

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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Nancy L. Lancaster, Managing Editor

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Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: 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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SPECIAL NOTICES

Commerce Occupational and Professional Licensing

Proposed Building Codes and Amendments Under the Utah Uniform Building Standards Act

The following document has the full details and summary of proposed building codes and amendments. A public hearing regarding the proposed building codes will be held September 7, 2016, at 9:00 a.m. at Sandy City Hall, 10000 South Centennial Parkway, Room 341, Sandy, Utah. This public notice and scheduled public hearing are for the Uniform Building Code Commission to receive public comment on the proposed building codes prior to it making its recommendation to the legislative Business and Labor Interim Committee.

This document has two parts. The first part is a proposed change to the State Construction Codes which has been recommended by the Uniform Building Code Commission advisory committees. This proposed change is written with strikethrough (language to be removed) and underline (language to be added) to the existing statute for easier identification of the item that is being recommended for change. The second part is a summary of the reasons for the proposed change to the State Construction Codes.

Recommended Changes to Construction Codes Under Title 15A State Construction and Fire Code Act Proposed by the Uniform Building Code Commission

Part 1

15A-3-206 Amendments to Chapters 36, and 44, and Appendix F of IRC.

(1) In IRC, Section E3901.9, the following exception is added:

"Exception: Receptacles or other outlets adjacent to the exterior walls of the garage, outlets adjacent to an exterior wall of the garage, or outlets in a storage room with entry from the garage may be connected to the garage branch circuit."

(2) In IRC, Section E3902.16, the following words in the first sentence are deleted: "family rooms, dining rooms, living rooms, parlors, libraries, dens," and "sunrooms, recreation rooms, closets, hallways, and similar rooms or areas."

(3) In Section E3902.17:

(a) following the word "Exception" the number "1." is added; and

(b) at the end of the section, the following sentences are added:

"2. This section does not apply for a simple move or an extension of a branch circuit or an outlet which does not significantly increase the existing electrical load. This exception does not include changes involving remodeling or additions to a residence."

(4) IRC, Chapter 44, is amended by adding the following reference standard:

Standard reference number	Title	Referenced in code section
USC-FCCCHR 10th Edition Manual of Cross Connection Control	Foundation for Cross-Connection Control and Hydraulic Research University of Southern California Kaprielian Hall 300 Los Angeles CA 90089-2531	Table P2902.3"

(5) When passive radon controls or portions thereof are installed, the installation shall comply with Appendix F of the IRC.

Part 2

Summary of Reasons for Recommended Changes to Construction Codes Under Title 15A State Construction and Fire Code Act

Excess radon gas is a naturally caused problem that occurs in a substantial number of homes throughout the state of Utah. Excess radon gas causes cancer. It is impossible, before a home is built, to determine whether a home will have an excess radon gas problem. As a result, radon controls systems are not required to be installed in every home when it is built. However, the homeowner or contractor will often choose to voluntarily install passive radon controls when the home is being built. This is because it is far less expensive to install these controls before a home is built rather than to retrofit a home after it is built.

Adding these passive controls is totally voluntary. If after a home is built, the home is determined to have an excess radon gas problem that is beyond the capacity of the passive radon controls, then a fan can be added for very little extra cost to the passive controls to make the system an active radon control system.

This recommended code change requires that when passive radon controls are voluntarily installed, the installation complies with Appendix F of the International Residential Code. If the passive radon controls are not properly installed, then the homeowner may not reap the saving that was intended by his investment in additional safety measures at the time the home was built and his investment would be wasted.

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between August 02, 2016, 12:00 a.m., and August 15, 2016, 11:59 p.m. are included in this, the September 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 October 3, 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 December 30, 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

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

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40670

FILED: 08/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-403 is amended in response to H.B. 40, Agency Reporting Requirements, from the 2016 General Session, which deleted several reporting requirements for the Board.

SUMMARY OF THE RULE OR CHANGE: The report referenced in Rule R277-403 is removed as it is no longer required; the rule is updated to include specific names of assessments as required in statute to clarify and avoid the practice of simply repeating language in rule that is in statute; and technical and conforming changes are provided throughout the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-17a-150

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The amendments to this rule include removing a report from the rule consistent with the 2016 legislation, providing specific names of assessments, and providing technical and conforming changes, which likely will not result in a cost or savings to the state budget.

◆ LOCAL GOVERNMENTS: The amendments to this rule include removing a report from the rule consistent with the 2016 legislation, providing specific names of assessments, and providing technical and conforming changes, which likely will not result in a cost or savings to local government.

◆ SMALL BUSINESSES: The amendments to this rule include removing a report from the rule consistent with the 2016 legislation, providing specific names of assessments, and providing technical and conforming changes, which likely will not result in a cost or savings to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to this rule include removing a report from the rule consistent with the 2016 legislation, providing specific names of assessments, and providing technical and conforming changes, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this rule include removing a report from the rule consistent with the 2016 legislation, providing specific names of assessments, and providing technical and conforming changes, which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from the amendments to this rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2016

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

R277. Education, Administration.

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

R277-403-[2]1. Authority and Purpose.

[A-](1) This rule is authorized [under]by:

_____ (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board[; by];

_____ (b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

_____ (c) Section 53A-17a-150[(14)], which directs the Board to make rules to implement the K-3 Reading Improvement Program and to require progress reports from each LEA documenting the LEA's satisfaction with its reading goals[~~(s)~~], and by Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities].

[B-](2) The purpose of this rule is:

_____ (a) to designate assessments required in Section 53A-1-606.6;

_____ (b) to provide definitions of terms used in Section 53A-1-606.6[;].

~~_____ (c) to provide necessary testing and reporting windows and timelines[;]; and~~

~~_____ (d) to require submission by LEA[S]s of student reading assessment data to the [USOE]Board.~~

R277-403-[4]2. Definitions.

~~[_____ A. "Board" means the Utah State Board of Education.]~~

~~_____ (1) "Benchmark reading assessment" means the Dynamic Indicators of Basic Early Literacy Skills or DIBELS assessment.~~

~~[B-](2) "Competency" means a demonstrable acquisition of a specified knowledge, skill, or ability that has been organized into a hierarchical arrangement, leading to higher levels of knowledge, skill, or ability.~~

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

~~_____ D. "LEA" means a local education agency, including local school boards/public school districts and charter schools.]~~

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

~~[F-](3) "Notification to parents" [for purposes of this rule] means notice by any reasonable means, including electronic notice, notice by telephone, written notice, or personal notice.~~

~~[G-](4) "Reading below grade level" [for purposes of this rule] means that a student:~~

~~_____ (a) performs below the benchmark score on the benchmark reading assessment; and~~

~~_____ (b) requires additional instruction beyond that provided to typically[-]developing peers in order to close the gap between the student's current level of reading achievement and that expected of all students in that grade[-as determined by valid and reliable assessments as designated by the Board].~~

~~[H-](5) "Reading remediation interventions" means reading instruction or reading activities, or both, [in reading-]given to students in addition to their regular reading instruction, during another time in the school day, outside regular instructional time, or in the summer, which is focused on specific needs as identified by reliable and valid assessments.~~

~~_____ (6) "Utah eTranscript and Record Exchange" or "UTREx" means the same as that term is defined in Section R277-404-2.~~

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

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

R277-403-[4]3. [Board/USOE]Superintendent Responsibilities.

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

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

~~[E-](1) The [USOE]Superintendent shall provide procedures for LEAs to determine expected reading [levels of first, second and third grade students]competencies of students in grade 1, grade 2, and grade 3.~~

~~[_____ D. The Board shall contract with an educational technology provider, selected through a request for proposals process, for a diagnostic assessment system for reading for students in kindergarten through grade three that meets the requirements of 53A-1-606-7.]~~

~~[E-](2) To the extent [of]that funds are available, the [USOE]Superintendent shall [select interested LEAs to use]distribute the diagnostic reading assessment [for reading]tool designated in Section 53A-1-606.7 to LEAs.~~

~~[_____ F. The USOE shall provide timelines to LEAs for notification to the USOE of:~~

~~_____ (1) LEA selected assessments;~~

~~_____ (2) student reading data required by law;~~

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

~~_____ G. LEAs that select the assessment technology shall use the assessment consistent with Board directives.~~

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

~~_____ I. The Board shall report to the Education Interim Committee consistent with timelines and information required under Section 53A-17a-150(13).~~

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

R277-403-[3]4. LEA Responsibilities - Timelines.

~~[A-](1) An LEA[s] shall administer the[-Board approved] benchmark reading assessments [at the beginning, in the middle, and at the end of grade one, grade two and grade three]in grade 1, grade 2, and grade 3 within the following testing windows[-determined by USOE-]:~~

~~_____ (a) the first benchmark before September 30;~~

~~_____ (b) the second benchmark between December 1 and January 31; and~~

~~_____ (c) the third benchmark between the middle of April and June 15.~~

~~_____ (2) An LEA shall report benchmark reading assessment results to the Superintendent by:~~

~~_____ (a) October 30;~~

~~_____ (b) the last day of February; and~~

~~_____ (c) June 30.~~

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

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

~~[D-](3) If a benchmark assessment or supplemental reading assessment indicates a student [lacks competency in a reading skill]is reading below grade level, the LEA shall implement~~

the notification and reading remediation interventions described in Section 53A-1-606.6.[:

~~(1) provide notice to parents of student's lack of competency;~~

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

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

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

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

[E:](4) An LEA[s] shall report benchmark reading assessment results to parents of students in grade 1, grade 2, and grade 3 by:

~~(a) [in the beginning,]October 30;~~

~~(b) [by February 15,]the last day of February; and~~

~~(c) [at the end of grade one, grade two and grade three, assessment results]June 30.~~

[F:](5) An LEA[s] shall also report to parents the student's reading level at the end of [third] grade 3.

[G:](6) An LEA[s] shall [provide as part of the UTREx Data Submission,]submit to UTREx the following information from the benchmark assessment:

(a) whether or not each student is reading on grade level at each administration of the assessment;

(b) whether or not each student received reading intervention; and

(c) the composite score for each student at each administration of the assessment.

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

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

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

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

(7) An LEA that selects the reading assessment technology shall use the assessment consistent with Board directives.

KEY: students, reading, competency

Date of Enactment or Last Substantive Amendment:
~~[November 7, 2013]2016~~

Notice of Continuation: June 10, 2013

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

Education, Administration **R277-419** Pupil Accounting

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40671

FILED: 08/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-419 is amended to provide changes to clarify the maximum membership allowances for each student, as contained, and to clarify exceptions that allow only 180 days of aggregate regular membership per school year for each student in the state. Additional minor changes are also provided.

SUMMARY OF THE RULE OR CHANGE: The amendments to this rule provide clarification to student membership calculations and exceptions to the 180-day rule. Additional minor changes are provided.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Subsection 53A-1-402(1)(e)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendments to Rule R277-419 provide clarification to student membership calculations and exceptions to the 180-day rule, which likely will not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** The amendments to Rule R277-419 provide clarification to student membership calculations and exceptions to the 180-day rule, which likely will not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** The amendments to Rule R277-419 provide clarification to student membership calculations and exceptions to the 180-day rule, which likely will not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to Rule R277-419 provide clarification to student membership calculations and exceptions to the 180-day rule, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-419 provide clarification to student membership calculations and exceptions to the 180-day rule, which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from the amendments to this rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2016

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

R277. Education, Administration.

R277-419. Pupil Accounting.

R277-419-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-1-401, which allows the Board to make rules ~~[in accordance with its responsibilities]~~ to execute the Board's duties and responsibilities under the Utah Constitution and state law;

(c) Subsection 53A-1-402(1)(e), which directs the Board to establish rules and standards regarding:

(i) cost-effectiveness;

(ii) school budget formats; and

(iii) financial, statistical, and student accounting requirements;

(d) Subsection 53A-1-404(2), which ~~[directs that]~~ requires a local school board's auditing standards ~~[shall]~~ to include financial accounting and student accounting;

(e) Subsection 53A-1-301(3)(d), which ~~[directs]~~ requires the Superintendent to present to the Governor and the Legislature data on the funds allocated to LEAs; and

(f) Section 53A-3-404, which requires annual financial reports from all school districts.

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

R277-419-2. Definitions.

(1) "Aggregate Membership" means the sum of all days in membership during a school year for eligible students enrolled in a public school.

(2) "Approved CTE course" means a course approved by the Board within the Career and Technical Education (CTE) Pathways in the eight areas of study.

(3) "Blended learning program" means a program under the direction of an LEA:

(a) where a student learns at least in part:

(i) at a supervised brick and mortar location away from a student's home; and

(ii) through an online delivery; and

(b) that may include some element of student control over time, place, or path, or pace.

(4) "Brick and mortar school" means a traditional school or traditional school building.

(5) "Competency based learning program" means an education program that requires a student to acquire a competency and includes a classroom structure and operation that aid and facilitate the acquisition of specified competencies on an individual basis wherein a student is allowed to master and demonstrate competencies as fast as the student is able.

(6) "Continuing enrollment measurement" means a methodology used to establish a student's continuing membership or enrollment status for purposes of generating membership days.

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

(8) "Distance learning program" means a program, under the direction of an LEA, in which students receive educational services in a location other than a brick and mortar school, and may include educational services delivered over the internet.

(9) "Early graduation student" means a student who has an early graduation student education plan as described in Rule R277-703.

(10) "Electronic High School" means a rigorous program offering 9-12 grade level courses delivered over the Internet and coordinated by the ~~[USOE]~~ Superintendent.

(11) "Eligible student" means a student who satisfies the criteria for enrollment in an LEA, set forth in Subsection R277-419-5.

(12) "Enrollment verification data" includes:

(a) a student's birth certificate or other verification of age;

(b) verification of immunization or exemption from immunization form;

(c) proof of Utah public school residency;

(d) family income verification; or

(e) special education program information, including:

(i) an individualized education program;

(ii) a Section 504 accommodation plan; or

(iii) an English learner plan.

(13) "Face-to-face learning program" means a program within an LEA that consists of eligible, enrolled public school students who physically attend school in a brick and mortar school.

(14) "Home school" means the formal instruction of children in their homes instead of in an LEA. The differences between a home school student and an online student include:

(a) an online student may receive instruction at home, but the student is enrolled in a public school that follows state Core Standards;

(b) an online student is:

(i) subject to laws and rules governing state and federal mandated tests; and

(ii) included in accountability measures;

(c) an online student receives instruction under the direction of highly qualified, licensed teachers who are subject to the licensure requirements of Rule R277-502 and fingerprint and background checks consistent with Rules R277-516 and R277-520;

(d) instruction delivered in a home school course is not eligible to be claimed in membership of an LEA and does not qualify for funding under the Minimum School Program in Title 53A, Chapter 17a, Minimum School Program Act.

(15) "Home school course" means instruction:

(a) delivered in a home school environment where the curriculum and instruction methods, evaluation of student progress or mastery, and reporting, are provided or administered by the parent, guardian, custodian, or other group of individuals; and

(b) not supervised or directed by an LEA.

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

(17) "ISI-1" means a student who receives 1 to 59 minutes of YIC related services during a typical school day.

(18) "ISI-2" means a student who receives 60 to 179 minutes of YIC related services during a typical school day.

(19) "Membership" means a public school student is on the current roll of a public school class or public school as of a given date:

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

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

(20) "Minimum School Program" means the same as that term is defined in Section 53A-17a-103.

(21) "Nontraditional Program" means a program within an LEA that consists of eligible, enrolled public school students where the student receives instruction through a:

(a) distance learning program;

(b) online learning program;

(c) blended learning program; or

(d) competency based learning program.

(22) "Online learning program" means a program:

(a) that is under the direction of an LEA; and

(b) in which students receive educational services primarily over the internet.

(23) "Private school" means an educational institution that:

(a) is not an LEA;

(b) is owned or operated by a private person, firm, association, organization, or corporation; and

(c) is not subject to governance by the Board consistent with the Utah Constitution.

(24) "Program" means a course of instruction within a school that is designed to accomplish a predetermined curricular objective or set of objectives.

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

(26) "Qualifying school age" means:

(a) a person who is at least five years old and no more than [47]18 years old on or before September 1;

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

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

(27) "Retained senior" means a student beyond the general compulsory school age who is authorized at the discretion of an LEA to remain in enrollment as a high school senior in the year(s) after the student's cohort has graduated due to:

(a) sickness;

(b) hospitalization;

(c) pending court investigation or action; or

(d) other extenuating circumstances beyond the control of the student.

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

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

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

(31) "School" means an educational entity governed by an LEA that:

(a) is supported with public funds;

(b) includes enrolled or prospectively enrolled full-time students;

(c) employs licensed educators as instructors that provide instruction consistent with [Rule]Section R277-502-5;

(d) has one or more assigned administrators;

(e) is accredited consistent with [Rule]Section R277-410-3; and

(f) administers required statewide assessments to the school's students.

(32) "School day" means:

(a) a minimum of two hours per day per session in kindergarten and a minimum of four hours per day in grades one through twelve, subject to the following constraints described in Subsection (32)(b).

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

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

(33) "School membership" means membership other than in a special education or YIC program in the context of the Data Clearinghouse.

(34) "School of enrollment" means:

(a) a student's school of record; and

(b) the school that maintains the student's cumulative file, enrollment information, and transcript for purposes of high school graduation.

(35) "School year" means the 12 month period from July 1 through June 30.

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

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

(38) "SSID" means Statewide Student Identifier.

(39) "Unexcused absence" means an absence charged to a student when:

(a) the student was not physically present at school at any of the times attendance checks were made in accordance with Subsection R277-419-4(8); and

(b) the student's absence could not be accounted for by evidence of a legitimate or valid excuse in accordance with local board policy on truancy as defined in Section 53A-11-101.

(40) "Year end upload" means the Data Clearinghouse file due annually by July 15 from LEAs to the [USOE]Superintendent for the prior school year.

(41) "Youth in Custody (YIC)" means a person under the age of 21 who is:

(a) in the custody of the Department of Human Services;

(b) in the custody of an equivalent agency of a Native American tribe recognized by the United States Bureau of Indian Affairs and whose custodial parent or legal guardian resides within the state; or

(c) being held in a juvenile detention facility.

R277-419-3. Schools and Programs.

(1)(a) The Superintendent shall provide a list to each school detailing the required accountability reports and other state-mandated reports for the school type and grade range.

(b) All schools shall submit a Clearinghouse report to the Superintendent.

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

(2)(a) A student who is enrolled in a program is considered a member of a public school.

(b) The Superintendent may not require programs to receive separate accountability and other state-mandated reports.

(c) A student reported under an LEA's program shall be included in the LEA's WPU and student enrollment calculations of the LEA's school of enrollment.

(d) A course taught at a program shall be credited to the appropriate school of enrollment.

(3) A private school or program may not be required to submit data to the [USOE]Superintendent.

(4) A private school or program may not receive annual accountability reports.

R277-419-4. Minimum School Days, LEA Records, and Audits.

(1)(a) Except as provided in Subsection (1)(b), an LEA shall conduct school for at least 990 instructional hours and 180 school days each school year.

(b) an LEA may seek an exception to the number of school days described in Subsection (1)(a) for an individual student or school as provided for in Section R277-419-11.

(2) An LEA may offer the required school days and hours described in Subsection (1)(a) at any time during the school year, consistent with the law.

