cover system shall include an infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in Subsections R315-319-100(b) (3)(i)(A) and (B):~~

~~(B) The design of the final cover system shall include an erosion layer that provides equivalent protection from wind or water~~

~~erosion as the erosion layer specified in Subsection R315-319-100(b)(3)(i)(C).~~

~~(C) The disruption of the integrity of the final cover system shall be minimized through a design that accommodates settling and subsidence.~~

~~(4) The owner or operator of the CCR surface impoundment shall obtain a written certification from a qualified professional engineer stating that the design of the final cover system meets either the requirements of Subsection R315-319-100(b)(3)(i) or (ii).~~

~~(5) Closure through removal of CCR. The owner or operator may alternatively elect to close an inactive CCR surface impoundment by removing and decontaminating all areas affected by releases from the CCR surface impoundment. CCR removal and decontamination of the CCR surface impoundment are complete when all CCR in the inactive CCR surface impoundment is removed, including the bottom liner of the CCR unit.~~

~~(6) The owner or operator of the CCR surface impoundment shall obtain a written certification from a qualified professional engineer that closure of the CCR surface impoundment under either Subsections R315-319-100(b)(1) through (4) or (b)(5) is technically feasible within the timeframe in Subsection R315-319-100(b).~~

~~(7) If the owner or operator of the CCR surface impoundment fails to complete closure of the inactive CCR surface impoundment within the timeframe in Subsection R315-319-100(b), the CCR unit shall comply with all of the requirements applicable to existing CCR surface impoundments under Sections R315-319-50 through 107.~~

~~(e) Required notices and progress reports. An owner or operator of an inactive CCR surface impoundment that closes in accordance with Subsection R315-319-100(b) shall complete the notices and progress reports specified in Subsections R315-319-100(e)(1) through (3).~~

~~(1) No later than December 17, 2015, the owner or operator shall prepare and place in the facility's operating record a notification of intent to initiate closure of the CCR surface impoundment. The notification shall state that the CCR surface impoundment is an inactive CCR surface impoundment closing under the requirements of Subsection R315-319-100(b). The~~

~~notification shall also include a narrative description of how the CCR surface impoundment will be closed, a schedule for completing closure activities, and the required certifications under Subsections R315-319-100(b)(4) and (6), if applicable.~~

~~(2) The owner or operator shall prepare periodic progress reports summarizing the progress of closure implementation, including a description of the actions completed to date, any problems encountered and a description of the actions taken to resolve the problems, and projected closure activities for the upcoming year. The annual progress reports shall be completed according to the following schedule:~~

~~(i) The first annual progress report shall be prepared no later than 13 months after completing the notification of intent to initiate closure required by Subsection R315-319-100(e)(1).~~

~~(ii) The second annual progress report shall be prepared no later than 12 months after completing the first progress report required by Subsection R315-319-100(e)(2)(i).~~

~~(iii) The owner or operator has completed the progress reports specified in Subsection R315-319-100 (e)(2) when the reports are placed in the facility's operating record as required by Subsection R315-319-105(i)(2).~~

~~(3) The owner or operator shall prepare and place in the facility's operating record a notification of completion of closure of the CCR surface impoundment. The notification shall be submitted within 60 days of completing closure of the CCR surface impoundment and shall include a written certification from a qualified professional engineer stating that the CCR surface impoundment was closed in accordance with the requirements of either Subsections R315-319-100 (b)(1) through (4) or (b)(5).~~

~~(d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(i), the notification requirements specified in Subsection R315-319-106(i), and the internet requirements specified in Subsection R315-319-107(i).~~

~~]~~

KEY: permit, solid waste, coal ash

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: 19-6-108

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 Office of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

Career Service Review Office, Administration **R137-1** Grievance Procedure Rules

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40595
FILED: 07/11/2016

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: Utah Code Section 67-19a-203 grants the Career Service Review Office (CSRO) rulemaking authority to administer the state's grievance and appeal procedures.

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 this period.