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

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

(c) A waiver may be for a designated time period, for a specific area, or for a specific LEA in the state, as determined by the health department directive.

(d) A waiver may allow an LEA to continue to receive state funds for pupil services and reimbursements.

(e) A waiver by the Board or Superintendent shall direct an LEA to provide as much notice to students and parents of the suspension of school services, as is reasonably possible.

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

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

(4) Minimum standards apply to all public schools in all settings unless Utah law or this rule provides for a specific exception.

(5) An LEA's governing board is encouraged to provide adequate school days and hours in the LEA's yearly calendar to avoid the necessity of a waiver request except in the most extreme circumstances.

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

(a) entry date;

(b) exit date;

(c) exit or high school completion status;

(d) whether or not an absence was excused;

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

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

(7) An LEA shall ensure that:

(a) computerized or manually produced records for CTE programs are kept by teacher, class, and Classification of Instructional Program (CIP) code; and

(b) the records described in Subsection (7)(a) clearly and accurately show for each student in a CTE class the:

- (i) entry date;
- (ii) exit date; and
- (iii) excused or unexcused status of absence.

(8) An LEA shall ensure that each school within the LEA completes a minimum of one attendance check each school day.

(9) Due to school activities requiring schedule and program modification during the first days and last days of the school year:

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

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

(c) schools shall continue instructional activities throughout required calendared instruction days.

(10) An LEA shall employ an independent auditor, under contract, to:

(a) annually audit student accounting records; and

(b) report the findings of the audit to:

(i) the LEA board; and

(ii) the Finance and Statistics Section of the [USOE]Board.

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

(12) The Superintendent:

(a) shall review each LEA's student membership and fall enrollment audits as they relate to the allocation of state funds in accordance with the policies and procedures established in [Rule]Sections R277-484-7 and 8; and

(b) may periodically or for cause review LEA records and practices for compliance with the laws and this rule.

R277-419-5. Student Membership Eligibility and Continuing Enrollment Measurements.

(1) A student may enroll in two or more LEAs at the discretion of the LEAs.

(2) A kindergarten student may only enroll in one LEA at a time.

(3) In order to generate membership for funding through the Minimum School Program for any clock hour of instruction on any school day, an LEA shall ensure that a student being counted by the LEA in membership:

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

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

(c) does not have unexcused absences, which are determined using one of the continuing enrollment measurements described in Subsection (4);

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

(e) is of qualifying school age or is a retained senior;

(f)(i) is expected to attend a regular learning facility operated or recognized by an LEA on each regularly scheduled school day, if enrolled in a face-to-face learning program;

(ii) has direct instructional contact with a licensed educator provided by an LEA at:

(A) an LEA-sponsored center for tutorial assistance; or

(B) the student's place of residence or convalescence for at least 120 minutes each week during an expected period of absence, if physically excused from such a facility for an extended period of time, due to:

(I) injury;

(II) illness;

(III) surgery;

(IV) suspension;

(V) pregnancy;

(VI) pending court investigation or action; or

(VII) an LEA determination that home instruction is necessary;

(iii) is enrolled in an approved CTE course(s) on the campus of another state funded institution where such a course is:

(A) not offered at the student's school of membership;

(B) being used to meet Board-approved CTE graduation requirements under [Rule]Subsection R277-700-6(14); and

(C) a course consistent with the student's SEOP/Plan for College and Career Readiness; or

(iv) is enrolled in a nontraditional program under the direction of an LEA, other than the Utah Electronic High School, that:

(A) is consistent with the student's SEOP/Plan for College and Career Readiness;

(B) has been approved by the student's counselor; and

(C) includes regular instruction or facilitation by a designated employee of an LEA.

(4) An LEA shall use one of the following continuing enrollment measures:

(a) For a student primarily enrolled in a face-to-face learning program, the LEA may not count a student as an eligible student if the eligible student has unexcused absences during all of the prior ten consecutive school days.

(b) For a student enrolled in a nontraditional program, an LEA shall:

(i) adopt a written policy that designates a continuing enrollment measurement to document the continuing membership or enrollment status for each student enrolled in the nontraditional program consistent with Subsection (3)(c);

(ii) document each student's continued enrollment status in compliance with the continuing enrollment policy at least once every ten consecutive school days; and

(iii) appropriately adjust and update student membership records in the student information system for students that did not meet the continuing enrollment measurement, consistent with Subsection (3)(c).

(5) The continuing enrollment measurement described in Subsection (4)(b) may include some or all of the following components, in addition to other components, as determined by an LEA:

(a) a minimum student login or teacher contact requirement;

- (b) required periodic contact with a licensed educator;
- (c) a minimum hourly requirement, per day or week, when students are engaged in course work; or
- (d) required timelines for a student to provide or demonstrate completed assignments, coursework or progress toward academic goals.

(6) For a student enrolled in both face-to-face and nontraditional programs, an LEA shall measure a student's continuing enrollment status using the methodology for the program in which the student earns the majority of their membership days.

(7)(a) An LEA desiring to generate membership for student enrollment in courses outlined in Subsection (3)(f)(iii), or to seek a waiver from a requirement(s) in Subsection (3)(f)(iii), shall submit an application for course approval by April 1 of the year prior to which the membership will be counted.

(b) An LEA shall be notified within 30 days of the application deadline if courses have been approved.

R277-419-6. Student Membership Calculations.

(1)(a) Except as provided in Subsection (1)(b) or (1)(c), a student enrolled in only one LEA during a school year is eligible for no more than 180 days of regular membership per school year.

(b) An early graduation student may be counted for more than 180 days of regular membership in accordance with the student's early graduation student education plan.

(c) A student transferring within an LEA to or from a year-round school is eligible for no more than 205 days of regular membership per school year.

~~(d) A student transferring to or from an LEA with a schedule approved under R277-419-4(1)(b) is eligible for no more than 220 days of regular membership per school year.~~

(2)(a) Except as provided in Subsection (2)(b), (2)(c), or (2)(d), [A] a student enrolled in two or more LEAs during a school year is eligible for no more than 180 days of regular membership per school year.

(b) A student transferring to or from an LEA with a schedule approved under Subsection R277-419-4(1)(b) is eligible for no more than 220 days of regular membership per school year.

(c) A student transferring to or from an LEA where the student attended or will attend a year-round school is eligible for no more than 205 days of regular membership per school year.

(d) If the exceptions in Subsections (2)(b) and (2)(c) do not apply but a student transfers from one LEA to another at least one time during the school year, the student is eligible for regular membership in an amount not to exceed the sum of:

(i) 170 days; plus

(ii) 10 days multiplied by the number of LEAs the student attended during the school year.

(3) If a student is enrolled in two or more LEAs during a school year and the aggregate regular membership generated for the student between all LEAs exceeds the amount allowed under Subsection (2), the Superintendent shall apportion the ~~[+80]~~ days of regular membership allowed between the LEAs.

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

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

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

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

(6) For students in grade 1, an LEA shall adjust the first term of the formula to use 810 hours as the denominator.

(7) For students in kindergarten, an LEA shall adjust the first term of the formula to use 450 hours as the denominator.

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

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

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

(11) An LEA may also count a student in membership for the equivalent in hours of up to:

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

(i) released by the school, upon a parent or guardian's request, during the school day for religious instruction or individual learning activity consistent with the student's SEOP/Plan for College and Career Readiness; or

(ii) participating in one or more extracurricular activities under Rule R277-438, but has otherwise been exempted from school attendance under Section 53A-11-102 for home schooling;

(b) two periods each school day per student for time spent in bus travel during the regular school day to and from another state-funded institution, if the student is enrolled in CTE instruction consistent with the student's SEOP/Plan for College and Career Readiness;

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

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

(ii) a private school without religious affiliation under a contract initiated by an LEA to provide special education services which directs that the instruction be paid by public funds if the contract with the private school is approved by an LEA board in an open meeting;

(iii) a foreign exchange student program under Subsection 53A-2-206(8);

(iv) Electronic High School courses for credit which meet curriculum requirements, consistent with the student's SEOP/Plan for College and Career Readiness and following written school counselor approval; or

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

(A) the student may only be counted in S1 membership and may not have an S2 record; and

(B) the S2 record for the student is submitted by the Utah Schools for the Deaf and the Blind.

R277-419-7. Calculations for a First Year Charter School.

(1) For the first operational year of a charter school or a new satellite campus, the Superintendent shall determine the charter school's WPU funding based on October 1 counts.

(2) For the second operational year of a charter school or a new satellite campus, the Superintendent shall determine the charter school's WPU funding based on Section 53A-17a-106.

R277-419-8. Reporting Requirements.

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

(2) In the Data Clearinghouse, aggregate membership is calculated in days of membership.

R277-419-9. High School Completion Status.

(1) An LEA shall account for the final status of all students who enter high school (grades 9-12) whether they graduate or leave high school for other reasons, using the following decision rules to indicate the high school completion or exit status of each student who leaves the Utah public education system:

(a) graduates are students who earn a basic high school diploma by satisfying one of the options consistent with ~~[Rule]Subsection R277-705-4(2)~~ or out-of-school youths of school age who complete adult education secondary diploma requirements consistent with R277-733;

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

(i) are in membership in twelfth grade on the last day of the school year; and

(ii)(A) meet any additional criteria established by an LEA consistent with its authority under ~~[Rule]Section R277-705-4~~;

(B) meet any criteria established for special education students under Utah State Board of Education Special Education Rules, Revised, ~~[November 2013]~~ June 2016, and available ~~[from the USOE]at: <http://www.schools.utah.gov/sars/Laws.aspx> and the Utah State Board of Education~~ ~~[, and]~~;

(C) meet any criteria established for special education students under Subsection R277-700-8(5); or

(~~[C]~~~~[D]~~) pass a General Educational Development (GED) test with a designated score;

(c) continuing students are students who:

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

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

(iii) age out of special education;

(d) dropouts are students who:

(i) leave school with no legitimate reason for departure or absence;

(ii) withdraw due to a situation so serious that educational services cannot be continued even under the conditions of Subsection R277-419-5(3)(f)(ii);

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

(iv) transfer to adult education;

(e) an LEA shall exclude a student from the cohort calculation if the student:

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

(ii) is a U.S. citizen who enrolls in another country as a foreign exchange student;

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

(iv) dies; or

(v) beginning with the 2015-2016 school year, is attending an LEA that is not the student's school of enrollment.

(2)(a) An LEA shall report the high school completion status or exit code of each student to the Superintendent as specified in Data Clearinghouse documentation.

(b) High School completion status or exit codes for each student are due to the Superintendent by year end upload for processing and auditing.

(c) Except as provided in Subsection (2)(d), an LEA shall submit any further updates of completion status or exit codes by October 1 following the end of a student's graduating cohort pursuant to ~~[Rule]Section R277-484-3~~.

(d) An LEA with an alternative school year schedule where all of the students have an extended break in a season other than summer, shall submit the LEA's data by the next complete data submission update, following the LEA's extended break, as defined in ~~[Rule]Section R277-484-3~~.

(3)(a) The Superintendent shall report a graduation rate for each school, LEA, and the state.

(b) The Superintendent shall calculate the graduation rates in accordance with applicable federal law.

(c) The Superintendent shall include a student in a school's graduation rate if:

(i) the school was the last school the student attended before the student's expected graduation date; and

(ii) the student does not meet any exclusion rules as stated in Subsection (1)(e).

(d) The last school a student attended will be determined by the student's exit dates as reported to the Data Clearinghouse.

(e) A student's graduation status will be attributed to the school attended in their final cohort year.

(f) If a student attended two or more schools during the student's final cohort year, a tie-breaking logic to select the single school will be used in the following hierarchical order of sequence:

(i) school with an attached graduation status for the final cohort year;

(ii) school with the latest exit date;

(iii) school with the earliest entry date;

(iv) school with the highest total membership;

(v) school of choice;

(vi) school with highest attendance; or

(vii) school with highest cumulative GPA.

(g) The Superintendent shall report the four-year cohort rate on the annual state reports.

R277-419-10. Student Identification and Tracking.

- (1)(a) Pursuant to Section 53A-1-603.5, an LEA shall:
- (i) use the SSID system maintained by the Superintendent to assign every student enrolled in a program under the direction of the Board or in a program or a school that is supported by public school funding a unique student identifier; and
 - (ii) display the SSID on student transcripts exchanged with LEAs and Utah public institutions of higher education.
- (b) The unique student identifier:
- (i) shall be assigned to a student upon enrollment into a public school program or a public school-funded program;
 - (ii) may not be the student's social security number or contain any personally identifiable information about the student.
- (2) An LEA shall require all students to provide their legal first, middle, and last names at the time of registration to ensure that the correct SSID follows students who transfer among LEAs.
- (a) A school shall transcribe the names from the student's birth certificate or other reliable proof of the student's identity and age, consistent with Section 53A-11-503;
 - (b) The direct transcription of student names from birth certificates or other reliable proof of student identity and age shall be the student's legal name for purposes of maintaining school records; and
 - (c) An LEA may modify the order of student names, provide for nicknames, or allow for different surnames, consistent with court documents or parent preferences, so long as legal names are maintained on student records and used in transmitting student information to the ~~[USOE]~~ Superintendent.
 - (3) The Superintendent and LEAs shall track students and maintain data using students' legal names.
 - (4) If there is a compelling need to protect a student by using an alias, an LEA should exercise discretion in recording the name of the student.
 - (5) An LEA is responsible to verify the accuracy and validity of enrollment verification data, prior to enrolling students in the LEA, and provide students and their parents with notification of enrollment in a public school.
 - (6) An LEA shall ensure enrollment verification data is collected, transmitted, and stored consistent with sound data policies, established by the LEA as required in Rule R277-487.

R277-419-11. Variances.

- (1)(a) An LEA may, at its discretion, make an exception for school attendance for a public school student, in the length of the school day or year, for a student with compelling circumstances.
- (b) The time an excepted student is required to attend school shall be established by the student's IEP or SEOP/Plan for College and Career Readiness.
- (2)(a) An LEA shall plan for emergency, activity, and weather-related exigency time in its annual calendaring.
- (b) If school is closed for any reason, the school shall make up the instructional time missed under the emergency/activity time as part of the minimum required time to qualify for full Minimum School Program funding.
- (3)(a) To provide planning and professional development time for staff, an LEA may hold school longer some days of the week and shorter other days so long as minimum school day

requirements, as provided for in Subsection R277-419-2(32), are satisfied.

- (b) A school may conduct parent-teacher and Student Education Plan (SEP) conferences during the school day.
- (c) Parent-teacher and SEP conferences may only be held for a total of the equivalent of three full school days or a maximum of 16.5 hours for the school year.
- (d) Student membership for professional development or parent-teacher conference days shall be counted as that of the previous school day.
- (e) An LEA may designate no more than 12 instructional days at the beginning of the school year, at the end of the school year, or both for the assessment of students entering or completing kindergarten.
- (f) If instruction days are designated for kindergarten assessment:
- (i) an LEA shall designate the days in an open meeting;
 - (ii) an LEA shall provide adequate notice and explanation to kindergarten parents well in advance of the assessment period;
 - (iii) qualified school employees shall conduct the assessment consistent with Section 53A-3-410; and
 - (iv) assessment time per student shall be adequate to justify the forfeited instruction time.
- (g) The final decision and approval regarding planning time, parent-teacher and SEP conferences rests with an LEA, consistent with Utah law and Board administrative rules.
- (h) Total instructional time and school calendars shall be approved by an LEA in an open meeting.
- (4) A school using a modified 45-day/15-day year round schedule initiated prior to July 1, 1995 shall be considered to be in compliance with this rule if the school's schedule includes a minimum of 990 hours of instruction time in a minimum of 172 days.

KEY: education finance, school enrollment, pupil accounting
Date of Enactment or Last Substantive Amendment: [~~June 3,~~ 2016
Notice of Continuation: September 14, 2012
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401; 53A-1-402(1)(e); 53A-1-404(2); 53A-1-301(3)(d); 53A-3-404; 53A-3-410

Education, Administration
R277-421
 Out-of-State Tuition Reimbursement

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40672

FILED: 08/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new Rule R277-421 is to provide procedures for the cost of out-of-state tuition reimbursement to school districts.

SUMMARY OF THE RULE OR CHANGE: This new rule provides procedures for school districts to obtain Utah State Board of Education (Board) approval for reimbursement of out-of-state tuition expenses, calculating reimbursement costs, and recording out of state students in school district records.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-2-204

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is likely no cost or savings to the state budget as a result of this new rule. School districts will only be reimbursed for out-of-state tuition costs if the Board approves a request for reimbursement and if there are sufficient funds to cover the reimbursement.
- ◆ **LOCAL GOVERNMENTS:** There is likely no cost or savings to local government as a result of this new rule. School districts will be reimbursed for out-of-state tuition costs if the Board approves a request for reimbursement and if there are sufficient funds to cover the reimbursement.
- ◆ **SMALL BUSINESSES:** There is likely no cost or savings to the small businesses as a result of this new rule. School districts will only be reimbursed for out-of-state tuition costs if the Board approves a request for reimbursement and if there are sufficient funds to cover the reimbursement.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is likely no cost or savings to persons other than small businesses, businesses, or local government entities. School districts will only be reimbursed for out-of-state tuition costs if the Board approves a request for reimbursement and if there are sufficient funds to cover the reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is likely no compliance costs for affected persons as a result of this new rule. School districts will only be reimbursed for out-of-state tuition costs if the Board approves a request for reimbursement and if there are sufficient funds to cover the reimbursement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from this new rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2016

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

R277. Education, Administration.

R277-421. Out-of-State Tuition Reimbursement.

R277-421-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53A-2-204, which outlines when a school district may pay out-of-state tuition for a resident student to attend a school district out of state.

(2) The purpose of this rule is to establish procedures for:

(a) obtaining Board approval for reimbursement of out-of-state tuition expenses;

(b) calculating reimbursement costs; and

(c) recording out of state students in district records.

R277-421-2. Definitions.

(1) "ADM" means average daily membership.

(2) "Minimum school program" or "MSP" means the same as that term is defined in Section 53A-17a-103.

(3) "NESS" means the Necessarily Existent Small Schools Fund.

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

(5) "WPU" means the weighted pupil unit.

R277-421-3. Board Review of Out-of-State Tuition Agreements.

(1) A district shall submit to the Superintendent an agreement to pay tuition to an out-of-state district in accordance with Subsection 53A-2-204(1) by June 30.

(2) A district requesting reimbursement for excess tuition costs under Subsection 53A-2-204(3) shall submit a request to the Superintendent by June 30 including:

(a) an estimate of ADM for out of state students for the upcoming school year; and

(b) an estimate of tuition payment amounts for the upcoming school year.

(3)(a) The Board shall review a request submitted under Subsection (2) no later than August 30.

(b) The Board may deny a request submitted under Subsection (2) if there are insufficient funds to cover the reimbursement.

R277-421-4. Calculation of Out-of-State Tuition Reimbursement.

(1) The Superintendent shall calculate out-of-state reimbursement to a district by subtracting state funds that are calculated based on the WPU generated by an out-of-state resident student's ADM from the total tuition payment per student:

- (a) Kindergarten WPU;
- (b) Grade 1-12 WPU;
- (c) Professional Staff Costs;
- (d) NESS;
- (e) District Administrative Costs;
- (f) Class-Size Reduction;
- (g) Flexible Allocation;
- (h) Gifted and Talented program;
- (i) K-3 Reading Improvement program;
- (j) Voted and Board Local Levy Guarantee programs; and
- (k) Applicable Special Education programs.

(2) A district shall not include out-of-state tuition payments in any other MSP formula.

(3) The Superintendent may include in a calculation under Subsection (1) mileage costs reimbursed by a district to parents for transporting students to the nearest bus stop in accordance with Section R277-600-7.

(4) The Superintendent shall reserve the estimated funds identified by a district under Subsection R277-421-3(2)(a) from the new year NESS appropriation, and pay Board-authorized reimbursement payments from reserved funds.

R277-421-5. Recording Student Membership for Out-of-State Students.

(1) A district shall record student membership for students receiving out-of-state tuition reimbursement in accordance with District enrollment and membership policies.

(2) A district shall report students in UTREx for whom they are paying out-of-state tuition using codes identified by the Superintendent.

(3) A district shall report ADM for students attending school out-of-state pursuant to a tuition agreement under Section 53A-2-204 in the same manner as the district calculates ADM for students attending the district's schools.

KEY: out-of-state, tuition, reimbursements

Date of Enactment of Last Substantive Amendment: 2016
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-530 is amended to include the recently approved Utah Effective School Counselor Performance Standards.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-530 provide updated definitions, a new section on educational school counselor standards, and technical and conforming changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Subsections 53A-1-402(1)(a)(i) and (ii)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The amendments to Rule R277-530 provide updated definitions, a new section on educational school counselor standards, and technical and conforming changes, which likely will not result in a cost or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** The amendments to Rule R277-530 provide updated definitions, a new section on educational school counselor standards, and technical and conforming changes, which likely will not result in a cost or savings to local government.

♦ **SMALL BUSINESSES:** The amendments to Rule R277-530 provide updated definitions, a new section on educational school counselor standards, and technical and conforming changes, which likely will not result in a cost or savings to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to Rule R277-530 provide updated definitions, a new section on educational school counselor standards, and technical and conforming changes, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-530 provide updated definitions, a new section on educational school counselor standards, and technical and conforming changes, which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from the amendments to this rule.

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

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

Education, Administration
R277-530
 Utah Effective Teaching and
 Educational Leadership Standards

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40673

FILED: 08/15/2016

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2016

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

R277. Education, Administration.**R277-530. Utah Effective ~~[Teaching and Educational Leadership]~~ Educator Standards.****R277-530-[2]1. Authority and Purpose.**

~~[A-](1)~~ This rule is authorized ~~[under]~~ by:

~~(a)~~ Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board~~;~~ by~~;~~

~~(b)~~ Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

~~(c)~~ Subsections 53A-1-402(1)(a)(i) and (ii), which require the Board to establish rules and minimum standards for the qualification and certification of educators and for required school administrative and supervisory services~~;~~ and Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities].

~~[B-](2)~~ The purpose of this rule is to establish:

~~(a)~~ statewide effective teaching standards for Utah public education teachers~~[and to establish];~~

~~(b)~~ statewide educational leadership standards for Utah public education administrators~~[consistent with the Board's supervision of the public education system under Utah Constitution Article X, Section 3 and supports one pillar of the Board's Promises to Keep - high quality instruction for all Utah children]; and~~

~~(c)~~ statewide educational school counselor standards for Utah public education school counselors.

R277-530-[1]2. Definitions.

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

~~B.~~ "Local education agency (LEA)" means a Utah school district or charter school.

~~C.~~ "Promises to Keep" is the Board's statement of vision and mission for Utah's system of public education. Utah's public education system keeps its constitutional promise by ensuring literacy and numeracy for all Utah children, providing high quality instruction for all Utah children, establishing curriculum with high standards and relevance for all Utah children, and requiring effective assessment to inform high quality instruction and accountability.]

~~[E-](1)~~ "[Teacher" for purposes of this rule]Educator" means an individual licensed by the Board under Section 53A-6-103[4 and who meets the requirements of R277-504].

~~[D-](2)~~ "School administrator" means an educator serving in a position that requires a Utah Educator License with an ~~[Administrative]~~ Educator Leadership license area of concentration and who supervises Level 2 educators.

~~(3)~~ "The Utah Effective Educator Standards" means:

~~(a)~~ the Effective Teaching Standards described in R277-530-5;

~~(b)~~ the Educational Leadership Standards described in R277-530-6; and

~~(c)~~ the Educational School Counselor Standards described in R277-530-7.

~~[F.~~ "USOE" means the Utah State Office of Education.]

R277-530-3. ~~[USOE]Board [Responsibilities]Expectations for Effective Teaching[and], Educational Leadership, and Educational School Counselor Standards.~~

~~[A-](1)~~ The Board ~~[shall use]~~ hereby establishes the Effective ~~[Teaching Standards and Educational Leadership]~~ Educator Standards as the foundation of educator development, ~~[that]which~~ includes:

~~(a)~~ alignment of teacher and school administrator preparation programs~~;~~;

~~(b)~~ expectations for licensure~~;~~; and

~~(c)~~ the screening, hiring, induction, and mentoring of beginning teachers, ~~[and]~~ school administrators, and other licensed educators.

~~[B-](3)~~ The Board~~[shall]~~ uses the Effective ~~[Teaching Standards and Educational Leadership]~~ Educator Standards to direct and ensure the implementation of~~[the]~~ Utah's ~~[Common-]Core Standards.~~

~~[C-](4)~~ The Board ~~[shall rely]~~ relies on the Effective ~~[Teaching Standards and Educational Leadership]~~ Educator Standards as the basis for an evaluation system and tiered-licensing system.

~~[D-](5)~~ The Board's ~~[shall develop a-]model~~ educator assessment system, for use by LEAs, is based on the Effective ~~[Teaching Standards and Educational Leadership]~~ Educator Standards.

~~[E-](6)~~ The Board~~[shall]~~ provides resources, including professional ~~[development, that]learning, which~~ assist LEAs in integrating the Effective ~~[Teaching Standards and Educational Leadership]~~ Educator Standards into educator practices.

R277-530-4. LEA Responsibilities for Effective ~~[Teaching Standards and Educational Leadership]~~ Educator Standards.

~~[A-](1)~~ An LEA[s] shall develop policies to support ~~[teachers and]educators, school administrators, and school counselors~~ in implementation of the Effective ~~[Teaching and Educational Leadership]~~ Educator Standards.

~~[B-](2)~~ An LEA[s] shall develop professional learning experiences and professional learning plans for relicensure using the Effective ~~[Teaching and Educational Leadership]~~ Educator Standards to assess educator progress toward implementation of the standards.

~~[C-](3)~~ An LEA[s] shall adopt formative and summative educator assessment systems based on the Effective ~~[Teaching and Educational Leadership]~~ Educator Standards to facilitate educator growth toward expert practice.

~~[(D)](4) An LEA[s] shall use the Effective [Teaching and Educational Leadership]Educator Standards as a basis for the development of a collaborative professional culture to facilitate student learning.~~

~~[(E)](5) An LEA[s] shall implement induction and mentoring activities for beginning teachers and school administrators that support implementation of the Effective [Teaching Standards and Educational Leadership]Educator Standards.~~

R277-530-5. Effective Teaching Standards.

~~[(A)](1) [The Board document, Promises to Keep, identifies the development and retention of teachers who have the skills and knowledge to provide effective, high quality instruction to all of Utah's students as one of four essential promises between the Board and the public education community. The Utah Effective Teaching Standards describe what effective teachers must know and be able to do to fulfill the Board's constitutional promise.]The Effective Teaching Standards focus on the high-leverage concepts of:~~

- ~~_____ (a) personalized learning for diverse learners[;];~~
- ~~_____ (b) a strong[er] focus on application of knowledge and skills[;];~~
- ~~_____ (c) improved assessment literacy[;];~~
- ~~_____ (d) a collaborative professional culture[;]; and~~
- ~~_____ (e) [new]leadership roles for teachers.~~

~~[(B)](2) [Effective Teaching Standards—]Utah [teachers]educators shall demonstrate the following skills and work functions designated in the following ten standards:~~

~~[(1)](a) Learner Development - An [teacher]educator understands cognitive, linguistic, social, emotional, and physical areas of student development[;].~~

~~[(2)](b) Learning Differences - An [teacher]educator understands individual learner differences and cultural and linguistic diversity[;].~~

~~[(3)](c) Learning Environments - An [teacher]educator works with learners to create environments that support individual and collaborative learning, encouraging positive social interaction, active engagement in learning, and self motivation[;].~~

~~[(4)](d) Content Knowledge - An [teacher]educator understands the central concepts, tools of inquiry, and structures of the discipline[;].~~

~~[(5)](e) Assessment - An [teacher]educator uses multiple methods of assessment to engage learners in their own growth, monitor learner progress, guide planning and instruction, and determine whether the outcomes described in content standards have been met[;].~~

~~[(6)](f) Instructional Planning - An [teacher]educator plans instruction to support students in meeting rigorous learning goals by drawing upon knowledge of content areas, core curriculum standards, instructional best practices, and the community context[;].~~

~~[(7)](g) Instructional Strategies - An [teacher]educator uses various instructional strategies to ensure that all learners develop a deep understanding of content areas and their connections, and build skills to apply and extend knowledge in meaningful ways[;].~~

~~[(8)](h) Reflection and Continuous Growth - An [teacher]educator is a reflective practitioner who uses evidence to~~

continually evaluate and adapt practice to meet the needs of each learner[;].

~~[(9)](i) Leadership and Collaboration - An [teacher]educator is a leader who engages collaboratively with learners, families, colleagues, and community members to build a shared vision and supportive professional culture focused on student growth and success[;]. and~~

~~[(10)](j) Professional and Ethical Behavior - An [teacher]educator demonstrates the highest standards of legal, moral, and ethical conduct as [specified]required in the Utah Educator Professional Standards described in Rule R277-515.~~

R277-530-6. Educational Leadership Standards.

~~[(A)](1)(a) The Board[document, Promises to Keep,] expects that school administrators shall meet the standards of effective teaching and have the knowledge and skills to guide and supervise the work of [teachers]educators, lead the school learning community, and manage the school's learning environment in order to provide effective, high quality instruction to all of Utah's students.~~

- ~~_____ (b) The Educational Leadership Standards focus on:~~
 - ~~_____ (i) visionary leadership[;];~~
 - ~~_____ (ii) advocacy for high levels of student learning[;];~~
 - ~~_____ (iii) leading professional learning communities[;]; and~~
 - ~~_____ (iv) the facilitation of school and community collaboration.~~

~~[(B)](2) In addition to meeting the standards of an effective teacher, school administrators shall demonstrate the following traits, skills, and work functions designated in the following six standards:~~

~~[(1)](a) Visionary Leadership - A school administrator promotes the success of every student by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is largely shared and supported by[~~an~~] stakeholders[;].~~

~~[(2)](b) Teaching and Learning - A school administrator promotes the success of every student by advocating, nurturing and sustaining a school focused on teaching and learning conducive to student, faculty, and staff growth[;].~~

~~[(3)](c) Management for Learning - A school administrator promotes the success of every student by ensuring management of the organization, operation, and resources for a safe, efficient, and effective learning environment[;].~~

~~[(4)](d) Community Collaboration - A school administrator promotes the success of every student by collaborating with faculty, staff, parents, and community members, responding to diverse community interests and needs and mobilizing community resources[;].~~

~~[(5)](e) Ethical Leadership - A school administrator promotes the success of every student by acting with, and ensuring a system of, integrity, fairness, equity, and ethical behavior[;]. and~~

~~[(6)](f) Systems Leadership - A school administrator promotes the success of every student by understanding, responding to, and influencing the interrelated systems of political, social, economic, legal, policy, and cultural contexts affecting education.~~

R277-530-7. Educational School Counselor Standards.

~~In addition to meeting the Effective Teaching Standards described in Section R277-530-5 and the Educational Leadership~~

Standards described in Section R277-530-6, an educational school counselor shall demonstrate the following traits, skills, and work functions designated in the following seven standards:

(1) Collaboration, Leadership and Advocacy - An educational school counselor is a leader who engages collaboratively with learners, families, colleagues, and community members to build a shared vision and supportive professional culture focused on student growth and success;

(2) Collaborative Classroom Instruction - An educational school counselor delivers a developmental and sequential guidance curriculum prioritized according to the results of the school needs assessment;

(3) The Plan for College and Career Readiness Process - An educational school counselor implements the individual planning component by guiding individuals and groups of students and their parents or guardians through the development of educational and career plans;

(4) Systemic Approach to Dropout Prevention with Social and Emotional Supports - An educational school counselor provides responsive services through the effective use of individual and small-group counseling, consultation and referral skills and implements programs for student support in dropout prevention;

(5) Data-Driven Accountability and Program Evaluation - An educational school counselor collects and analyzes data to guide program direction and emphasis;

(6) Systemic School Counseling Program Management - An educational school counselor is involved in management activities that establish, maintain and enhance the total school counseling program; and

(7) Professional and Ethical Behavior - An educational school counselor demonstrates the highest standard of legal, moral and ethical conduct, as required in the Utah Educator Professional Standards described in R277-515.

KEY: educators, effectiveness, leadership, standards

Date of Enactment or Last Substantive Amendment: [~~October 11, 2014~~]**2016**

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

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

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40674

FILED: 08/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-531 is amended as a result of H.B. 201, Student Testing Amendments, from the 2016 General

Session, which prohibits a school district from using student scores on the SAGE end-of-level assessment for evaluation of the school district's educators and administrators.

SUMMARY OF THE RULE OR CHANGE: The amendments provide updated definitions including definitions for educator standards that incorporates teachers, educational leadership, and school counselors, and provides technical and conforming changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-8a-301 and Subsections 53A-1-402(1)(a)(i) and (ii)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The amendments to Rule R277-531 provide updated definitions and technical and conforming changes, which likely will not result in a cost or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** The amendments to Rule R277-531 provide updated definitions and technical and conforming changes, which likely will not result in a cost or savings to local government.

♦ **SMALL BUSINESSES:** The amendments to Rule R277-531 provide updated definitions and technical and conforming changes, which likely will not result in a cost or savings to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to Rule R277-531 provide updated definitions and technical and conforming changes, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-531 provide updated definitions and technical and conforming changes, which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from the amendments to this rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2016

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

R277. Education, Administration.

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

R277-531-2. Authority and Purpose.

[A-](1) This rule is authorized ~~under~~ by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board~~;~~ by];

(b) Section 53A-1-401, which allows the Board to make ~~rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;~~

(c) Subsections 53A-1-402(1)(a)(i) and (ii), which require the Board to establish rules and minimum standards for the qualification and certification of educators and for required school administrative and supervisory services~~;~~; and

(d) Section 53A-8a-301, which directs that the Board adopt rules to guide school district employee evaluations~~;~~ and Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities].

[B-](2) The purpose of this rule is to provide a statewide educator evaluation system framework that includes required Board directed expectations and components and additional school district determined components and procedures to ensure the availability of data about educator effectiveness.

(3) The process shall:

(a) focus on the improvement of high quality instruction and improved student achievement~~;~~ Additionally, the process shall];

(b) include common data that can be aggregated and disaggregated to inform Board and school district decisions about retention, preparation, recruitment, and improved professional ~~development~~ learning practices; and

(c) ensure school districts engage in a consistent process statewide of educator evaluation.

R277-531-4.2. Definitions.

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

[B-](1) "Educator" means an individual licensed under Section 53A-6-10[4]3 and who meets the requirements of Rule R277-50[1]2.

[C-](2) "Educator Evaluation Program" means a school district's process, policies, and procedures for evaluating an educator's^[s] performance according to the~~the~~ educator's various assignments~~;~~ those policies and procedures shall align with R277-531.

[D-](3) "Formative evaluation" means an evaluation[s] that provides an educator[s] with information and assessments on how to improve the~~the~~ educator's performance.

[E-](4) "Instructional quality data" means data acquired through observation of an educator's instructional practices.

[F-](5) "Joint educator evaluation committee" means the local committee described under Section 53A-8a-403 that develops and assesses a school district evaluation program.

[G-](6) "School administrator" means an educator;

(a) serving in a position that requires a Utah Educator License with an Administrative area of concentration; and

(b) who supervises Level 2 educators.

[H-](7) "Student growth score" means a measurement of a student's achievement towards educational goals in the course of a school year.

[I-](8) "Summative evaluation" means an evaluation[s] that ~~are~~is used to make annual decisions or ratings of an educator's performance and may inform decisions on salary, confirmed employment, personnel assignments, transfers, or dismissals.

~~J. "USOE" means the Utah State Office of Education.~~

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

[L-](9) "Utah Effective ~~Teaching~~ Educator Standards" means:

(a) the Effective ~~Teaching~~ Standards ~~identified and provided~~ established in Section R277-530-5[-];

(b) [

~~M. "Utah ~~the~~ Educational Leadership Standards" means the standards for educational leadership identified and adopted~~ established in Section R277-530-6[-]; and

(c) the Educational School Counselor Standards established in Section R277-530-7.

[N-](10) "Valid and reliable measurement tool~~[(s)]"~~ means an instrument that has proved consistent over time and uses non-subjective criteria that require minimal interpretation.

R277-531-3. Public Educator Evaluation Framework.

[A-](1)(a) The Board~~shall~~ provides ~~a~~the public education evaluation framework ~~that~~described in this section, which includes ~~five~~ general evaluation system areas and additional discretionary components required in a school district's educator evaluation system.

(b) A school district's educator evaluation system shall conform to the framework no later than the 2015-2016 school year.

[B-](2) A school district shall~~align its evaluation policies with Board standards:~~

(1) A school district educator evaluation system shall];

(a) ~~be based on~~base the school district's educator evaluation system on ~~rigorous performance expectations aligned with~~the Utah Effective Educator Standards in Rule R277-530[-];

(2)b) ~~A school district evaluation system shall~~ establish and articulate performance expectations individually for all licensed school district educators[-];

(3)c) ~~A school district evaluation system shall~~ use valid and reliable measurement tools including, at a minimum:

(a)i) observations of instructional quality;

(b)ii) evidence of student growth;

(e)iii) parent and student input; and

(d)iv) other indicators as determined by the school district.

(4)d) ~~A school district evaluation system shall~~ provide ~~a summative yearly~~an annual rating of educator performance

using uniform statewide terminology and definitions~~[-. A school district evaluation system shall]~~, and include summative and formative components~~[-];~~

~~(5)e~~ [A school district evaluation system shall] direct the revision or alignment of all related school district policies, as necessary, to be consistent with the school district Educator Evaluation System~~[-]; and~~

~~(6)f~~ [A school district evaluation system shall] use valid, reliable, and research-based ~~[measurement tool(s) for all educator evaluations. Such]~~ measurements that shall:

~~(a)i~~ employ a variety of measurement tools;

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

~~(e)iii~~ provide evaluation for non-instructional licensed educators and administrators; and

~~(d)g~~ provide both formative and summative evaluation data.

~~(3)~~ A school district may consider data gathered from tools to inform decisions about employment and professional ~~[development]~~ learning.

~~(4)~~ A school district shall discuss, collaborate, and protect the confidentiality of educator data in the evaluation process~~[-]~~.