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 essential for the CSRO to administer the state grievance and appeal procedures at Title 67, Chapter 19a. The grievance process is functioning well and efficiently. The Legislature intended for this authority to continue. This rule is necessary to assure that the state provides due process in its employee disciplinary actions and continues to address employee grievances fairly and judiciously. The rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
CAREER SERVICE REVIEW OFFICE
ADMINISTRATION
ROOM 1120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Akiko Kawamura by phone at 801-538-3047, by FAX at 801-538-3139, or by Internet E-mail at akawamura@utah.gov
♦ Annette Morgan by phone at 801-538-3048, by FAX at 801-538-3139, or by Internet E-mail at amorgan@utah.gov

AUTHORIZED BY: Akiko Kawamura, Administrator

EFFECTIVE: 07/11/2016

Commerce, Consumer Protection **R152-1a** Internet Content Provider Ratings Methods

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40604
FILED: 07/15/2016

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 76-10-1234 states that

the Division of Consumer Protection (Division) "shall make rules" to establish acceptable rating methods to be implemented by a content provider.

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 Division is not aware of any written comments received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: As noted above, the Legislature stated that the Division "shall" make rules establishing acceptable rating methods. Rule R152-1a provides guidance regarding an accepted method for content providers to rate and restrict material that is harmful to minors. This rule creates a safe harbor for content providers if they wish to comply with the terms of Section 76-10-1233. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 COMMERCE
 CONSUMER PROTECTION
 HEBER M WELLS BLDG
 160 E 300 S
 SALT LAKE CITY, UT 84111-2316
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Jacob Hart by phone at 801-530-6636, or by Internet E-mail at jfhart@utah.gov

AUTHORIZED BY: Daniel O'Bannon, Director

EFFECTIVE: 07/15/2016

Health, Center for Health Data, Vital
 Records and Statistics

R436-5

New Birth Certificates After
 Legitimation, Court Determination of
 Paternity, or Adoption

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 40600
 FILED: 07/13/2016

**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 26-2-10 authorizes the rule. The rule describes the procedures for preparing supplementary birth certificates. These include new birth certificates after legitimation, court determination of paternity, or adoption.

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 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: This rule should be continued because it is authorized by Section 26-2-10, and it outlines essential procedures related to the issuance of supplementary birth certificates. These procedures ensure appropriate issuance and access to these birth certificates.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HEALTH
 CENTER FOR HEALTH DATA,
 VITAL RECORDS AND STATISTICS
 CANNON HEALTH BLDG
 288 N 1460 W
 SALT LAKE CITY, UT 84116-3231
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Richard Oborn by phone at 801-538-6262, by FAX at 801-538-7012, or by Internet E-mail at roborn@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 07/13/2016

Public Safety, Driver License
R708-46

Refugee or Approved Asylee
 Knowledge Test in Applicant's Native
 Language

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 40586
 FILED: 07/07/2016

**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 53-3-206 allows refugees and approved asylees to take the knowledge test in their native language.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In order to best serve the needs of refugees and approved asylees, the Driver License Division will continue to enforce Subsection 53-3-206(2)(a)(1). 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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@utah.gov

AUTHORIZED BY: Chris Caras, Director

EFFECTIVE: 07/07/2016

Transportation, Administration

R907-69

Records Access

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40590
FILED: 07/07/2016

End of the Five-Year Notices of Review and Statements of Continuation Section

**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 Government Records Access Management Act at Subsection 63G-2-204(2)(d) authorizes the Department to make rules in accordance with the Utah Administrative Rulemaking Act that specifies where and to whom requests for access to records shall be directed. Rule R907-69 provides detailed contact information for persons within the Department to whom the public may direct records requests.

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 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: Rule R907-69 provides the public useful, easy-to-locate information regarding where to make records requests, and to appeal request denials. The rule enhances the Department's transparency. Therefore, this rule should be continued.

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

TRANSPORTATION
ADMINISTRATION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at jimpalmer@utah.gov

AUTHORIZED BY: Carlos Braceras, Executive Director

EFFECTIVE: 07/07/2016

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 Office 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

Consumer Protection

No. 40414 (AMD): R152-15-3. Compensated Employees and Independent Contractors

Published: 06/01/2016

Effective: 07/08/2016

Occupational and Professional Licensing

No. 40412 (AMD): R156-1. General Rule of the Division of Occupational and Professional Licensing

Published: 06/01/2016

Effective: 07/11/2016

No. 40407 (AMD): R156-17b-614a. Operating Standards - General Operating Standards, Class A and B Pharmacy

Published: 06/01/2016

Effective: 07/11/2016

No. 40411 (NEW): R156-86. State Certification of Commercial Interior Designers Act Rule