~~(5)a~~ [a] A school district evaluation system shall provide for clear and timely notice to educators of the components, timelines, and consequences of the evaluation process;

~~(2)b~~ [a] A school district evaluation system shall provide for timely discussion with evaluated educators to include professional growth plans as required in Rule R277-50~~[+]~~0 and evaluation conferences; and

~~(3)c~~ [a] A school district evaluation system shall protect personal data gathered in the evaluation process.

~~(6)~~ A [S] school district ~~[plans]~~ evaluation system shall provide support for instructional improvement, including~~[-];~~

~~(1)a~~ [A school district evaluation system shall] assessing the professional ~~[development]~~ learning needs of educators~~[-]; and~~

~~(2)b~~ [A school district evaluation system shall] identifying educators who do not meet expectations for instructional quality and providing support as appropriate at the school district level, which may include providing educators with mentors, coaches, and specialists in effective instruction, and setting timelines and benchmarks to assist educators toward greater improved instructional effectiveness and student achievement.

~~(7)~~ A school district evaluation system shall maintain records and documentation of required educator evaluation information.

~~(1)8~~ A school district evaluation system shall require the evaluation of all licensed educators at least once a year in accordance with Section R277-533.

~~(2)9~~ A school district evaluation system shall provide at least an annual rating for each licensed educator, including teachers, school administrators, and other non-teaching licensed positions, using Board-directed statewide evaluation terminology and definitions.

~~(3)10~~ A school district evaluation system shall provide for the evaluation of all provisional educators, as defined by the school district under Section 53A-8a-405, at least twice yearly.

~~(4)11~~ A school district evaluation system shall include the following specific educator performance criteria:

(a) school district-determined instructional quality measures;

(b) complete integration of student growth score ~~[before July 1, 2016]; and~~

(c) other measures as determined by the school district, including data required from student/parent input.

~~(5)12~~ The Board shall determine weightings for specific educator performance criteria to be used in the school district's evaluation system.

~~(6)13~~ A school district evaluation system shall include a plan for recognizing educators who demonstrate exemplary professional effectiveness, at least in part, by student achievement.

~~(7)14~~ A school district evaluation system shall identify potential employment consequences, including discipline and termination, if an educator fails to meet performance expectations.

~~(8)15~~ A school district evaluation system shall include a review or appeals procedure for an educator to challenge the process of a summative evaluation that provides for adequate and timely due process for the educator consistent with Section 53A-8a-406(2).

~~(9)16~~ A school district may include additional components in its evaluation system.

~~(10)17~~ A local board of education shall review and approve its school district's proposed evaluation systems in an open meeting prior to the local board's submission to the Board for review and approval.

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

~~(1)1~~ The Board ~~[shall]~~ establishes a state evaluation advisory committee to provide ongoing review and support for school districts as ~~[they]~~ school districts develop and implement evaluation systems consistent with the law (2) and this rule.

(2) The Committee, described in Subsection (1), shall:

~~(1)a~~ analyze school district evaluation data for purposes of:

~~(a)i~~ reporting;

~~(b)ii~~ assessing instructional improvement; and

~~(e)iii~~ assessing student achievement~~[-];~~

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

~~(3)c~~ review school district educator evaluation plans for alignment with Board requirements.

~~(2)2~~ The [USOE] Superintendent, under supervision of the Board, shall develop a model educator evaluation system that includes performance expectations consistent with this rule.

~~(3)3~~ The [USOE] Superintendent shall evaluate and recommend tools and measures for use by school districts as they develop and initiate their local educator evaluation systems.

~~D.](4) The [USOE]Superintendent shall provide professional [development]learning and technical support to school districts to assist in evaluation procedures and to improve educators' ability to make valid and reliable evaluation judgments.~~

R277-531-5. Implementation.

- ~~A.](1) Each school district shall:

 - ~~(a) have an educator evaluation committee[in place.];~~
 - ~~B.](b) [Each school district shall]design the required evaluation program, including pilot programs as desired[-]; and~~
 - ~~C.](c) [Each school district shall continue to]report educator effectiveness data to the [USOE in the UCA]Superintendent annually on or before June 30.~~
 - ~~D. Each school district shall implement an evaluation system no later than the 2015-2016 school year.]~~~~
- ~~E.](2) A school district shall implement an employee compensation system no later than the 2016-2017 school year that is aligned with the school district's wage or salary schedule and is consistent with the provisions of Section 53A-8a-601(2).~~
- ~~F. Each school district shall implement student growth measures as part of the school district evaluation system before the 2015-2016 school year.]~~

KEY: educators, evaluations, requirements
Date of Enactment or Last Substantive Amendment: [October 9, 2014]2016
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(a)(i); 53A-1-401(3)]

Education, Administration
R277-606
Dropout Recovery Program

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 40675
FILED: 08/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-606 is amended to incorporate changes resulting from H.B. 443, School Dropout Prevention and Recovery, from the 2016 General Session.

SUMMARY OF THE RULE OR CHANGE: The majority of the changes to the rule are updates related to the new legislation, including providing new and amended definitions, providing procedures for a local education agency (LEA) that enrolls an eligible student in a dropout prevention and recovery program, and providing updated reporting and audit requirements.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-15-1903

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The amendments to the rule provide updated procedures required by the new legislation, which likely will not result in a cost or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** The amendments to the rule provide updated procedures required by the new legislation, which likely will not result in a cost or savings to local government.
- ◆ **SMALL BUSINESSES:** The amendments to the rule provide updated procedures required by the new legislation, which likely will not result in a cost or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to the rule provide updated procedures required by the new legislation, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to the rule provide updated procedures required by the new legislation, which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from the amendments to this rule.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2016

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

R277. Education, Administration.
R277-606. Dropout Prevention and Recovery Program.
R277-606-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (b)a) Utah Constitution Article X, Section 3, which vests general control and supervision [of]over public education in the Board; and

(a) Section 53A-172(15)-1903, which requires the Board to develop rules to set policies related to a dropout prevention and recovery program;

(c) ~~S[ub]section 53A-1-401(3)~~, which ~~[permits]allows~~ the Board to ~~[adopt]make~~ rules ~~[in accordance with its responsibilities]~~ to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) develop policies related to an LEA's dropout prevention and recovery program; and

(b) ~~[establish procedures for calculating average daily membership for students who participate in a dropout recovery program; and~~

~~(e)]set reporting requirements for LEAs with a dropout prevention and recovery program.~~

R277-606-2. Definitions.

For purposes of this rule:

~~(1) "Adequate monthly progress" has the same meaning as that term is defined in Section 53A-17a-172.]~~

~~(2)1] "Attainment goal" has the same meaning as that term is defined in Section 53A-17a-172]15-1902.~~

~~(3)2] "Average daily membership" means the same as that term is defined in Section 53A-17a-103.~~

~~(4)3] "Cohort" means the same as that term is defined in Section 53A-17a-172]15-1902.~~

~~(5)4] "College and career readiness work" means the same as that term is defined in Section 53A-17a-172]15-1902.~~

~~(6)5] "[Eligible]Designated student" means a student:~~

~~(a)1] who has withdrawn from a secondary school prior to earning a diploma [with no legitimate reason for departure or absence from school];~~

~~(b)2] who was dropped from average daily membership because the student was not able to be counted by an LEA in membership because the student was not meeting an applicable continuing enrollment measurement chosen by the LEA as described in Subsection R277-419-5A(2)]; and~~

~~(c)3] whose cohort has not yet graduated; or~~

~~(b) who is at risk of meeting the criteria described in Subsection (5)(a), as determined by the student's LEA, using the risk factors described in Subsection (10).~~

~~(ii) whose cohort graduated in the previous school year.~~

~~(7) "LEA" does not include:~~

~~(a) an alternative school as defined in Section 53A-1-1102; or~~

~~(b) a statewide virtual school.~~

~~(8)(a) "Statewide course or program" means a statewide course or program that:~~

~~(i) a student is able to enroll in; and~~

~~(ii) an LEA is able to count the student for enrollment as described in R277-419.~~

~~(b) "Statewide course or program" includes the Statewide Online Education Program described in Title 53A, Chapter 15, Part 12, Statewide Online Education Program Act.]~~

~~(6) "Graduation rate" means the same as that term is defined in Section 53A-15-1902.~~

~~(7) "LEA" means the same as that term is defined in Section 53A-15-1902.~~

~~(8) "Nontraditional program" means the same as that term is defined in Section 53A-15-1902.~~

~~(9) "Proxy graduation rate" means a rate calculated:~~

~~(a) in a manner similar to the regular graduation rate for each year of grades 9 through 12;~~

~~(b) treating a student as having graduated if the student returned after each grade year; and~~

~~(c) treating a student as dropping out if the student:~~

~~(i) did not return after each year; or~~

~~(ii) the student did not have an acceptable exit code entered into the Board's UTREx system.~~

~~(10) "Risk factors" means:~~

~~(a) low academic performance, as measured by grades, test scores, or course failure;~~

~~(b) poor behavior, as measured by office disciplinary referrals, suspensions, or expulsions; and~~

~~(c) absenteeism, whether excused or unexcused absences, and including days tardy and truant.~~

~~(9)11] "Third party provider" means [a third party who provides educational services on behalf of an LEA]the same as that term is defined in Section 53A-15-1902.~~

R277-606-3. LEA Dropout Prevention and Recovery Programs.

(1) Beginning with the 20~~15]16-[16]17~~ school year, an LEA that serves students in grades 9, 10, 11, or 12 shall provide a dropout prevention and recovery program for a~~n eligible] designated~~ student with the dropout prevention and recovery services described in S~~[ub]section 53A-17a-172(2)]15-1903.~~

~~(2) An LEA that meets the description of an LEA required to contract with a third party provider as described in Subsection 53A-17a-172(4) shall contract with a third party provider to provide the dropout recovery services described in Subsection (1):~~

~~(3) An eligible student may:~~

~~(a) re-enroll in an LEA or statewide course or program; or~~

~~(b) participate in an LEA's dropout recovery program.~~

~~(4) An LEA may count an eligible student in average daily membership in accordance with R277-419 if the eligible student:~~

~~(a) re-enrolls in the LEA or statewide course or program;~~

~~(b) meets all eligibility requirements in R277-419; and~~

~~(c) re-enrolls in the LEA at such a level the LEA can count the eligible student in regular membership.]~~

~~(5)2] An LEA that enrolls a~~n eligible] designated~~ student in a dropout prevention and recovery program shall:~~

~~(a) develop a written policy that describes:~~

~~(i) how the LEA or the LEA's third party[provider] will measure and report [adequate monthly]if the designated student made a year's worth of progress toward an attainment goal as required in Section R277-606-4; and~~

~~(ii) how membership days[in the dropout recovery program] will be determined for the [eligible]designated student['s progress] in accordance with the LEA's established school schedule and enrollment policies; and~~

~~(b) indicate that the designated student is enrolling in the LEA's dropout prevention and recovery program in accordance with current UTREx specifications.~~

~~[(6)3](a) If a [n-eligible] designated student chooses to enroll in a dropout prevention and recovery program, the LEA, in consultation with the [eligible] designated student, shall prepare, in accordance with the LEA's written policy described in Subsection ([5]2), a learning plan for the [eligible] designated student that includes[:~~

~~— (i) — an attainment goal for the [eligible] designated student[; and].~~

~~— (ii) — how the LEA will measure the eligible student's adequate monthly progress toward the attainment goal in accordance with the LEA's written policy described in Subsection (5);]~~

~~(b) If an LEA is required to contract with a third party[—provider] to provide dropout prevention and recovery services, the third party[—provider] shall:~~

~~(i) work with the LEA to prepare a learning plan for a [n-eligible] designated student described in Subsection ([5]3)(a);~~

~~(ii) regularly report a [n-eligible] designated student's progress toward the designated student's attainment goal in accordance with the LEA's written policy described in Subsection ([5]2); and~~

~~(iii) maintain documentation[:~~

~~— (A) — required to validate that an eligible student is meeting adequate monthly progress; and~~

~~— (B) — required by the LEA for the LEA to meet the requirements of Subsection R277-606-4(4).~~

~~— (7)(a) Subject to Subsection (8), if an eligible student participates in a dropout recovery program as described in Subsection (3)(b):~~

~~(i) an LEA may receive an amount equal to the product of the following for each eligible student who participates in the LEA's dropout recovery program:~~

~~— (A)(I) — the value of one k-12 WPU for that school year, divided by~~

~~— (II) — 180 days; and~~

~~— (B) — subject to the LEA's written policy, the number of days that eligible student made adequate monthly progress; and~~

~~(ii) may not count the student as described in Subsection (4).~~

~~(b) If an eligible student participates in a dropout recovery program as described in Subsection (3)(b), the Superintendent may not distribute to the LEA an amount that is more than the value of the kindergarten through grade 12 weighted pupil unit, excluding add-on weighted pupil units, for the eligible student each school year.~~

~~(8) An LEA may receive an amount as described in Subsection (7) for an eligible student for a month if:~~

~~(a) the LEA or third party provider has a personalized learning plan in place for the eligible student on or before the first school day of the first month that the eligible student participates in the dropout recovery program; or~~

~~(b) beginning with month two, the eligible student meets the definition of adequate monthly progress for the month, pursuant to the LEA's written policies.]~~

~~[(9)4](a) If a [n-eligible] designated student is a student with a disability and an LEA provides dropout prevention and recovery services without using a third party [provider], the LEA shall:~~

~~(i) prepare an IEP or Section 504 plan for the [eligible] designated student; and~~

~~(ii) provide the dropout prevention and recovery services in accordance with the designated student's IEP or Section 504 plan.~~

~~(b) If a [n-eligible] designated student is a student with a disability and an LEA contracts with a third party[—provider] to provide dropout prevention and recovery services to the [eligible] designated student:~~

~~(i) the LEA shall prepare an IEP or Section 504 plan for the [eligible] designated student; and~~

~~(ii) the third party[—provider] shall provide the dropout prevention and recovery services to the [eligible] designated student in accordance with the [eligible] designated student's IEP or Section 504 plan.~~

R277-606-4. Reporting Requirements and Audits.

~~(1)(a) Beginning with the 20[+5]16-[+6]17 school year, on or before August 1, 20[+6]17 and on or before August 1 each year thereafter, an LEA shall submit a report to the Superintendent on the LEA's dropout prevention and recovery services.~~

~~(b) The report described in Subsection (1)(a) shall include:~~

~~(i) the information described in Section 53A-[+7a-+72]15-1903;[—and]~~

~~(ii) the total number of designated students in the LEA; and~~

~~(iii) if applicable, the name of a third party[—provider] the LEA is contracting with to provide dropout prevention and recovery services.~~

~~(2) A third party[—provider] working with an LEA on the LEA's dropout prevention and recovery program shall report any information requested by the LEA including any information required for the LEA to submit a report described in Subsection (1).~~

~~(3) The Superintendent shall:~~

~~(a) review LEA reports described in Subsection (1);[—and]~~

~~(b) by April 1 each year, inform an LEA that the LEA is required to enter into a contract with a third party as described in Subsection 53A-15-1903(3); and~~

~~([b]c) ensure that an LEA described in Subsection 53A-15-1903(3) and Subsection R277-606-3([2]3) contracts with a third party[—provider] as required in Section 53A-15-1903 and Section R277-606-3.~~

~~(4)(a) An LEA shall maintain documentation to comply with the requirements of Section 53A-[+7a-+72]15-1903 and this rule.~~

~~(b) The Board or the Superintendent may request an audit of an LEA's dropout prevention and recovery program.~~

KEY: dropout, prevention and recovery, pupil accounting

Date of Enactment or Last Substantive Amendment:

[November 23, 2015]2016

Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-15-1903; 53A-1-401(3); 53A-17a-172]

Education, Administration
R277-711
 High Quality School Readiness
 Expansion

NOTICE OF PROPOSED RULE

(New Rule)
 DAR FILE NO.: 40676
 FILED: 08/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new Rule R277-711 is in response to S.B. 101, High Quality School Readiness Program Expansion, from the 2016 General Session, which requires the Utah State Board of Education to make rules to administer a grant program for local education agencies (LEAs) and home-based technology providers.

SUMMARY OF THE RULE OR CHANGE: This new Rule R277-711 provides definitions, grant application timelines, and responsibilities for the State Superintendent and LEAs to develop a tool to determine whether or not a school readiness program is a high-quality program and eligible for additional money to expand access for students most at risk to enter school less ready than their peers.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-2-204

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: Funding is provided by the 2016 Legislature, so there is likely no cost or savings to the state budget resulting from this new rule.
- ◆ LOCAL GOVERNMENTS: Funding is provided by the 2016 Legislature, so there is likely no cost or savings to local government resulting from this new rule.
- ◆ SMALL BUSINESSES: Funding is provided by the 2016 Legislature, so there is likely no cost or savings to small businesses resulting from this new rule.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Funding is provided by the 2016 Legislature, so there is likely no cost or savings to persons other than small businesses, businesses, or local government entities resulting from this new rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: LEAs will need to apply and be determined eligible to receive grant money, so there is likely no compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from this new rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2016

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

R277. Education, Administration.

R277-711. High Quality School Readiness Expansion.

R277-711-1. Authority and Purpose.

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;
 - (c) Section 53A-1b-204, which requires the Board to make rules to:
 - (i) implement a grant program for LEAs to increase capacity in high-quality school readiness programs; and
 - (ii) create a tool to determine quality of a school readiness program; and
 - (d) Section 53A-1b-205, which requires the Board to make rules to implement a grant program for home-based technology programs to provide high-quality school readiness programs.
- (2) The purpose of this rule is to:
- (a) designate the tool for the Superintendent to use in determining if a school readiness program is high quality; and
 - (b) designate procedures for an LEA to apply to the Board to receive grant money.

R277-711-2. Definitions.

- (1) "Eligible LEA" means an LEA that provides a school readiness program that the Superintendent has determined to be a high-quality program consistent with procedures established in this Rule.

(2) "Program" means the high-quality school readiness expansion program established in Title 53A, Chapter 1b, Part 2.

R277-711-3. Grant Applications - Timelines.

(1) The Superintendent shall:

(a) develop a grant application that allows an LEA to apply to participate in the program; and

(b) make the grant application available on the Board's website.

(2) An LEA may apply for a grant described in Section 53A-1b-204 by submitting an application to the Superintendent on or before the date published on the Board's website.

(3)(a) An LEA may notify the Superintendent of the LEA's intention to apply for a grant at any time.

(b) If an LEA intends to be considered for a grant for the upcoming school year, the LEA shall submit a letter of intent by the deadline established by the Superintendent and published on the Board's website.

(4) For each year the Superintendent is authorized to solicit grant applications, the Superintendent shall publish a timeline on the Board's website by March 1, including a date for the application release, and due dates for the LEA to submit required materials.

(5) The Superintendent shall evaluate each application using the tool described in Section R277-711-4 to determine if the applying LEA is an eligible LEA.

(6) The Superintendent shall notify an eligible LEA of successful receipt of a grant by July 1.

R277-711-4. Superintendent and LEA Responsibilities - Tool to Determine Quality of an LEA School Readiness Program.

(1) The Superintendent shall create a tool to determine whether or not an LEA school readiness program may be designated as high quality.

(2) The tool described in Subsection (1) shall consist of the following components:

(a)(i) the Early Childhood Environmental Rating Scale (ECERS) observational tool for an observer to rate a program through a site visit; or

(ii) another observational tool that the Superintendent trusts to be a reliable tool;

(b) an application from the LEA containing the high quality components described in 53A-1b-105; and

(c) an on-site visit and interview with the Superintendent's designated staff.

(3) The Superintendent shall establish a scoring rubric for how the application will be evaluated, and make the rubric available to applicants.

(4) The Superintendent shall maintain a list of state-funded high-quality school readiness programs operating in each LEA's geographic boundaries, which have been designated as high quality through use of the tool.

(5) The Superintendent shall provide for a flag in a student's data file to indicate the type of state-funded high-quality school readiness program that the student participated in.

(6)(a) The Superintendent may require an LEA that receives program money to develop a corrective action plan and successfully implement the corrective action plan if the LEA fails to:

(i) comply with statutory provisions or the requirements of this Rule;

(ii) meet expected goals; or

(iii) maintain all the high-quality elements of the school readiness program.

(b) If an LEA fails to successfully implement a corrective action plan described in Subsection (6)(a), the Superintendent may discontinue or reduce funding of program grant monies to the LEA.

(7) The Superintendent shall administer the grant program for home-based technology providers as provided in Section 53A-1b-205.

(8) The Superintendent shall administer and oversee the evaluation of the program as provided in Section 53A-1b-208.

KEY: grants, school readiness program

Date of Enactment of Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401; 53A-1b-204; 53A-1b-205

Education, Administration
R277-712
Competency-based Grant Programs

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40677

FILED: 08/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new Rule R277-712 is in response to S.B. 143, Competency-based Learning Amendments, from the 2016 General Session, which requires the Board to make rules that establish criteria for the Competency-based Grant Program.

SUMMARY OF THE RULE OR CHANGE: This new Rule R277-712 provides definitions, advisory committee membership and duties, grant application procedures and timelines, and describes the criteria for awarding planning grants.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-15-1803

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Funding is provided by the 2016 Legislature, so there is likely no cost or savings to the state budget resulting from this new rule.

◆ **LOCAL GOVERNMENTS:** Funding is provided by the 2016 Legislature, so there is likely no cost or savings to local government resulting from this new rule.

◆ **SMALL BUSINESSES:** Funding is provided by the 2016 Legislature, so there is likely no cost or savings to small businesses resulting from this new rule.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Funding is provided by the 2016 Legislature, so there is likely no cost or savings to persons other than small businesses, businesses, or local government entities resulting from this new rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: LEAs will need to apply and be determined eligible to receive grant money, so there is likely no compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from this new rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2016

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

R277. Education, Administration.

R277-712. Competency-based Grant Programs.

R277-712-1. Authority and Purpose.

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and
- (b) Section 53A-15-1803, which requires the Board to:
- (i) define outcome-based measures for each type of grant awarded to LEA's;
- (ii) establish a grant application process;
- (iii) establish a review committee; and
- (iv) adopt metrics to analyze the quality of a grant application; and
- (c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) The purpose of this rule is to:

(a) define outcome-based measures for each type of grant awarded to LEA's;

(b) establish a grant application process;

(c) establish a review committee; and

(d) adopt metrics to analyze the quality of a grant application.

R277-712-2. Definitions.

(1) "Advisory committee" means the advisory committee established by the Board in Section R277-712-3.

(2) "Grant program" means the same as that term is defined in Section 53A-15-1802.

R277-712-3. Competency-based Advisory Committee Membership and Duties.

(1) The advisory committee shall include the following ten individuals:

(a) the Deputy Superintendent of Instructional Services or the Deputy's designee, who is a non-voting member of the advisory committee;

(b) one member who is an expert in blended learning;

(c) one member who is an expert in STEM education;

(d) one member who is an expert in assessment of student learning;

(e) one member who is a former school district superintendent;

(f) one member who is a current school administrator;

(g) one member who is a current charter school administrator;

(h) one member who is a former LEA administrator;

(i) one member who is a current teacher; and

(j) one member who is a former teacher.

(2) In addition to the committee members described in Subsection (1), the advisory committee may select additional grant application reviewers to assist the advisory committee with the work described in Subsection (3).

(3) The advisory committee shall:

(a) establish metrics to analyze the quality of a grant application;

(b) review an LEA's planning grant application to determine whether the planning grant application:

(i) meets the criteria described in Section 53A-15-1804 and Section R277-712-5; and

(ii) should be selected by the Board as one of three LEAs to receive a planning grant;

(c) make a recommendation to the Superintendent and the Board on which grant applications should be selected by the Board; and

(d) perform other duties as directed by:

(i) the Board; or

(ii) the Superintendent.

(4) The advisory committee, or the Superintendent on behalf of the advisory committee, shall present the advisory committee's recommendations on grant applications to the Board for approval.

R277-712-4. Pre-grant Approval Requirements.

(1) Before an LEA submits a planning grant application to the advisory committee for approval by the Board, the LEA shall

have at least two LEA representatives participate in the competency-based technical assistance training conducted by the Superintendent, including:

(a) the school district superintendent or charter school executive director; and

(b)(i) the LEA's curriculum director; or

(ii) the LEA's proposed competency-based education program manager.

(2) A member of an LEA's local school board or charter school governing board and other staff identified by the applying LEA may participate in the technical assistance training described in Subsection (1).

R277-712-5. Grant Application.

(1) An LEA may apply for a planning grant described in Section 53A-15-1804 by submitting an application to the Superintendent.

(2) The Superintendent shall:

(a) develop a grant application;

(b) set a deadline for the application to be submitted to the Superintendent; and

(c) make the grant application available to LEAs on the Board's website.

R277-712-6. Procedure and Requirements for Awarding a Planning Grant.

(1) The advisory committee and the Superintendent shall make recommendations to the Board based on:

(a) the criteria described in Subsection 53A-15-1804(2);

(b) the LEA's proposed budget for the LEA's competency-based program; and

(c) the LEA's outcome based measurements described in Subsection (2).

(2)(a) For a planning grant, an LEA shall include outcome-based measurements as part of the LEA's competency-based program to measure the performance of the LEA's plan.

(b) The outcome-based measurements described in Subsection (2)(a) shall include at least one measurement of student growth and proficiency.

(c) The outcome-based measurements described in Subsection (2)(a) may include:

(i) parent and student satisfaction with the LEA's competency-based program;

(ii) cost savings;

(iii) an increase in the LEA's graduation rate; and

(iv) number of credits earned by students through the competency-based program.

KEY: competency-based instruction, grant programs

**Date of Enactment of Last Substantive Amendment: 2016
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-15-1803; 53A-1-401**

Education, Administration
R277-750
Education Programs for Students with
Disabilities

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 40678
FILED: 08/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-750 is amended to incorporate the Special Education Rules Manual into the Rule R277-750 and update the rule consistent with the Administrative Rules drafting manual.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-750 incorporate the Special Education Rules Manual by reference, provide an updated revision date of the manual, and provide technical and conforming changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Subsection 53A-1-402(1) and Title 53A, Chapter 15, Part 3

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Updates Special Education Rules Manual, published by Utah State Board of Education, August 12, 2016

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendments to Rule R277-750 incorporate the Special Education Rules Manual by reference and provide technical and conforming changes, which likely will not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** The amendments to Rule R277-750 incorporate the Special Education Rules Manual by reference and provide technical and conforming changes, which likely will not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** The amendments to Rule R277-750 incorporate the Special Education Rules Manual by reference and provide technical and conforming changes, which likely will not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to Rule R277-750 incorporate the Special Education Rules Manual by reference and provide technical and conforming changes which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-750 incorporate the Special Education Rules Manual by reference and provide technical and conforming changes, which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from the amendments to this rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2016

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

R277. Education, Administration.

R277-750. Education Programs for Students with Disabilities.

[R277-750-1. Definitions:

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

R277-750-[2]1. Authority and Purpose.

[A-](1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision ~~[of]~~over public education in the Board[;];

(b) Subsection 53A-1-402(1), which directs the Board to adopt rules regarding services for persons with disabilities[; Section 53A-15-301 which directs the Board to set standards for state funds appropriated for students with disabilities];

(c) Title 53A, Chapter 15, Part 3, Education of Children with Disabilities, which requires the Board to adopt rules regarding educational services to students with disabilities; and

(d) Section 53A-1-401[(2)] which ~~[permits]~~allows the Board to ~~[adopt rules in accordance with its responsibilities]~~make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

[B-](2) The purpose of this rule is to specify standards and procedures for special education programs.

R277-750-2. Incorporation of Special Education Rules Manual by Reference.

(1) This rule incorporates by reference the Special Education Rules manual dated August 12, 2016, which establishes policies and procedures for:

(a) appropriate and timely identification of a student with a disability;

(b) evaluation and classification of a student with a disability by qualified personnel;

(c) standards for services provided to a student with a disability;

(d) provision for multi-district programs for a student with a disability;

(e) provision for delivery of service responsibilities;

(f) certification and qualifications for instructional staff; and

(g) the state's implementation of federal special education programs, including IDEA.

(2) A copy of the manual is located at:

(a) <http://www.schools.utah.gov/sars/Laws.aspx>; and

(b) the Utah State Board of Education.

R277-750-3. Standards and Procedures.

[A-](1) ~~[As its rules for programs for students with disabilities,]~~The Board adopts and hereby incorporates by reference the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C., 1400 as the Board's rules for students with disabilities.

[B-](2) The ~~[Board]~~Superintendent and LEAs shall ~~[et]~~provide services to a student with a disability in accordance with:

([1]a) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. 794, incorporated by reference in R277-112;

([2]b) ~~[R277-750]~~this rule;

([3]c) ~~[State Board of Education]~~the Special Education Rules, August 201[3]6, included in the Special Education Rules manual described in R277-750-2; and

([4]d) ~~[F]~~the annual Utah State Federal Application under Part B of the Individuals with Disabilities Education Act as amended in 2004.

~~[C. Students with disabilities shall be entitled to dual enrollment consistent with Section 53A-11-102.5 and R277-438.]~~

KEY: special education

Date of Enactment or Last Substantive Amendment: ~~[October 8, 2013]~~2016

Notice of Continuation: August 14, 2012

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1); Title 53A, Chapter 15, Part 3; ~~[53A-15-301;]~~ 53A-1-401[(3)]

Education, Administration **R277-922** Digital Teaching and Learning Grant Program

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40679

FILED: 08/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to provide standards and procedures for a local education agency (LEA) to receive funding and participate in the Digital Teaching and Learning Grant Program.

SUMMARY OF THE RULE OR CHANGE: This new rule provides standards and procedures for establishing an application and grant review committee and process, and provides direction to LEAs participating in the Digital Teaching and Learning Grant Program.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Title 53A, Chapter 1, Part 15

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Funding is provided for approved LEAs participating in the Digital Teaching and Learning Grant Program, so there is likely no cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Funding is provided for approved LEAs participating in the Digital Teaching and Learning Grant Program, so there is likely no cost or savings to local government.

◆ **SMALL BUSINESSES:** Funding is provided for approved LEAs participating in the Digital Teaching and Learning Grant Program, so there is likely no cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Funding is provided for approved LEAs participating in the Digital Teaching and Learning Grant Program, so there is likely no cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Funding is provided for approved LEAs participating in the Digital Teaching and Learning Grant Program, so there is likely no compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from this new rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2016

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

R277. Education, Administration.**R277-922. Digital Teaching and Learning Grant Program.****R277-922-1. Authority and Purpose.**

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
- (b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
- (c) Title 53A, Chapter 1, Part 15, Digital Teaching and Learning Grant Program, which requires the Board to:
- (i) establish a qualifying grant program; and
- (ii) adopt rules related to administration of the Digital Teaching and Learning Grant Program.
- (2) The purpose of this rule is to:
- (a) establish an application and grant review committee and process;
- (b) give direction to LEAs participating in the Digital Teaching and Learning Program.

R277-922-2. Definitions.

- (1) "Advisory committee" means the Digital Teaching and Learning Advisory Committee:
- (a) established by the Board as required in Section 53A-1-1506; and
- (b) required to perform the duties described in R277-922-5.
- (2) "LEA plan" has the same meaning as that term is defined in Section 53A-1-1502.
- (3) "Master plan" means Utah's Master Plan: Essential Elements for Technology-Powered Learning incorporated by reference in R277-922-3.
- (4) "Program" has the same meaning as that term is defined in Section 53A-1-1502.
- (5) "Participating LEA" means an LEA that:
- (a) has an LEA plan approved by the Board; and
- (b) receives a grant under the program.

R277-922-3. Incorporation of Utah's Master Plan by Reference.

- (1) This rule incorporates by reference Utah's Master Plan: Essential Elements for Technology-Powered Learning, October 9, 2015, which establishes:
- (a) the application process for an LEA to receive a grant under the program; and

(b) a more detailed description of the requirements of an LEA plan.

(2) A copy of the Master Plan is located at:

(a) <http://www.schools.utah.gov/edtech/>; and

(b) the Utah State Board of Education, 250 East 500 South, Salt Lake City, Utah 84111.

R277-922-4. LEA Planning Grants.

(1) An LEA may apply for a planning grant in lieu of preparing an LEA plan and receiving a Digital Teaching and Learning Grant as described in this rule.

(2) A planning grant awarded under Subsection (1) shall be in the amount of \$5,000.

(3) In order to qualify for a planning grant, an LEA shall:

(a) send an LEA representative to a pre-grant submission training conducted by the Superintendent; and

(b) complete the readiness assessment required in Section 53A-1-1405.

(4)(a) If an LEA receives a planning grant, the LEA shall submit an LEA plan as set forth in Section R277-922-8 for the subsequent school year.

(b) An LEA that fails to submit an LEA plan in the subsequent year shall reimburse funds awarded under Subsection (2) to the program.

R277-922-5. Digital Teaching and Learning Advisory Committee Duties.

(1) The advisory committee shall include the following individuals who will serve as non-voting chairs:

(a) the Deputy Superintendent of Instructional Services or designee; and

(b) the Director of the Utah Education and Telehealth Network or designee.

(2) In addition to the chairs described in Subsection (1), the Board shall appoint five members to the advisory committee as follows:

(a) the Digital Teaching and Learning Coordinator;

(b) one member who represents a school district with expertise in digital teaching and learning;

(c) one member who represents a charter school with expertise in digital teaching and learning; and

(d) two members that have earned a national certification in education technology, that may include a certification from the Certified Education Technology Leader from the Consortium for School Networking (CoSN).

(3) The advisory committee shall:

(a) oversee review of an LEA plan to determine whether the LEA plan meets the criteria described in Section R277-922-8;

(b) make a recommendation to the Superintendent and the Board on whether the Board should approve or deny an LEA plan;

(c) make recommendations to an LEA on how the LEA may improve the LEA's plan; and

(d) perform other duties as directed by:

(i) the Board; or

(ii) the Superintendent.

(4) The advisory committee may select additional LEA plan reviewers to assist the advisory committee with the work described in Subsection (3).

(5) The advisory committee, or the Superintendent on behalf of the advisory committee, shall present the advisory committee's recommendations on whether to approve or deny each LEA plan to the Board for the Board's approval.

R277-922-6. Board Approval or Denial of LEA Plans.

(1) The Board will either approve or deny each LEA plan submitted by the advisory committee.

(2) If the Board denies an LEA's plan, the LEA may amend and re-submit the LEA's plan to the advisory committee until the Board approves the LEA plan.

R277-922-7. Pre-LEA Plan Submission Requirements.

(1) Before an LEA submits an LEA plan to the advisory committee for approval by the Board, an LEA shall:

(a) have an LEA representative participate in a pre-grant submission training conducted by the Superintendent;

(b) require the following individuals to participate in a leadership and change management training conducted by the Superintendent:

(i) a representative group of school leadership from schools participating in the program;

(ii) the school district superintendent or charter school executive director;

(iii) the LEA's technology director; and

(iv) the LEA's curriculum director; and

(c) complete the readiness assessment required in Section 53A-1-1505.

(2) A member of an LEA's local school board or charter school governing board and other staff identified by the LEA may participate in:

(a) a pre-grant submission training conducted by the Superintendent as described in Subsection (1)(a); or

(b) a leadership and change management training conducted by the Superintendent as described in Subsections (1)(b).

R277-922-8. LEA Plan Requirements.

(1) An LEA shall develop an LEA plan in cooperation with educators, paraeducators, and parents.

(2) An LEA plan shall include:

(a) an LEA's results on the readiness assessment required in Section 53A-1-1504;

(b) a statement of purpose that describes the learning objectives, goals, measurable outcomes, and metrics of success an LEA will accomplish by implementing the program, including the following outcomes:

(i) a 5% increase on each school's performance on SAGE using a baseline of the school's 2015-16 SAGE proficiency scores by the end of the third year of the LEA's implementation of the program; or

(ii) a school level outcome:

(A) selected by the LEA;

(B) included in the LEA's plan; and

(C) approved by the advisory committee;

(c) long-term, intermediate, and direct outcomes as defined in the Master Plan and identified by an LEA that may include:

(i) student achievement on statewide assessments;

(ii) cost savings and improved efficiency relating to instructional materials, facilities, and maintenance;
(iii) attendance;
(iv) discipline incidents;
(v) parental involvement;
(vi) citizen involvement;
(vii) graduation rates;
(viii) student enrollment in higher education;
(ix) dropout rates;
(x) student technology proficiency for college and career readiness;
(xi) teacher satisfaction and engagement; or
(xii) other school level outcomes approved by the advisory committee or the Board;
(d) an implementation process structured to yield an LEA's school level outcomes:
(e) a plan for infrastructure acquisition;
(f) a process for procurement and distribution of the goods and services an LEA intends to use as part of an LEA's implementation of the program;
(g) a description of necessary high quality digital instructional materials;
(h) a detailed plan for student engagement in personalized learning:
(i) technical support standards for implementation and maintenance of the program that:
(i) include support for hardware and Internet access; and
(ii) remove technical support burdens from the classroom teacher;
(j) proposed security policies, including security audits, student data privacy, and remediation of identified lapses;
(k) an inventory of an LEA's current technology resources, including software, and a description of how an LEA will integrate those resources into the LEA's implementation of the program;
(l) a disclosure by an LEA of the LEA's current technology expenditures;
(m) the LEA's overall financial plan, including use of additional LEA non-grant funds, to be utilized to adequately fund the LEA plan;
(n) a description of how an LEA will:
(i) provide high quality professional learning for educators, administrators, and support staff participating in the program, including ongoing periodic coaching; and
(ii) provide special education students with appropriate software;
(o) a plan for digital citizenship curricula and implementation;
(p) a plan for how an LEA will ensure that schools use software programs with fidelity in accordance with:
(i) the recommended usage requirements of the software provider; and
(ii) the best practices recommended by the software or hardware provider; and
(q) a plan for how an LEA will monitor student and teacher usage of the program technology.
(2)(a) An LEA shall include the LEA's proposed implementation of the program over multiple years in the LEA plan.

(b) An LEA must demonstrate the financial ability to fully fund the LEA plan using both grant and non-grant funds.

(3) An LEA's approved LEA plan is valid for three years, and may be required to be reapproved by the advisory committee and the Board after three years of implementation.

(4) An LEA is not required to implement the program in kindergarten through grade 4.

R277-922-9. Distribution of Grant Money to Participating LEAs.