Published: 06/01/2016

Effective: 07/11/2016

Education

Administration

No. 40431 (AMD): R277-477. Distribution of Funds from the Interest and Dividends Account and Administration of the School LAND Trust Program

Published: 06/01/2016

Effective: 07/11/2016

No. 40432 (AMD): R277-491. School Community Councils

Published: 06/01/2016

Effective: 07/11/2016

No. 40429 (AMD): R277-707. Enhancement for Accelerated Students Program

Published: 06/01/2016

Effective: 07/11/2016

Environmental Quality

Waste Management and Radiation Control, Waste Management

No. 40267 (AMD): R315-310. Permit Requirements for Solid Waste Facilities

Published: 04/15/2016

Effective: 07/15/2016

Governor

Economic Development

No. 40434 (NEW): R357-16. Utah Outdoor Recreation Infrastructure Grant

Published: 06/01/2016

Effective: 07/15/2016

Energy Development (Office of)

No. 40433 (NEW): R362-4. High Cost Infrastructure Development Tax Credit Act

Published: 06/01/2016

Effective: 07/14/2016

Health

Family Health and Preparedness, Children with Special Health Care Needs

No. 40402 (REP): R398-15. Autism Treatment Account

Published: 06/01/2016

Effective: 07/08/2016

Family Health and Preparedness, Emergency Medical Services

No. 40427 (AMD): R426-3-600. Cost, Quality, and Access Goals for Ground Ambulance Providers
Published: 06/01/2016
Effective: 07/15/2016

No. 40426 (AMD): R426-9. Trauma and EMS System Facility Designations
Published: 06/01/2016
Effective: 07/15/2016

Human Services

Substance Abuse and Mental Health, State Hospital
No. 40314 (AMD): R525-8. Forensic Mental Health Facility
Published: 05/01/2016
Effective: 07/07/2016

Natural Resources

Wildlife Resources
No. 40403 (AMD): R657-5. Taking Big Game
Published: 06/01/2016
Effective: 07/11/2016

No. 40404 (AMD): R657-23. Utah Hunter Education Program
Published: 06/01/2016
Effective: 07/11/2016

Pardons (Board Of Administration

No. 40316 (AMD): R671-315-1. Pardons
Published: 05/01/2016
Effective: 07/07/2016

Tax Commission

Auditing

No. 40417 (AMD): R865-6F-28. Enterprise Zone Corporate Franchise Tax Credits Pursuant to Utah Code Ann. Sections 63N-2-201 through 63N-2-215
Published: 06/01/2016
Effective: 07/14/2016

No. 40418 (AMD): R865-9I-37. Enterprise Zone Individual Income Tax Credits Pursuant to Utah Code Ann. Sections 63N-2-201 through 63N-2-215
Published: 06/01/2016
Effective: 07/14/2016

Motor Vehicle

No. 40419 (AMD): R873-22M-34. Rule for Denial of Personalized Plate Requests Pursuant to Utah Code Ann. Sections 41-1a-104 and 41-1a-411
Published: 06/01/2016
Effective: 07/14/2016

Motor Vehicle Enforcement

No. 40420 (AMD): R877-23V-20. Reasonable Cause to Deny, Suspend, or Revoke a License Issued Under Title 41, Chapter 3 Pursuant to Utah Code Ann. Section 41-3-209
Published: 06/01/2016
Effective: 07/14/2016

Property Tax

No. 40421 (AMD): R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210
Published: 06/01/2016
Effective: 07/14/2016

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, 2016 through July 15, 2016. 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 Office of Administrative Rules (801-538-3003).

A copy of the **RULES INDEX** is available for public inspection at the Office of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Office's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