(1) If an LEA's plan is approved by the Board, the Superintendent shall distribute grant money to the participating LEA as described in this section.

(2)(a) The amount available to distribute to participating charter schools is an amount equal to the product of:

(i) October 1 headcount in the prior year at charter schools statewide, divided by October 1 headcount in the prior year in public schools statewide; and

(ii) the total amount available for distribution under the program.

(b) The Superintendent shall distribute to participating charter schools the amount available for distribution to participating charter schools in proportion to each participating charter school's enrollment as a percentage of the total enrollment in participating charter schools in the prior year.

(c) A new LEA or new charter school satellite campus shall be funded based on the new LEA or new charter school satellite campus's projected October 1 headcount.

(3) The Superintendent shall distribute grant money to the Utah Schools for the Deaf and the Blind in an amount equal to the product of:

(a) October 1 headcount in the prior year at the Utah Schools for the Deaf and the Blind, divided by October 1 headcount in the prior year in public schools statewide; and

(b) the total amount available for distribution under this section.

(4) Of the funds available for distribution under the program after the allocation of funds for the Utah Schools for the Deaf and the Blind and participating charter schools, the Superintendent shall distribute grant money to participating LEAs that are school districts as follows:

(a) the Superintendent shall distribute 10 percent of the total funding available for participating LEAs that are school districts to the participating LEAs as a base amount on an equal basis; and

(b) the Superintendent shall distribute the remaining 90% of the funds to the participating LEAs on a per-student basis, based on the October 1 headcount in the prior year.

(5)(a) If an LEA's plan is not approved during year one of the program, the advisory committee and the Digital Teaching and Learning Coordinator shall provide additional supports to help the LEA become a qualifying LEA.

(b) The Superintendent shall redistribute the funds an LEA would have been eligible to receive, in accordance with the distribution formulas described in this section, to other qualifying LEAs if the LEA's plan is not approved:

(i) after additional support described in Subsection (5)(a) is given; and

(ii) by no later than December 31 of the school year for which the grant is being awarded.

(6) A non-qualifying LEA may reapply for grant money in subsequent years based on the LEA's plan being approved by the Board.

R277-922-10. Prohibited Uses of Grant Money.

A participating LEA may not use grant money:

- (1) to fund nontechnology programs;
- (2) to purchase mobile telephones;
- (3) to fund voice or data plans for mobile telephones; or
- (4) to pay indirect costs charged by the LEA.

R277-922-11. Participating LEA Reporting Requirements.

Beginning with the school year after a participating LEA's first year implementation of an LEA plan, a participating LEA shall annually:

(1) review how the participating LEA:

(a) redirected funds through the participating LEA's implementation of the LEA plan; and

(b) made progress toward implementation; and

(2) on or before October 1, report the potential savings identified in Subsection (1) to the Superintendent.

R277-922-12. Evaluation of LEA Program Implementation.

(1) An evaluation conducted by the independent evaluator described in Section 53A-1-1507 shall include a review of:

(a) a participating LEA's implementation of the program in accordance with the participating LEA's LEA plan;

(b) a participating LEA's progress toward meeting the school level outcomes in the participating LEA's LEA plan.

(2) After an evaluation described in Subsection (1), if the Superintendent determines that a participating LEA is not meeting the requirements of the participating LEA's LEA plan the Superintendent:

(a) shall:

(i) provide assistance to the participating LEA; and

(ii) recommend changes to the LEA's LEA plan; or

(b) after at least two findings of failure to meet the requirements of the participating LEA's LEA plan, may recommend that the Board terminate the participating LEA's grant money.

KEY: digital teaching and learning, grant programs

Date of Enactment of Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401; Title 53A, Chapter 1, Part 15

Education, Administration
R277-924
 Partnerships for Student Success
 Grant Program

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40680

FILED: 08/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new Rule R277-924 is in response to S.B. 67, Partnerships for Student Success, from the 2016 General Session, which requires the Utah State Board of Education (Board) to make rules to administer the Partnerships for Student Success Grant Program.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-924 provide definitions, procedures, and criteria for applying to participate in the grant program, and for awarding a grant.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-4-307

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Funding is provided by the 2016 Legislature, so there is likely no cost or savings to the state budget resulting from this new rule.

◆ **LOCAL GOVERNMENTS:** Funding is provided by the 2016 Legislature, so there is likely no cost or savings to local government resulting from this new rule.

◆ **SMALL BUSINESSES:** Funding is provided by the 2016 Legislature, so there is likely no cost or savings to small businesses resulting from this new rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Funding is provided by the 2016 Legislature, so there is likely no cost or savings to persons other than small businesses, businesses, or local government entities resulting from this new rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Partnerships will need to apply and be determined eligible to participate and receive grant money, so there is likely no compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from this new rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2016

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

R277. Education, Administration.**R277-924. Partnerships for Student Success Grant Program.****R277-924-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and

(b) Section 53A-4-307, which requires the Board to make rules to administer the Partnerships for Student Success Grant Program; and

(c) Subsection 53A-1-401(3), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to provide:

(a) criteria for evaluating grant applications; and

(b) procedures for:

(i) an eligible partnership to apply to the Board to receive grant money; and

(ii) the evaluation of an eligible partnership's use of grant money.

R277-924-2. Definitions.

(1) "Eligible partnership" means the same as that term is defined in Section 53A-4-302.

(2) "Eligible school feeder pattern" means the same as that term is defined in Section 53A-4-302.

(3) "Grant program" means the Partnerships for Student Success Grant Program established in Section 53A-4-303.

(4) "Lead applicant" means an LEA or local nonprofit organization designated by an eligible partnership to act as the lead applicant for a grant described in Title 53A, Chapter 4, Part 3, Partnerships for Student Success Grant Program and this Rule.

R277-924-3. Grant Application.

(1) The Superintendent shall:

(a) develop a grant application that allows an eligible partnership, through the lead applicant, to apply to participate in the grant program; and

(b) make the grant application available on the Board's website.

(2) An eligible partnership may apply for a grant described in Section 53A-4-303 by submitting an application to the Superintendent:

(a) on or before September 1, 2016; or

(b) on or before the date published on the Board's website.

(3)(a) An eligible partnership or lead applicant may notify the Superintendent of the eligible partnership's intention to apply for a grant at any time.

(b) If an eligible partnership intends to be considered for a grant for the upcoming school year, the eligible partnership shall submit a letter of intent by the deadline established by the Superintendent and published on the Board's website.

(4) For each year the Superintendent is authorized to solicit grant applications, the Superintendent shall publish a timeline on the Board's website by March 1, including a date for the application release, and due dates for the LEA to submit required materials.

(5) The Superintendent shall evaluate each application using the criteria described in Section R277-924-4 to determine if the applying partnership is an eligible partnership.

(6) The Superintendent shall notify the lead applicant of successful receipt of a grant by July 1.

R277-924-4. Procedure and Criteria for Awarding a Grant.

(1) The Superintendent shall award grants to eligible partnerships based on the amount of funding available for the grant program.

(2) The Superintendent shall award the grant described in Subsection (1) to an eligible partnership based on the following criteria:

(a) the percentage of students who live in families with an income at or below 185% of the federal poverty level enrolled in schools within the eligible school feeder pattern;

(b) the comprehensive needs assessment of the eligible partnership, including the shared goals, outcomes and measurement practices based on the unique community needs and interests;

(c) the proposed program services to be implemented based on the comprehensive needs assessment described in Subsection (2)(b), including how the eligible partnership's plan aligns with:

(i) the five- and ten-year plan to address intergenerational poverty described in Section 35A-9-303; and

(ii) if the eligible partnership has a low performing school within the eligible partnership's school feeder pattern, the school turnaround plans of the low performing schools;

(d) how the eligible partnership will:

(i) improve educational outcomes for low income students through the formation of cross-sector partnerships; and

(ii) improve efforts focused on student success;

(e) the outcome-based measures selected by the eligible partnership, including the eligible partnership's plan to:

(i) objectively assess the success of the eligible partnership's program design plan; and

(ii) make changes to the eligible partnership's plan based on the assessment described in Subsection (2)(e)(i);

(f) the strength of the eligible partnership's commitment to:

(i) the establishment and maintenance of data systems that inform program decisions;

(ii) sharing of information and collaboration with third party evaluators; and

(iii) meeting annual reporting requirements;

- (g) the eligible partnership's budget, including:
- (i) identifying the estimated cost per student for the program;
- (ii) an explanation for each proposed expenditure and how each expenditure aligns with the eligible partnership's proposed program; and
- (iii) providing matching funds as required in Section 53A-4-304.
- (3) Additional points will be awarded to an eligible partnership that:
- (a) includes a low performing school as defined in Section 53A-1-1202; or
- (b) includes community and parent engagement as a part of the eligible partnership's plan.
- (4) The Superintendent shall administer and oversee the evaluation of the program as provided in Section 53A-4-306.

KEY: Partnerships for Student Success, grant program, community, non-profit organizations
Date of Enactment of Last Substantive Amendment: 2016
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-4-307; 53A-1-401(3)

Environmental Quality, Drinking Water **R309-540** Facility Design and Operation: Pump Stations

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
 DAR FILE NO.: 40661
 FILED: 08/12/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division of Drinking Water was directed by the Drinking Water Board to review the R309-500 series of rules and propose changes to clarify, correct, and update the rules. The Division has reviewed Rule R309-540, and proposes to update terms, delete unnecessary or inaccurate requirements, add needed requirements, and reorganize the rule.

SUMMARY OF THE RULE OR CHANGE: Rule R309-540 will be repealed and a substantially reorganized rule with a new title, Facility Design and Operation: Pumping Facilities, will be reenacted in its place. Revisions to the current rule include deleting requirements that are unnecessary or without a logical or practical basis, revising requirements that are unnecessarily specific or overly broad to be useful in the design of pumping facilities, rewording unclear requirements, updating terms, and reorganizing the rule. Most of the current rule requirements are included in the proposed rule but many are reworded and organized differently. The proposed rule to be reenacted in place of the current rule is

organized according to the following plan with the following changes: Section R309-540-1 has minor changes to reflect the proposed new title of the rule but is substantially the same as the current rule. Section R309-540-2 is unchanged. Section R309-540-3 is unchanged. Section R309-540-4 is revised and greatly expanded to gather together in one place all requirements that generally apply to pumping facilities (pumps, pump stations, and hydropneumatic systems). Section R309-540-5 is revised to group together all requirements that apply specifically to pumps. Section R309-540-6 has a revised title and includes requirements that apply specifically to water distribution system booster pumps. Section R309-540-7 is revised to include requirements that apply to pump station structures (buildings, wet wells, stairways/ladders, heating/lighting, ventilation, and remote stations). Section R309-540-8 revises and reorganizes requirements that apply to pressure tank systems.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-4-104(1)(a)(ii)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The proposed amendment should entail no costs or savings to the state budget. It should not require additional resources to manage the drinking water program nor should it result in a reduction of resources needed.
- ◆ **LOCAL GOVERNMENTS:** The proposed amendment should entail no costs or savings. It places no substantial new requirements on local governments nor relieves them of any existing requirements related to public water systems.
- ◆ **SMALL BUSINESSES:** The proposed amendment should entail no costs or savings to small businesses. It places no new requirements on small businesses nor relieves them of any existing requirements related to public water systems.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendment should entail no costs or savings to persons other than small businesses, businesses, or local government entities. It places no new requirements on persons other than small businesses, businesses, or local governments nor relieves them of any existing requirements related to public water systems.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Persons affected by the proposed amendment to Rule R309-540 would be owners and operators of Public Water Systems. The proposed amendment imposes no new compliance costs on these affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendment is expected to have no fiscal impact on businesses. The rule itself only applies to public water systems and would, therefore, only affect businesses as customers or operators of public water systems. Since the proposed amendment imposes no new costs upon public water systems, there are no new fiscal impacts associated with the amendment.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Bernie Clark by phone at 801-536-0092, or by Internet E-mail at bernieclark@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2016

AUTHORIZED BY: Ken Bousfield, Director

R309. Environmental Quality, Drinking Water.
[R309-540. Facility Design and Operation: Pump Stations.
R309-540-1. Purpose.

The purpose of this rule is to provide specific requirements for pump stations utilized to deliver drinking water to facilities of public water systems. It is intended to be applied in conjunction with rules R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-540-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with 63G-3 of the same, known as the Administrative Rulemaking Act.

R309-540-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-540-4. General.

Pumping stations shall be designed to maintain the sanitary quality of water and to provide ample quantities of water at sufficient pressure.

R309-540-5. Pumping Facilities.

- (1) Location:
 - (a) The pumping station shall be designed such that:
 - (i) the proposed site will meet the requirements for sanitary protection of water quality, hydraulics of the system, and protection against interruption of service by fire, flood or any other hazard;
 - (ii) the access to the pump station shall be six inches above the surrounding ground and the station located at an elevation which is

- a minimum of three feet above the 100-year flood elevation, or three feet above the highest recorded flood elevation, which ever is higher, or protected to such elevations;
- (iii) the station is readily accessible at all times unless permitted to be out of service for the period of inaccessibility;
- (iv) surrounding ground is graded so as to lead surface drainage away from the station; and
- (v) the station is protected to prevent vandalism and entrance by animals or unauthorized persons.
- (2) Pumping Stations:
 - (a) Building structures for both raw and drinking water shall:
 - (i) have adequate space for the installation of additional pumping units if needed, and for the safe servicing of all equipment;
 - (ii) be of durable construction, fire and weather resistant, with outward opening doors;
 - (iii) have an interior floor elevation at least six inches above the exterior finished grade;
 - (iv) have any underground facilities, especially wet wells, waterproofed;
 - (v) have all interior floors drained in such a manner that the quality of drinking water contained in any wet wells will not be endangered. All floors shall slope at least one percent (one foot every 100 feet) to a suitable drain; and
 - (vi) provide a suitable outlet for drainage from pump glands without discharging onto the floor.
 - (b) Suction wells shall:
 - (i) be watertight;
 - (ii) have floors sloped to permit removal of water and entrained solids;
 - (iii) be covered or otherwise protected against contamination; and
 - (iv) have two pumping compartments or other means to allow the suction well to be taken out of service for inspection, maintenance, or repair.
 - (c) Servicing equipment shall consist of:
 - (i) crane ways, hoist beams, eyebolts, or other adequate facilities for servicing or removal of pumps, motors or other heavy equipment;
 - (ii) openings in floors, roofs or wherever else needed for removal of heavy or bulky equipment; and
 - (iii) a convenient tool board, or other facilities as needed, for proper maintenance of the equipment.
 - (d) Stairways and ladders shall:
 - (i) be provided between all floors, and in pits or compartments which must be entered; and
 - (ii) have handrails on both sides, and treads of non-slip material. They shall have risers not exceeding nine inches and treads wide enough for safety.
 - (e) Heating provisions shall be adequate for:
 - (i) the comfort of the operator; and
 - (ii) the safe and efficient operation of the equipment.
 - (f) Ventilation shall:
 - (i) conform to existing local and/or state codes; and
 - (ii) forced ventilation of at least six changes of air per hour shall be provided for all rooms, compartments, pits and other enclosures below ground floor, and any area where unsafe atmosphere may develop or where excessive heat may be built up.
 - (g) Lighting:

~~_____ Pump stations shall be adequately lighted throughout. All electrical work shall conform to the requirements of the relevant state and/or local building codes.~~

~~_____ (h) Sanitary and other conveniences.~~

~~_____ Plumbing shall be so installed as to prevent contamination of a public water supply. Wastes shall be discharged in accordance with the plumbing code, R317-4, or R317-1-3.~~

~~_____ (3) Pumps:~~

~~_____ (a) Capacity:~~

~~_____ Capacity shall be provided such that the pump or pumps shall be capable of providing the peak day demand of the system or the specific portion of the system serviced.~~

~~_____ The pumping units shall:~~

~~_____ (i) have ample capacity to supply the peak day demand against the required distribution system pressure without dangerous overloading;~~

~~_____ (ii) be driven by prime movers able to meet the maximum horsepower condition of the pumps without use of service factors;~~

~~_____ (iii) be provided readily available spare parts and tools; and~~

~~_____ (iv) be served by control equipment that has proper heater and overload protection for air temperature encountered.~~

~~_____ (b) Suction Lift:~~

~~_____ Suction lift, where possible, shall be avoided. If suction lift is necessary, the required lift shall be within the pump manufacturer's recommended limits and provision shall be made for priming the pumps.~~

~~_____ (c) Priming:~~

~~_____ Prime water shall not be of lesser sanitary quality than that of the water being pumped. Means shall be provided to prevent back siphonage. When an air-operated ejector is used, the screened intake shall draw clean air from a point at least 10 feet above the ground or other source.~~

~~_____ (4) Booster Pumps:~~

~~_____ (a) Booster pumps shall be located or controlled so that:~~

~~_____ (i) they will not produce negative pressure in their suction lines;~~

~~_____ (ii) automatic cutoff pressure shall be at least 10 psi in the suction line;~~

~~_____ (iii) automatic or remote control devices shall have a range between the start and cutoff pressure which will prevent excessive cycling; and~~

~~_____ (iv) a bypass is available.~~

~~_____ (b) Inline booster pumps (pumps withdrawing water directly from distribution lines without the benefit of storage and feeding such water directly into other distribution lines rather than storage), in addition to the other requirements of this section, shall have at least two pumping units (such that with any one pump out of service, the remaining pump or pumps shall be capable of providing the peak day demand of the specific portion of the system serviced); shall be accessible for servicing and repair and located or controlled so that the intake pressure shall be at least 20 psi when the pump or pumps are in normal operation.~~

~~_____ (c) Individual home booster pumps shall not be allowed for any individual service from the public water supply main.~~

~~_____ (5) Automatic and remote controlled stations:~~

~~_____ All remote controlled stations shall be electrically operated and controlled and shall have signaling apparatus of proven performance. Installation of electrical equipment shall conform with~~

~~the applicable state and local electrical codes and the National Electrical Code.~~

~~_____ (6) Appurtenances:~~

~~_____ (a) Valves:~~

~~_____ Valves shall be used to permit satisfactory operation, maintenance, and repair of the equipment. If foot valves are necessary, they shall have a net valve area of at least 2 1/2 times the area of the suction pipe and they shall have a positive-acting check valve on the discharge side between the pump and the shut-off valve.~~

~~_____ (b) Piping:~~

~~_____ Piping within and near pumping stations shall:~~

~~_____ (i) be designed so that the friction losses will be minimized;~~

~~_____ (ii) not be subject to contamination;~~

~~_____ (iii) have watertight joints;~~

~~_____ (iv) be protected against surge or water hammer; and~~

~~_____ (v) be such that each pump has an individual suction line or that the lines shall be so manifolded that they will insure similar hydraulic and operating conditions.~~

~~_____ (c) Gauges and Meters:~~

~~_____ Each pump shall:~~

~~_____ (i) have a standard pressure gauge on its discharge line;~~

~~_____ (ii) have a compound gauge (capable of indicating negative pressure or vacuum as well as positive pressure) on its suction line; and~~

~~_____ (iii) have recording gauges in the larger stations.~~

~~_____ (d) Water Seal:~~

~~_____ Where pumps utilize water seals, the seals shall:~~

~~_____ (i) not be supplied with water of a lesser sanitary quality than that of the water being pumped; and~~

~~_____ (ii) when pumps are sealed with potable water and are pumping water of lesser sanitary quality, the seal shall be provided with a break tank open to atmospheric pressure, and have an air gap of at least six inches or two pipe diameters, whichever is greater, between the feeder line and the spill line of the tank.~~

~~_____ (e) Controls:~~

~~_____ Controls shall be designed in such a manner that they will operate their prime movers, and accessories, at the rated capacity without dangerous overload. Where two or more pumps are installed, provision shall be made for alternation. Provision shall be made to prevent energizing the motor in the event of a backspin cycle. Electrical controls shall be protected against flooding. Equipment shall be provided or other arrangements made to prevent surge pressures from activating controls which switch on pumps or activate other equipment outside the normal design cycle of operation.~~

~~_____ (f) Standby Power:~~

~~_____ Standby power, to ensure continuous service when the primary power has been interrupted, shall be provided from at least two independent sources or a standby or an auxiliary source shall be provided. If standby power is provided by onsite generators or engines, the fuel storage and fuel line must be designed to protect the water supply from contamination.~~

~~_____ (g) Water Pre-Lubrication:~~

~~_____ When automatic pre-lubrication of pump bearings is necessary and an auxiliary direct drive power supply is provided, the pre-lubrication line shall be provided with a valved bypass around the automatic control so that the bearings can, if necessary, be lubricated manually before the pump is started or the pre-lubrication controls shall be wired to the auxiliary power supply.~~

R309-540-6. Hydropneumatic Systems.**(1) General.**

Hydropneumatic systems shall comply with all appropriate sections of R309-540-5 except as otherwise indicated herein.