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	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Facilities Construction and Management</u>					
R23-19	Facility Use Rules	40226	NSC	03/11/2016	Not Printed
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	40044	NSC	01/15/2016	Not Printed
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	40440	EMR	05/23/2016	2016-12/51
R23-25	Administrative Rules Adjudicative Proceedings	40480	5YR	06/09/2016	2016-13/159
R23-31	Executive Residence Commission	40481	5YR	06/09/2016	2016-13/159
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	40548	EMR	07/01/2016	2016-14/161
R25-7-10	Reimbursement for Transportation	40042	AMD	02/23/2016	2016-2/4
R25-15	Change Date and Set Aside Provisions for Annual Leave II	39943	NEW	01/13/2016	2015-23/6
<u>Purchasing and General Services</u>					
R33-6-114	Technology Acquisitions for Executive Branch Procurement Units	40048	AMD	02/23/2016	2016-2/6
R33-7	Request for Proposals	40438	NSC	06/13/2016	Not Printed
R33-12	Terms and Conditions, Contracts, Change Orders and Costs	40562	NSC	07/15/2016	Not Printed
R33-12-502	Technology Modifications	40047	AMD	02/23/2016	2016-2/7
R33-15	Architect-Engineer Services	40563	NSC	07/15/2016	Not Printed
R33-16	Controversies and Protests	40564	NSC	07/15/2016	Not Printed
R33-18	Appeal to the Utah Court of Appeals	40566	NSC	07/15/2016	Not Printed
<u>Risk Management</u>					
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	40282	AMD	06/01/2016	2016-8/6
AGRICULTURE AND FOOD					
<u>Administration</u>					
R51-3	Government Records Access and Management Act	40234	5YR	02/29/2016	2016-6/27
R51-4	ADA Complaint Procedure	40235	5YR	02/29/2016	2016-6/27
<u>Animal Industry</u>					
R58-2	Diseases, Inspections and Quarantines	40476	5YR	06/09/2016	2016-13/160
R58-4	Use of Animal Drugs and Biologicals in the State of Utah	40478	5YR	06/09/2016	2016-13/160
R58-14	Holding Live Raccoons or Coyotes in Captivity	40477	5YR	06/09/2016	2016-13/161

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R52-7	Horse Racing	39951	AMD	02/02/2016	2015-24/4
R52-7-5	Occupation Licensing and Registration	40366	AMD	06/23/2016	2016-10/8

Marketing and Development

R65-2	Utah Cherry Marketing Order	40367	REP	06/23/2016	2016-10/11
R65-8	Management of the Junior Livestock Show Appropriation	40233	5YR	02/29/2016	2016-6/28
R65-8-2	Establishment of a Forum	40369	AMD	06/23/2016	2016-10/13

Plant Industry

R68-4	Standardization, Marketing, and Phytosanitary Inspection of Fresh Fruits, Vegetables, and Other Plant and Plant Products	40201	5YR	02/08/2016	2016-5/23
R68-7	Utah Pesticide Control Rule	40232	5YR	02/29/2016	2016-6/28
R68-9	Utah Noxious Weed Act	39965	AMD	02/02/2016	2015-24/8
R68-12	Quarantine Pertaining to Mint Wilt	40365	REP	06/23/2016	2016-10/14
R68-18	Quarantine Pertaining to Karnal Bunt	40200	5YR	02/08/2016	2016-5/23

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R70-330	Raw Milk for Retail	40268	5YR	03/16/2016	2016-8/91
R70-370	Butter	40270	5YR	03/16/2016	2016-8/91
R70-370	Butter	40361	AMD	06/23/2016	2016-10/15
R70-380	Grade A Condensed and Dry Milk Products and Condensed and Dry Whey	40269	5YR	03/16/2016	2016-8/92
R70-380	Grade A Condensed and Dry Milk Products and Condensed and Dry Whey	40368	AMD	06/23/2016	2016-10/16
R70-410	Grading and Inspection of Shell Eggs with Standard Grade and Weight Classes	40149	5YR	01/20/2016	2016-4/77
R70-530	Food Protection	39950	AMD	02/02/2016	2015-24/12
R70-550	Utah Inland Shellfish Safety Program	40360	AMD	06/23/2016	2016-10/18

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R81-1	Scope, Definitions, and General Provisions	40376	5YR	05/02/2016	2016-10/73
R81-2	State Stores	40378	5YR	05/02/2016	2016-10/74
R81-3	Package Agencies	40379	5YR	05/02/2016	2016-10/74
R81-4A	Restaurant Liquor Licenses	40381	5YR	05/02/2016	2016-10/75
R81-5	Club Licenses	40382	5YR	05/02/2016	2016-10/76
R81-6	Special Use Permits	40383	5YR	05/02/2016	2016-10/76
R81-7	Event Permits	40384	5YR	05/02/2016	2016-10/77
R81-8	Manufacturer Licenses (Distillery, Winery, Brewery)	40385	5YR	05/02/2016	2016-10/77
R81-9	Liquor Warehousing Licenses	40386	5YR	05/02/2016	2016-10/78
R81-11	Beer Wholesaler Licenses	40387	5YR	05/02/2016	2016-10/79
R81-12	Local Industry Representative Licenses (Distillery, Winery, Brewery)	40388	5YR	05/02/2016	2016-10/79

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R131-2	Capitol Hill Complex Facility Use	40437	EMR	05/19/2016	2016-12/54
R131-4	Capitol Preservation Board General Procurement Rule	40092	5YR	01/11/2016	2016-3/507

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R151-4	Department of Commerce Administrative Procedures Act Rule	40265	5YR	03/15/2016	2016-7/63
R151-14	New Automobile Franchise Act Rule	40293	5YR	03/31/2016	2016-8/92

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R152-11	Utah Consumer Sales Practices Act	40342	5YR	04/19/2016	2016-10/80
R152-15-3	Compensated Employees and Independent Contractors	40414	AMD	07/08/2016	2016-11/2
R152-26	Telephone Fraud Prevention Act	40341	5YR	04/19/2016	2016-10/80

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R154-2	Utah Uniform Commercial Code, Revised Article 9 Rules	40371	5YR	05/02/2016	2016-10/81
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R156-1	General Rule of the Division of Occupational and Professional Licensing	40412	AMD	07/11/2016	2016-11/3
R156-3a	Architect Licensing Act Rule	40058	5YR	01/07/2016	2016-3/507
R156-9	Funeral Service Licensing Act Rule	40354	5YR	04/26/2016	2016-10/81
R156-9a	Uniform Athlete Agents Act Rule	40071	5YR	01/07/2016	2016-3/508
R156-15A	State Construction Code Administration and Adoption of Approved State Construction Code Rule	40298	AMD	06/07/2016	2016-9/4
R156-15A	State Construction Code Administration and Adoption of Approved State Construction Code Rule	40526	5YR	06/20/2016	2016-14/171
R156-17b	Pharmacy Practice Act Rule	40217	AMD	04/21/2016	2016-6/4
R156-17b-614a	Operating Standards - General Operating Standards, Class A and B Pharmacy	40218	AMD	04/21/2016	2016-6/11
R156-17b-614a	Operating Standards - General Operating Standards, Class A and B Pharmacy	40407	AMD	07/11/2016	2016-11/7
R156-26a	Certified Public Accountant Licensing Act Rule	39982	AMD	02/11/2016	2016-1/4
R156-37	Utah Controlled Substances Act Rule	40216	AMD	04/21/2016	2016-6/14
R156-37f	Controlled Substance Database Act Rule	39923	AMD	01/07/2016	2015-23/7
R156-40	Recreational Therapy Practice Act Rule	40352	5YR	04/26/2016	2016-10/82
R156-46b	Division Utah Administrative Procedures Act Rule	40052	5YR	01/05/2016	2016-3/509
R156-47b	Massage Therapy Practice Act Rule	40000	AMD	03/08/2016	2016-2/8
R156-54	Radiologic Technologist, Radiologist Assistant, and Radiology Practical Technician Licensing Act Rule	40486	5YR	06/09/2016	2016-13/162
R156-55a	Utah Construction Trades Licensing Act Rule	40219	AMD	04/21/2016	2016-6/16
R156-55a-301	License Classifications - Scope of Practice	40351	AMD	06/21/2016	2016-10/19
R156-55a-303b	Continuing Education - Standards	40344	NSC	05/11/2016	Not Printed
R156-55c	Plumber Licensing Act Rule	40131	NSC	02/02/2016	Not Printed
R156-55d	Burglar Alarm Licensing Rule	40164	AMD	03/24/2016	2016-4/10
R156-57	Respiratory Care Practices Act Rule	40355	5YR	04/26/2016	2016-10/83
R156-60b-102	Definitions	39924	AMD	01/07/2016	2015-23/12
R156-60c	Clinical Mental Health Counselor Licensing Act Rule	39911	AMD	01/07/2016	2015-23/14
R156-60d	Substance Use Disorder Counselor Act Rule	40055	5YR	01/05/2016	2016-3/509
R156-67	Utah Medical Practice Act Rule	40196	5YR	02/08/2016	2016-5/24
R156-69	Dentist and Dental Hygienist Practice Act Rule	40150	5YR	01/21/2016	2016-4/77
R156-73	Chiropractic Physician Practice Act Rule	40208	5YR	02/11/2016	2016-5/25
R156-77	Direct-Entry Midwife Act Rule	40353	5YR	04/26/2016	2016-10/83
R156-78-102	Definitions	39912	AMD	01/07/2016	2015-23/16
R156-82-201	Security	39980	AMD	02/08/2016	2016-1/12
R156-86	State Certification of Commercial Interior Designers Act Rule	40411	NEW	07/11/2016	2016-11/10