Unpressurized ground level or elevated storage, designed in accordance with R309-545, shall be provided for community type public water systems or non-transient non-community systems where a demand in excess of the capacity of the source(s) is required, in addition to the diaphragm or air tanks. Diaphragm or air pressure tank storage shall not be considered for fire protection purposes or effective system storage for community type systems.

(2) Location.

If diaphragm or air tanks and appurtenances are located below ground, adequate provisions for drainage, ventilation, maintenance, and flood protection shall be made and the electrical controls shall be located above grade so as to be protected from flooding as required by R309-540-5(6)(e). Any discharge piping from combination air release/vacuum relief valves (air/vac's) or pressure relief valves located in below ground chambers shall comply with all the pertinent requirements of R309-550-6(6).

(3) Operating Pressures.

The system shall be designed to provide minimum pressures in R309-105-9 at all points in the distribution system. A pressure gauge shall be installed on the pressure tank inlet line.

(4) Piping.

In addition to the bypass required by R309-540-5(4)(iv) on the pumps, the diaphragm or air tanks shall have sufficient bypass piping to permit operation of the hydropneumatic system while one or more of the tanks are being repaired, replaced or painted.

(5) Pumps.

At least two pumping units shall be provided except for those type systems not requiring unpressurized storage in R309-540-6(1); they may use the pump within their groundwater source to pressurize the diaphragm or air tanks. With any pump out of service the remaining pump or pumps shall be capable of providing the peak instantaneous demand of the system as described in R309-510-9(2); while recharging the pressure tank at 115 percent of the upper pressure setting. Pump cycling shall not exceed 15 starts per hour, with a maximum of ten starts per hour preferred.

(6) Pressure Tanks.

(a) Pressure tanks shall meet the requirement of state and local laws and regulations for the manufacture and installation of unfired pressure vessels. Interior coatings or diaphragms used in pressure tanks that will come into contact with the drinking water shall comply with ANSI/NSF Standard 61. Non diaphragm pressure tanks shall have an access manhole, a drain, control equipment consisting of pressure gauge, water sight glass, automatic or manual air blow-off, means for adding air, and pressure operated start-stop controls for the pumps.

(b) The minimum volume of the pressure tank or combination of tanks shall be greater than or equal to the sum of S and the value of CX divided by 4W:

where the following values are used in the equation above:

C = minutes per operating cycle, four minutes to meet the requirements of R309-540-6(5) above or preferably six minutes, and is equal to pump ON time plus pump OFF time.

X = output capacity rating of the pump(s) at the high pressure condition in the tank(s), in gpm.

W = percent of volume withdrawn during a given drop in tank pressure: specifically, between P_h and P_l , $W = 100(P_h - P_l)/P_h$, where P_h = high pressure in tank in psia (high absolute pressure) and P_l = low pressure in tank in psia (low absolute pressure). Values of W range typically from 0.26 to 0.31 for pressure differentials of 15 to 30 psi and high system pressures of 45 to 85 psi at elevations of approximately 5,000 feet.

S = water seal volume in gallons, the volume of inactive water remaining in tank at low pressure condition.

(7) Air Volume.

The method of adjusting the air volume shall be acceptable to the Director. Air delivered by compressors to the pressure tank shall be adequately filtered, oil free, and be of adequate volume. Any intake shall be screened and draw clean air from a point at least 10 feet above the ground or other source of possible contamination, unless the air is filtered by an apparatus approved by the Director. Discharge piping from air relief valves shall be designed and installed with screens to eliminate the possibility of contamination from this source.

(8) Water Seal.

For air pressure tanks without an internal diaphragm the volume of water remaining in a air pressure tank at the lower pressure setting shall be sufficient to provide an adequate water seal at the outlet to prevent the leakage of air.

The following water seal depths shall be considered as minimum requirements:

(a) Horizontal outlets shall maintain sufficient depth, as measured from the centerline of the horizontal outlet pipe, such that the depth is greater than or equal to the sum of d and twice the value v^2 divided by 2G:

(b) Vertical outlets, if unbaffled, the depth shall be the same as in (a) except measured from the pipe outlet; if baffled, the depth shall be greater than or equal to the value v^2 divided by 2G:

where the following values are used in the equations above:

v = the axial velocity in the pipe outlet for the peak instantaneous demand flow rate of the system.

d = the diameter of the outlet pipe in ft.

G = the gravitational constant of 32.2 ft/sec².

(9) Standby Power Supply.

Where a hydropneumatic system is intended to serve a public water system, categorized as a community water system as defined in R309-110, a standby source of power shall be provided.]

R309-540. Facility Design and Operation: Pumping Facilities.**R309-540-1. Purpose.**

The purpose of this rule is to provide specific requirements for the design and operation of drinking water pumping facilities. It is intended to be applied in conjunction with rules R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-540-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4,

Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with 63G-3 of the same, known as the Administrative Rulemaking Act.

R309-540-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified in this rule.

R309-540-4. General.

The following requirements apply to all pumping facilities including pumps, pump stations, and hydropneumatic systems. Pumping facilities shall be adequately sized and be designed to maintain the quality of the water and to meet minimum pressure requirements.

(1) Location and Accessibility.

(a) A pumping facility shall be designed and operated to meet the following requirements:

(i) The facility may not be located at a site that negatively affects drinking water quality.

(ii) The site shall be compatible with the hydraulics of the water system.

(iii) The site shall be graded to direct surface runoff away from the facility.

(iv) The facility shall be accessible at all times unless the facility can be taken out of service during periods of inaccessibility.

(v) The facility shall be protected from vandalism and unauthorized entry.

(2) Appurtenances.

(a) Valves.

Valves for pumping facilities shall be designed and operated to meet the following requirements.

(i) Isolation valves shall be included for operation, maintenance, and repair of the pumping equipment.

(ii) Foot valves in wet wells shall have a net valve area of at least 2 1/2 times the area of the suction pipe and there shall be a positive-acting check valve on the discharge side between the pump and the shut-off valve.

(iii) The open end of a vent on an air relief valve shall be downturned and covered with a #14 mesh non-corrodible screen. The end of a vent shall terminate in the following location:

(A) At least six inches above the floor, if the valve is located in a building

(B) At least 12 inches above the top of the water line, if the valve is located in a below grade chamber that is not subject to flooding

(C) At least 12 inches above grade, if the valve is located in a below grade chamber that is subject to flooding

(b) Piping.

Piping for pumping facilities shall be designed to meet the following requirements:

(i) Friction losses shall be minimized.

(ii) Piping shall not be subject to contamination.

(iii) Watertight joints shall be provided.

(iv) Protection against surge or water hammer shall be provided along with suitable restraints if necessary.

(c) Controls.

Controls for pumping facilities shall be designed and operated to meet the following requirements:

(i) The pump and accessories shall operate at the rated capacity.

(ii) Where two or more pumps are installed, provisions shall be made for alternation of the pumps.

(iii) Provisions shall be made to prevent energizing the pump motor in the event of a backspin cycle.

(iv) Electrical controls shall be protected against flooding.

(v) Provisions shall be made to prevent surge pressures from activating controls that switch on pumps or activate other equipment outside the normal design cycle of operation.

(vi) Pump control equipment shall have proper overload protection for the air temperature encountered.

(d) Standby Power.

A community water system that relies solely on a pump to supply water to the distribution system shall provide a redundant power supply. A redundant power supply may include a transfer switch for auxiliary power such as a generator or a power supply service with coverage from two independent substations.

(e) Water Pre-Lubrication.

If automatic pre-lubrication of pump bearings is needed and an auxiliary direct drive power supply is provided, the pre-lubrication line shall be provided with a valved bypass around the automatic control so that the bearings can, if necessary, be lubricated manually before the pump is started or the pre-lubrication controls shall be wired to the auxiliary power supply.

(f) Gauges.

Each pump station shall be designed to include the following gauges:

(i) The discharge line shall have a standard pressure gauge or an alternative means of measuring pressure on the discharge line.

(ii) The suction line shall have a compound gauge (capable of indicating negative pressure or vacuum as well as positive pressure) or an alternative means of measuring pressure.

R309-540-5. Pumps.

(a) Capacity.

Pumping facility shall be sized to meet the peak day demand of the specific portion of the distribution system served, or it shall meet the operating conditions if not serving the distribution system.

(b) Pump Motor.

Pump motors shall meet the following requirements:

(i) The pump motor shall be sized to meet the operating conditions without dangerous overloading.

(ii) The pump shall be driven by prime movers able to meet the maximum horsepower condition of the pumps without use of service factors.

(c) Suction Lift.

Suction lift, where possible, should be avoided. If suction lift is necessary, it shall be within the pump manufacturer's recommended limits and provisions shall be made for priming the pumps.

(d) Priming.

Where pumps require priming, the following requirements shall be met:

(i) Priming water shall not be of lesser sanitary quality than that of the water being pumped.

(ii) A means shall be provided to prevent back siphonage.

(iii) When an air-operated ejector is used for vacuum priming, the screened intake shall draw clean air from a point at least 10 feet above the ground or other source of possible contamination.

(e) Water Seal.

Where pumps use water seals, the seals shall meet the following requirements:

(i) They may not be supplied with water of a lesser sanitary quality than that of the water being pumped.

(ii) When pumps are sealed with potable water and are pumping water of lesser sanitary quality, the water for the seal shall be provided with a break tank open to atmospheric pressure, and have an air gap of at least six inches or two pipe diameters, whichever is greater, between the feeder line and the spill line of the tank.

R309-540-6. Booster Pumps Serving the Distribution System.

(a) Booster pumps shall be designed and operated to meet the following requirements:

(i) Negative pressure may not be produced in suction lines.

(ii) The automatic cutoff pressure shall be at least 10 psi in the suction line.

(iii) Automatic or remote control devices shall have a range between the start and cutoff pressure that will prevent excessive cycling.

(iv) A bypass shall be available.

(b) Inline booster pumps (pumps withdrawing water directly from distribution lines without the benefit of storage and feeding such water directly into other distribution lines rather than storage) shall be designed and operated to meet the following requirements:

(i) At least two pumping units shall be provided with each pump capable of meeting the peak day demand of the specific portion of the system served.

(ii) The pumps shall be accessible for servicing and repair.

(iii) The intake pressure shall be at least 20 psi when the pump or pumps are in normal operation.

(c) A public water system may not rely on individual service connection booster pumps to meet minimum pressure requirements.

R309-540-7. Pump Stations.

(a) If a building structure is provided for pumping facilities it shall be designed to meet the following requirements:

(i) Adequate space shall be provided for the safe servicing of all equipment and, if needed, the installation of additional pumps.

(ii) The building shall be durable.

(iii) Access to the pump station shall be six inches above the surrounding ground and the station located at an elevation which is a minimum of three feet above the 100-year flood elevation, or three feet above the highest recorded flood elevation, whichever is higher, or protected to such elevations.

(iv) Underground facilities shall be waterproof.

(v) Interior floors shall be drained in such a manner that the quality of drinking water contained in a wet well will not be endangered.

(vi) A means shall be provided for handling drainage from pump glands.

(b) Wet wells shall be designed to meet the following requirements:

(i) Construction shall be watertight.

(ii) Floors shall be sloped to permit removal of water and sediment.

(iii) Openings shall be covered and protected against contamination.

(c) Provisions shall be made for servicing or removal of heavy or bulky equipment.

(d) Stairways and ladders shall be designed to meet the following requirements:

(i) Safe access shall be provided between all floors and in pits or compartments that must be entered.

(ii) Added features shall provide for the safety of the operator, for example, by providing handrails on stairways and non-slip treads on steps.

(e) Adequate heating and lighting shall be provided for the safety and comfort of the operator and the safe and efficient operation of the equipment.

(f) Ventilation shall meet the following requirements:

(i) Forced ventilation of at least six changes of air per hour shall be provided for rooms, compartments, pits and other enclosures below ground floor and for any area where unsafe conditions may develop.

(ii) Existing local and state codes shall be followed.

(g) Automatic and remote-controlled stations shall meet the following requirements:

(i) Remote-controlled stations shall have signaling apparatus of proven performance.

(ii) Installation of electrical equipment shall conform with the applicable state and local electrical codes and the National Electrical Code.

R309-540-8. Hydropneumatic Systems.

(1) General.

(a) Pressure tanks shall comply with ANSI/NSF Standard 61.

(b) Community water systems shall not use hydropneumatic tanks to meet the water storage sizing requirements in R309-510-8.

(2) Location.

(a) A hydropneumatic pressure tank shall be located above ground if possible.

(b) If pressure tanks and appurtenances are located below ground, adequate provisions for drainage, ventilation, access, maintenance, and flood protection shall be provided, and the electrical controls shall be located above grade so as to be protected from flooding.

(3) Operating Pressures.

A means of monitoring the operating pressures of a hydropneumatic tank shall be provided.

(4) Bypass Piping.

The hydropneumatic system design shall include bypass piping and isolation valves to allow one or more of the pressure.

tanks to be serviced without affecting the availability of the remaining units.

(5) Redundancy.

(a) When used to maintain minimum pressures within the distribution system, a community water system shall have a means of providing redundancy to allow the tanks to be taken off line or serviced.

(b) At least two units shall be provided for community water systems if the hydropneumatic system is the only means to maintain minimum pressures in the distribution system.

(6) Sizing.

The minimum volume of a hydropneumatic tank shall be sized to avoid excessive pump cycling.

(7) Air-Over-Water Pressure Tanks.

(a) General.

Large air-over-water pressure tanks shall have an access manhole, a drain, a pressure gauge, a water sight glass, an automatic or manual air blow-off, a means for adding air, and pressure operated start-stop controls for the pumps.

(b) Air Supply for Pressure Tanks.

(i) Air delivered by a compressor to the pressure tank shall be adequately filtered, oil free, and be of adequate flow rate.

(ii) An air intake shall be screened and draw clean air from a point above the ground and free of possible contamination.

(iii) Discharge piping from air relief valves shall be screened and designed to eliminate the possibility of contamination.

(c) Water Seal.

(i) For air pressure tanks without an internal diaphragm the volume of water remaining in an air pressure tank at the lower pressure setting shall be sufficient to provide an adequate water seal at the outlet to prevent the leakage of air.

(d) Water Seal Depth.

The minimum water seal depths shall be as follows.

(i) Horizontal outlets shall maintain sufficient depth, as measured from the centerline of the horizontal outlet pipe, such that the depth is greater than or equal to the sum of (d) and (twice the value v squared divided by 2g). (Depth greater than or equal to $d + (2v^2/2g)$)

(ii) For vertical outlets, if unbaffled, the depth shall be the same as in (i) except measured from the pipe outlet; if baffled, the depth shall be greater than or equal to the value v squared divided by 2g. (Depth greater than or equal to $(v^2/2g)$)

Where the following values are used in the equations above:

v = the axial velocity in the pipe outlet for the peak instantaneous demand flow rate of the system.

d = the diameter of the outlet pipe in feet

g = the gravitational constant of 32.2 feet/sec².

KEY: drinking water, pumps, hydropneumatic systems, [individual home]-booster pumps

Date of Enactment or Last Substantive Amendment: [February 15, 2009]October 10, 2016

Notice of Continuation: March 13, 2015

Authorizing, and Implemented or Interpreted Law: 19-4-104

Environmental Quality, Waste Management and Radiation Control, Radiation **R313-27** Medical Use Advisory Committee

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 40666

FILED: 08/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R313-27 requires the Board to appoint a "Medical Use Advisory Committee" to review and make recommendations to the Board on any rule or other policy that affects the medical use of radiation. The rule sets the makeup of the committee and requires the committee to report to the Board prior to any Board action on the rule. Rule R313-27 was adopted by the Radiation Control Board in its final meeting in June 2015. The Division has received an opinion from the Attorney General's office that the Radiation Control Board could not, under authority that existed in June 2015 nor under the current authority of the Waste Management and Radiation Control Board, make Rule R313-27. The rule is being repealed as the authority did not nor does now exist to make the rule.

SUMMARY OF THE RULE OR CHANGE: Rule R313-27 is repealed in its entirety since the authority to make the rule does not exist.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-3-104 and Section 19-6-104

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Savings to the state budget will be realized as no resources will have to be expended to organize the committee that is required by the rule. The actual savings are unknown as no committee was ever formed, so the time required is unknown.

◆ **LOCAL GOVERNMENTS:** The requirements in Rule R313-27 applied only to the Waste Management and Radiation Control Board and are being repealed, therefore, there will be no cost or savings to local government.

◆ **SMALL BUSINESSES:** The requirements in Rule R313-27 applied only to the Waste Management and Radiation Control Board and are being repealed, therefore, there will be no cost or savings to small business.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The requirements in Rule R313-27 applied only to the Waste Management and Radiation Control Board and are being repealed, therefore, there will be no cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The requirements in Rule R313-27 are being repealed, therefore, there will be no compliance costs to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The requirements in Rule R313-27 applied only to the Waste Management and Radiation Control Board and are being repealed, therefore, there will be no cost impacts to business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 WASTE MANAGEMENT AND RADIATION
 CONTROL, RADIATION
 THIRD FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2016

AUTHORIZED BY: Brad Johnson, Deputy Director

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.

[R313-27. Medical Use Advisory Committee.