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R162-2f	Real Estate Licensing and Practices Rules	40041	AMD	02/23/2016	2016-2/11
R162-2f	Real Estate Licensing and Practices Rules	40276	AMD	05/31/2016	2016-8/7
R162-2f-202b	Principal Broker Licensing Fees and Procedures	40364	NSC	05/11/2016	Not Printed

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 R270-1-17 Prescription or Over-the-Counter Medications 40177 AMD 05/13/2016 2016-4/13
 R270-2 Crime Victim Reparations Adjudicative Proceedings 40496 5YR 06/15/2016 2016-13/163
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 R277-100 Rulemaking Policy 40332 REP 06/10/2016 2016-9/5
 R277-107-6 Public Education Employees 40248 NSC 03/29/2016 Not Printed
 R277-207 Utah Professional Practices Advisory Commission (UPPAC), Disciplinary Rebuttable Presumptions 39837 NEW 01/11/2016 2015-21/17
 R277-402-4 LEA Responsibilities 40249 NSC 03/29/2016 Not Printed
 R277-404 Requirements for Assessments of Student Achievement 40097 NSC 02/02/2016 Not Printed
 R277-419 Pupil Accounting 40287 AMD 06/03/2016 2016-8/12
 R277-477 Distribution of Funds from the Interest and Dividends Account and Administration of the School LAND Trust Program 40431 AMD 07/11/2016 2016-11/14
 R277-478 Block Grant Funding 40288 REP 05/23/2016 2016-8/19
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 R277-482 Charter School Timelines and Approval Processes 40289 AMD 05/23/2016 2016-8/21
 R277-491 School Community Councils 40432 AMD 07/11/2016 2016-11/18
 R277-494 Charter, Online, Home, and Private School Student Participation in Extracurricular or Co-curricular School Activities 40098 AMD 03/09/2016 2016-3/6
 R277-497 School Grading System 39984 AMD 02/08/2016 2016-1/13
 R277-505 Administrative License Areas of Concentration and Programs 40285 5YR 03/30/2016 2016-8/93
 R277-505 Administrative License Areas of Concentration and Programs 40290 AMD 05/23/2016 2016-8/25
 R277-507-1 Definitions 40250 NSC 03/29/2016 Not Printed
 R277-510 Educator Licensing - Highly Qualified Assignment 40099 5YR 01/14/2016 2016-3/510
 R277-510 Educator Licensing - Highly Qualified Assignment 40100 AMD 03/09/2016 2016-3/8
 R277-510-5 NCLB Highly Qualified Assignments - Secondary Teachers 6-12 40362 NSC 05/11/2016 Not Printed
 R277-616-3 Criteria for Determining Where a Homeless or Emancipated Student Shall Attend School 40251 NSC 03/29/2016 Not Printed
 R277-700 The Elementary and Secondary School General Core 40363 AMD 06/21/2016 2016-10/25
 R277-700-7 Student Mastery and Assessment of Core Standards 40252 NSC 03/29/2016 Not Printed
 R277-702-4 Eligibility for GED Testing 40253 NSC 03/29/2016 Not Printed
 R277-705 Secondary School Completion and Diplomas 39936 AMD 01/07/2016 2015-23/17
 R277-707 Enhancement for Accelerated Students Program 40428 5YR 05/16/2016 2016-11/63

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R277-716	Alternative Language Services for Utah Students	40211	5YR	02/16/2016	2016-5/25
R277-716	Alternative Language Services for Utah Students	40212	AMD	04/07/2016	2016-5/3
R277-726	Statewide Online Education Program	39996	AMD	02/08/2016	2016-1/15
R277-752	Adult Students with Disabilities and Informed Consent	40274	EMR	03/18/2016	2016-8/87
R277-920	Implementation of the School Turnaround and Leadership Development Act	39789	NEW	02/08/2016	2015-20/70
R277-920-3	Superintendent's Designation of Low Performing Schools and Waiver Authority	39997	AMD	02/08/2016	2016-1/20
R277-920-4	Implementation of the School Turnaround and Leadership Development Act	40286	NSC	04/05/2016	Not Printed
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R280-204	Utah State Office of Rehabilitation Employee Background Check Requirement	40101	5YR	01/14/2016	2016-3/510
R280-204	Utah State Office of Rehabilitation Employee Background Check Requirement	40102	AMD	03/09/2016	2016-3/11
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<u>Air Quality</u>					
R307-101-2	Definitions	39994	AMD	03/03/2016	2016-1/21
R307-104	Conflict of Interest	39995	NEW	03/03/2016	2016-1/28
R307-110-28	Regional Haze	39849	AMD	02/04/2016	2015-21/45
R307-210	Stationary Sources	40294	EXT	04/04/2016	2016-9/141
R307-210	Stationary Sources	40422	5YR	05/12/2016	2016-11/63
R307-230	NOx Emission Limits for Natural Gas-Fired Water Heaters	40408	LNR	05/10/2016	2016-11/67
R307-312-5	Hot Mix Asphalt Plants	39844	AMD	02/04/2016	2015-21/46
R307-328-4	Loading of Tank Trucks, Trailers, Railroad Tank Cars, and Other Transport Vehicles	39845	AMD	02/04/2016	2015-21/47
R307-351-4	Standards for Rotogravure, Flexographic, and Specialty Printing Operations	40225	NSC	03/11/2016	Not Printed
R307-403-2	Applicability	40193	NSC	02/25/2016	Not Printed
R307-405-3	Definitions	39846	AMD	02/04/2016	2015-21/48
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R307-801	Utah Asbestos Rule	39848	AMD	05/05/2016	2015-21/53
R307-801	Utah Asbestos Rule	39848	CPR	05/05/2016	2016-5/18
R307-841-8	Renovator Certification and Dust Sampling Technician Certification	40207	AMD	05/05/2016	2016-5/7
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R309-105-4	General	40031	AMD	05/01/2016	2016-2/19
R309-110-4	Definitions	40032	AMD	05/01/2016	2016-2/20
R309-200-5	Primary Drinking Water Standards	40033	AMD	05/01/2016	2016-2/23
R309-210	Monitoring and Water Quality: Distribution System Monitoring Requirements	40034	AMD	05/01/2016	2016-2/26
R309-211	Monitoring and Water Quality: Distribution System – Total Coliform Requirements	40035	NEW	05/01/2016	2016-2/33
R309-215	Monitoring and Water Quality: Treatment Plant Monitoring Requirements	40036	AMD	05/01/2016	2016-2/40
R309-220	Monitoring and Water Quality: Public Notification Requirements	40037	AMD	05/01/2016	2016-2/46
R309-225	Monitoring and Water Quality: Consumer Confidence Reports	40038	AMD	05/01/2016	2016-2/53

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R313-19-34	Terms and Conditions of Licenses	39990	AMD	03/15/2016	2016-1/32
R313-24	Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements	39992	AMD	03/15/2016	2016-1/38

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R313-15	Standards for Protection Against Radiation	40003	NSC	01/15/2016	Not Printed
R313-16	General Requirements Applicable to the Installation, Registration, Inspection, and Use of Radiation Machines	40574	5YR	07/01/2016	2016-14/173
R313-16-230	Registration of Radiation Machines	40004	NSC	01/15/2016	Not Printed
R313-17	Administrative Procedures	40575	5YR	07/01/2016	2016-14/174
R313-18	Notices, Instructions and Reports to Workers by Licensees or Registrants--Inspections	40576	5YR	07/01/2016	2016-14/175
R313-18-11	Posting of Notices to Workers	40007	NSC	01/15/2016	Not Printed
R313-19	Requirements of General Applicability to Licensing of Radioactive Material	40577	5YR	07/01/2016	2016-14/175
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R313-25-26	Near Surface Land Disposal Facility Operation and Disposal Site Closure	40451	NSC	06/13/2016	Not Printed
R313-26	Generator Site Access Permit Requirements for Accessing Utah Radioactive Waste Disposal Facilities	40259	5YR	03/10/2016	2016-7/63
R313-27	Medical Use Advisory Committee	40230	NSC	03/08/2016	Not Printed
R313-28	Use of X-Rays in the Healing Arts	40580	5YR	07/01/2016	2016-14/177
R313-32	Medical Use of Radioactive Material	40581	5YR	07/01/2016	2016-14/178
R313-32-2	Clarifications or Exceptions	40010	NSC	01/15/2016	Not Printed
R313-36	Special Requirements for Industrial Radiographic Operations	40582	5YR	07/01/2016	2016-14/178
R313-70	Payments, Categories and Types of Fees	40011	NSC	01/15/2016	Not Printed
R313-70	Payments, Categories and Types of Fees	40583	5YR	07/01/2016	2016-14/179

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R315-2	General Requirements - Identification and Listing of Hazardous Waste	40118	REP	04/15/2016	2016-3/14
R315-3	Application and Permit Procedures for Hazardous Waste Treatment, Storage, and Disposal Facilities	40119	REP	04/15/2016	2016-3/15
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R315-15	Standards for the Management of Used Oil	40446	NSC	06/13/2016	Not Printed
R315-16	Standards for Universal Waste Management	40129	REP	04/15/2016	2016-3/23
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R315-102	Penalty Policy	40263	5YR	03/10/2016	2016-7/66
R315-103	Commercial Hazardous Waste Facility Siting Criteria	40105	NEW	04/15/2016	2016-3/25
R315-124	Procedures for Decisionmaking	40106	NEW	04/15/2016	2016-3/26
R315-124-34	Public Participation	40312	AMD	06/10/2016	2016-9/72
R315-260	Hazardous Waste Management System	40107	NEW	04/15/2016	2016-3/32
R315-260	Hazardous Waste Management System	40277	NSC	04/15/2016	Not Printed
R315-260	Hazardous Waste Management System	40413	NSC	06/06/2016	Not Printed
R315-260	Hazardous Waste Management System	40307	AMD	06/10/2016	2016-9/73
R315-261	General Requirements - Identification and Listing of Hazardous Waste	40108	NEW	04/15/2016	2016-3/49
R315-261	General Requirements - Identification and Listing of Hazardous Waste	40278	NSC	04/15/2016	Not Printed
R315-261	General Requirements - Identification and Listing of Hazardous Waste	40308	AMD	06/10/2016	2016-9/84
R315-262	Hazardous Waste Generator Requirements	40109	NEW	04/15/2016	2016-3/170
R315-262	Hazardous Waste Generator Requirements	40279	NSC	04/15/2016	Not Printed
R315-262-10	Purpose, Scope, and Applicability	40309	AMD	06/10/2016	2016-9/95
R315-263	Standards Applicable to Transporters of Hazardous Waste and Standards Applicable to Emergency Control of Spills for All Hazardous Waste Handlers	40110	NEW	04/15/2016	2016-3/196
R315-263	Standards Applicable to Transporters of Hazardous Waste and Standards Applicable to Emergency Control of Spills for All Hazardous Waste Handlers	40280	NSC	04/15/2016	Not Printed
R315-264	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	40115	NEW	04/15/2016	2016-3/201
R315-264	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	40281	NSC	04/15/2016	Not Printed
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R661-5	Utah Navajo Trust Fund Blue Mountain Dine' Community	40023	NEW	02/29/2016	2016-2/109
R661-6	Utah Navajo Trust Fund Higher Education Financial Assistance and Scholarship Program	40024	NEW	02/29/2016	2016-2/110
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R661-8	Utah Navajo Trust Fund Power Lines and House Wiring Program	40026	NEW	02/29/2016	2016-2/115
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R661-10	Utah Navajo Trust Fund Short-Term Training Program	40348	NEW	06/23/2016	2016-10/68
R661-11	Utah Navajo Trust Fund Water Development Projects Culinary and Septic Systems	40349	NEW	06/23/2016	2016-10/70
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R714-162	Equipment Standards for Heavy Truck, Trailer and Bus Safety Inspections	40465	5YR	06/02/2016	2016-13/169
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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	

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	40343	R765-608	5YR	04/19/2016	2016-10/87

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	40286	R277-920-4	NSC	04/05/2016	Not Printed

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