~~R313-27-1. Formation and Role of Medical Use Advisory Committee.~~

~~(1) The board shall appoint a Medical Use Advisory Committee to review and make recommendations prior to a board action for any rule or other policy matter that affects the medical use of radiation. Committee members shall be appointed after considering recommendations from affected groups or individuals.~~

~~(2) The Medical Use Advisory Committee shall consist of at least three members, with the majority of members from an area of medical use affected by the rulemaking action.~~

~~(3) Members may include non-physician professionals if the member's professional credentials are applicable to the scope of the matter being considered.~~

~~(4) Members may include board members.~~

~~(5) The Medical Use Advisory Committee shall, by majority vote, provide recommendations and, as appropriate, suggested rule language to the board. Minority recommendations and suggested rule language, if any, shall also be provided to the board.~~

~~(6) This rule shall not apply to emergency rulemaking under Section 63G-3-304.~~

~~KEY: medical use advisory committee, medical use of radiation
 Date of Enactment or Last Substantive Amendment: July 9, 2015
 Authorizing, and Implemented or Interpreted Law: 19-3-103.5;
 19-3-104(4)]~~

Health, Disease Control and
 Prevention, Health Promotion
R384-415
 Electronic-Cigarette Substance
 Standards

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 40632
 FILED: 08/02/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes are intended to clarify the rule in light of the FDA's Tobacco Control Act Deeming Rule.

SUMMARY OF THE RULE OR CHANGE: The majority of the provisions for labeling have been removed from Rule R384-415, including the manufacturer's name, batch number, ingredients, tamper-evident warning, and the nicotine content. The rule's requirement for a safety warning on the label is amended to coincide with the requirements of the FDA Tobacco Control Act Deeming Rule. A separate safety warning specific to nicotine-free products has been added. The amended rule simplifies the restrictions on the retail sale of products that give the impression of a potential health benefit stimulant or are labeled as having colorants for emissions. The requirements limiting the variation of nicotine in a product have been removed. The provisions requiring products to feature tamper-evident packaging have been removed. The requirement that ingredients of electronic-cigarette substances meet certain manufacturing standards have been removed and replaced by a requirement that, by August 2019, the retailers can only sell products approved for sale by the FDA through their pre-market review or substantial equivalent application process. Record-keeping requirements that relate to deleted sections of the rule have been removed. This includes the requirement that retailers have a batch tracing system.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-57-103 and Subsection 59-14-803(5)

ANTICIPATED COST OR SAVINGS TO:
 ♦ THE STATE BUDGET: The amendments to the rule will not change the implementation of enforcement by the State

Health Department. The same enforcement apparatus and cost that was used for the original rule will accommodate these amendments. As such, the State Health Department expects to experience no additional costs or savings.

◆ **LOCAL GOVERNMENTS:** Since the State funds these enforcement efforts the amendments to the rule will not change the implementation of enforcement. The same enforcement apparatus and cost that was used for the original rule will accommodate these amendments. As such, no additional costs or savings are anticipated.

◆ **SMALL BUSINESSES:** The State Health Department anticipates that small businesses will experience reduced costs because of the amendments to the rule. Savings will occur because of amendments that remove the requirement that products must have tamper-evident packaging, leak-resistant packaging, and certain labeling provisions. Also, the retailer will no longer be expected to maintain a batch tracing system. The State Health Department estimates that a Utah e-liquid seller would experience savings of \$0 to \$73,000 during the first year of enforcement. The Department cannot estimate the savings to the industry as a whole because the number of sellers is unknown. The Department expects that additions to the rule will not increase costs above what was estimated in previous iterations of the rule. It is expected that, because of the rule, a Utah e-liquid seller would experience costs of \$10,000 to \$450,000 during the first year of enforcement. Costs are most likely to result from lost sales due to non-compliant product. However, the majority of the rule requirements are based on federal regulations that businesses would already be expected to follow. The only exception is that the Utah rule places a restriction on the sale of high nicotine products and those that market themselves as containing healthful additives. The Department cannot estimate the cost to the industry as a whole because the number of sellers is unknown. It is expected that small general retailers will incur little cost through the enforcement of the rule. General retailers typically sell manufacturer-sealed electronic-cigarette substances, which are exempt from the rule. General retailers may experience some cost through educating staff on the rule or through incurring local enforcement fines. However, because the number of small general retailers who sell these products is unknown, the Department cannot estimate the total cost they will incur. The e-liquid seller could also face non-fiscal costs and benefits. The requirement of a safety warning may be perceived as an infringement of free speech. Also, sellers may feel wrongfully deprived of property if a local health department exercises its authority to seize goods it has determined to be a danger to public health. With the amendments to the rule this event is less likely to occur. However, the use of federal regulations in the state rule will decrease any perceived sense of inequality between what is expected in Utah and the regulations of other states.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These amendments will decrease the cost of compliance to businesses in the state. Those savings can be passed on to consumers in the price of electronic cigarette products. The

Department cannot estimate the total savings to the consumer due to varying circumstances of the individual retailers. However, the amendment to loosen the requirements on labeling and packaging may impose costs on other members of the public. Provisions have been removed from the rule that may have prevented nicotine poisonings. As such, the public may experience medical costs they would not have had if certain labeling and packaging requirements had not been removed. It is difficult to estimate what this cost would be due to a wide range of potential medical circumstances. General retailers may experience some cost through educating staff on the rule or through incurring local enforcement fines. However, because the number of general retailers who sell these products is unknown, the Department cannot estimate the total cost they will incur.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The department expects that additions to the rule will not increase costs above what was estimated in previous iterations of the rule. Amendments to the rule are based on federal regulations that businesses are expected to follow. The only change in the rule that would cause a business to change its practices would be the amended requirements to the safety warning. Not only is this based on a federal standard, but also the amendment will not cost more than what has been estimated in previous iterations of this rule. The rule retains the restrictions on the sale of high nicotine products and those that market themselves as containing healthful additives. These provisions were present in previous iterations of the rule and will not add a cost to business above what has been estimated before. The majority of amendments remove requirements and thus will reduce the cost to business. As such, the department estimates that a Utah e-liquid seller would experience costs of \$10,000 to \$450,000 during the first year of compliance. Again, rule amendments have not added to compliance costs. Provisions that already existed in the rule contribute to the provided cost estimate and largely result from lost sales from non-compliance product. It is expected that general retailers will incur little compliance cost because the majority of the products they sell are exempt from the rule. The small portion of general retailers that will come under regulation may experience: 1) a negligible loss in sales; 2) some cost through educating staff; and 3) potential fines through local enforcement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of the amendment is to bring the rule into conformance with the FDA's Tobacco Control Act Deeming Rule. The majority of the provisions for labeling have been removed since they are now superceded by the Deeming Rule. The amendment simplifies retail sale restrictions and removes any limits addressing variations of nicotine in a product. It also removes the requirements addressing tamper-evident packaging and requirements addressing ingredients of electronic-cigarette substances. It also

removes any related record keeping requirements. The amendment will fiscally impact business by decreasing the cost of compliance with the deleted rule requirements.

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

HEALTH
DISEASE CONTROL AND PREVENTION,
HEALTH PROMOTION
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:

♦ Janae Duncan by phone at 801-538-9273, or by Internet E-mail at janaeduncan@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R384. Disease Control and Prevention, Health Promotion.

R384-415. Electronic-Cigarette Substance Standards.

R384-415-1. Authority and Purpose.

(1) This rule is authorized by Section 26-57-103 and Subsection 59-14-803(5).

(2) This rule establishes standards for labeling, nicotine content, packaging, and product quality for electronic-cigarette substances for the regulation of electronic-cigarettes.

(3) This rule does not apply to a manufacturer-sealed electronic-cigarette substance.

(4) A product in compliance with this rule is not endorsed as safe.

R384-415-2. Definitions.

As used in this rule:

~~(1) "Artificial coloring" means the same as the term is defined in 21 C.F.R. 101.22(a)(4) (April 1, 2015) and as the term "color additive" is defined in 21 C.F.R. 70.3(f) (April 1, 2015).~~

~~(2) "Artificial flavoring" means the same as the term is defined in 21 C.F.R. 101.22(a)(1) (April 1, 2015).~~

~~(3) "Batch number" means the same as the term "lot number, control number, or batch number" is defined in 21 C.F.R. 210.3(b)(11) (April 1, 2015).]~~

([4]1) "Business" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit or non-profit purposes.

([5]2) "Child resistant" means the same as the term "special packaging" is defined in 16 C.F.R. 1700.1(a)(4) (January 1, 2015) and is tested in accordance with the method described in 16 C.F.R. 1700.20 (January 1, 2015).

([6]3) "Department" means the Utah Department of Health.

([7]4) "Electronic-cigarette" means the same as the term is defined in Subsections 26-38-2(1) and 59-14-802(2).

([8]5) "Electronic-cigarette Product" means the same as the term is defined in Subsection 59-14-802(3).

([9]6) "Electronic-cigarette substance" means the same as the term is defined in Subsection 59-14-802(4).

~~(10) "EP standards" means the standards established for medicines by the European Pharmacopoeia, the European equivalent of the United States Pharmacopoeia. The EP standards define requirements for the qualitative and quantitative composition of medicines, and the tests that are to be used on medicines, substances, and materials used in their production.~~

~~(11) "Generally Recognized As Safe" means an United States Food and Drug Administration designation that a substance added to food is generally recognized, by qualified experts, as having been adequately shown to be safe under the conditions of its intended use, as found in 21 C.F.R. 170.30 (April 1, 2015). Such a substance is exempted from the usual Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq. (2013).]~~

([12]7) "Local health department" means the same as the term is defined in Subsection 26A-1-102(5).

([13]8) "Manufacture" means the same as the term is defined in Subsection 26-57-102(5).

([14]9) "Manufacturer" means the same as the term is defined in Subsection 26-57-102(6).

([15]10) "Mg/mL" means milligrams per milliliter, a ratio for measuring an ingredient, in liquid form, where accuracy is measured in milligrams per milliliter, or a percentage equivalent.

~~(16) "Natural flavoring" means the same as the term is defined in 21 C.F.R. 101.22(a)(3) (April 1, 2015).]~~

([17]11) "Nicotine" means the same as the term is defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 387(12) (2013).

([18]12) "Manufacturer-sealed electronic-cigarette substance" means the same as the term defined is in Subsection 26-57-102(6).

~~(13) "Package" or "packaging" means a pack, box, carton, or container of any kind, or if no other container, any wrapping, in which an electronic cigarette substance is offered for sale, sold, or otherwise distributed to consumers.~~

~~(19) "Pharmaceutical" means a compound manufactured for use as a medicinal drug.]~~

([20]14) "Retailer" means any person who sells, offers for sale, or offers to exchange for any form of consideration, an electronic-cigarette substance to a consumer. This definition is without regard to the quantity of an electronic-cigarette substance sold, offered for sale, exchanged, or offered for exchange.

([21]15) "Retailing" means involvement in any of the activities listed in Subsection R384-415-2([20]14). This definition is without regard to the quantity of an electronic-cigarette substance sold, offered for sale, exchanged, or offered for exchange.

~~(22) "Straight color" means a color additive approved for human consumption in food and drugs as listed in 21 C.F.R. 73.1 through 21 C.F.R. 73.1991 (April 1, 2015), 21 C.F.R. 74.101 through 21 C.F.R. 74.1711 (April 1, 2015), and 21 C.F.R. 81.1~~

(April 1, 2015), and includes substances as are permitted by the specifications for such color.

(23) "Tamper-evident" means the packaging uses an indicator or barrier to entry that is distinctive by design, or must employ an identifying characteristic.]

(24) "Transaction statement" means a statement, in paper or electronic form, which the manufacturer transferring ownership of the product certifies that the electronic-cigarette substance is in compliance with the standards in this rule.

(25) "USFDA Food Standards" means the United States Food and Drug Administration's common designation for standards of identity, standards of quality, and standards of fill of container promulgated under the Federal Food, Drug and Cosmetics Act, 21 U.S.C. Sec. 301 et seq. (2013) and as contained in 21 C.F.R. 130 through 21 C.F.R. 169 (April 1, 2015):

(26) "USP-NF standards" means the standards for drug products established by the United States Pharmacopeia and National Formulary. The USP-NF standards include standards for chemical and biological drug substances, dosage forms, compounded preparations, excipients, medical devices, and dietary supplements:

R384-415-3. General Labeling.

(1) The retailer shall ensure that a container holding an electronic-cigarette substance offered for sale to the consumer conforms to the following labeling standards:

- (a) the label is smear resistant; and
- (b) the label clearly displays:
 - (i) the nicotine content in mg/mL or percent by volume;
 - (ii) the manufacturer name;
 - (iii) the batch number;
 - (iv) the ingredients, as required in Section R384-415-4;
 - (v) a tamper-evident warning, which meets the requirements of Section R384-415-5; and
 - (vi) a safety warning, which meets the requirements of Section R384-415-6.

R384-415-4. Labeling of Ingredients.

- (1) The retailer shall ensure that:
- (a) an ingredient of an electronic-cigarette substance is listed on the label of the container holding an electronic-cigarette substance, except as provided for in Subsection R384-415-4(1)(c)(i):
 - (b) An artificial coloring ingredient is listed on the label using the classification system that best applies. Classification systems include:
 - (i) Food, Drug, and Cosmetic color designation and number;
 - (ii) Drug and Cosmetic color designation and number; or
 - (iii) the generic straight color name, if the artificial color is not classified under the systems found in Subsection R384-415-4(1)(b)(i) or Subsection R384-415-4(1)(b)(ii).
 - (c)(i) An ingredient included in the manufacturer's proprietary mixture of flavorings is exempt from being listed on the label by name:
 - (ii) An ingredient included in the manufacturer's proprietary mixture of flavorings is listed on the label under the generic term of artificial flavoring, natural flavoring, or both.

R384-415-5. Labeling of Tamper-Evident Warning.

(1) The retailer shall ensure that the label of an electronic-cigarette substance displays a tamper-evident warning alerting the consumer to the tamper-evident feature of the packaging

(2) The retailer shall ensure that the tamper-evident warning:

- (a) is prominently displayed to consumers;
- (b) is placed on the label so that it would be unaffected if the tamper-evidence feature is removed; and
- (c) lists the type of tamper-evident feature used with the product.]

R384-415-[6]3. Labeling[-of Safety Warning].

(1) The retailer shall ensure that [an]nicotine containing electronic-cigarette substance offered for sale to the consumer features on the product package label the required[a] safety warning stating ["nicotine is addictive and poisonous. Keep away from children and pets".]"WARNING": This product contains nicotine. Nicotine is an addictive chemical."

(2) The retailer shall ensure that an electronic-cigarette substance marketed as nicotine-free and offered for sale to the consumer features a safety warning stating "WARNING: Keep away from children and pets."

(2)3 The retailer shall ensure that the required safety warning appear directly on the package and must be visible underneath any cellophane or other clear wrapping as follows:

(a) [occupies at least 20 percent of the largest panel of the container and any additional immediate packaging]be located in a conspicuous and prominent place on the two principle display panels of the package and the warning area must comprise at least 30 percent of each of the principal display panels;

(b) is [in-]capitalized [letters]and punctuated as indicated in Subsection (1) or (2) of this Section;

(c) [has a font size that occupies the maximum amount of the area described in Subsection R384-415-6(2)(a)]be printed in at least 12-point font size and ensure that the required warning statement occupies the greatest possible proportion of the warning area set aside for the required text;

(d) uses [the]a conspicuous and legible Helvetica, Arial, or [Univers]other san serif font;[-and]

(e) uses either a black font on a white background or a white font on a black background[-]; and

(f) is centered in the warning area in which the text is required to be printed and positions such that the text of the required warning statement and the other information on the principal display panel have the same orientation.

(4) A retailer of an electronic-cigarette substance will not be in violation of this Section when packaging:

- (a) contains a health warning;
- (b) is supplied to the retailer by a manufacturer, importer, or distributor, who has the required state, local, or tobacco tax license or permit, if applicable; and
- (c) is not altered by the retailer in a way that is material to the requirements of this Section.

(5) An electronic-cigarette substance package that would be required to bear the warning in Subsection (1) or (2) of this Section but is too small or otherwise unable to accommodate a warning label with sufficient space to bear such information is exempt from compliance with the requirement provided:

~~(a) the information and specifications required in Subsection (1) and (2) of this Section appear on the carton or other outer container or wrapper if the carton, outer container, or wrapper has sufficient space to bear the information; or~~

~~(b) appear on a tag firmly and permanently affixed to the packaged electronic-cigarette substance.~~

~~(c) In the case of Subsection (5)(a) or (b), the carton, outer container, wrapper, or tag will serve as the location of the principal display panels.~~

R384-415-4. Prohibited Sales.

~~(1) The retailer shall be prohibited from selling an electronic-cigarette substance to the public that is labeled to the public as containing:~~

~~(a) additives that create the impression that an electronic-cigarette substance has a health benefit;~~

~~(b) additives that are associated with energy and vitality;~~

~~(c) illegal or controlled substances as identified in Section 58-37-3; and~~

~~(d) additives having coloring properties for emissions.~~

R384-415-[7]5. Nicotine Content.

~~[(1)]The retailer shall [comply with the following nicotine content standards regarding an]sell an electronic-cigarette substance [sold]to the consumer[;~~

~~(a) The nicotine content for an electronic-cigarette substance is[that is] limited to 360 mg nicotine per container, and does not exceed a 24mg/mL concentration of nicotine.~~

~~[(b)]The nicotine level for an electronic-cigarette substance is limited to a 10% variation in mg/mL above the content level indicated on the label.~~

~~(c) An electronic-cigarette substance labeled 0 mg/mL or 0% by volume contains no nicotine.]~~

R384-415-[8]6. Packaging.

~~[(1)]The retailer shall ensure that the packaging of an electronic-cigarette substance intended for sale to a consumer[;~~

~~(a) is certified as child resistant, and compliant with federal standards and law concerning child nicotine poisoning prevention[;].~~

~~[(b)] does not leak at the time of sale; and~~

~~(c) utilizes a tamper-evident feature by means of one or more of the following:~~

~~(i) a bubble pack;~~

~~(ii) a heat shrink band;~~

~~(iii) a breakable cap; or~~

~~(iv) an inner seal.]~~

R384-415-[9]7. Product Quality.

~~[(1)]The retailer shall ensure that an ingredient in an electronic-cigarette substance is compliant with either USP-NF standards, EP standards, USFDA Food Standards, or is Generally Recognized As Safe at the time of sale.~~

~~(2) The retailer shall be prohibited from selling an electronic-cigarette substance that contains:~~

~~(a) vitamins or other additives that create the impression that an electronic-cigarette substance has a health benefit or presents reduced health risks;~~

~~(b) pharmaceuticals;~~

~~(c) caffeine or taurine or other additives and stimulant compounds that are associated with energy and vitality;~~

~~(d) illegal or controlled substances as identified in Section 58-37-3; and~~

~~(e) additives having coloring properties for emissions.]~~

~~As of August 8, 2019, the retailer shall sell an electronic-cigarette substance that has been approved by the United States Food and Drug Administration through a Pre-Market Tobacco application or Substantial Equivalent application.~~

R384-415-[10]8. Record Keeping and Testing.

~~(1) The retailer shall provide the electronic-cigarette substances transaction statement to the Department or the local health department within five working days of a request. The retailer shall ensure that the transaction statement includes manufacturer certifications that:~~

~~(a) the nicotine content of an electronic-cigarette substance is compliant with Section R384-415-[7]5;~~

~~(b) the packaging of an electronic cigarette-substance is child-resistant; and~~

~~[(c) an ingredient used in an electronic-cigarette substance meets the appropriate standard found in Section R384-415-9.]~~

~~(c) United States Food and Drug Administration Approval after August 8, 2019.~~

~~[(2)(a)]The retailer shall have a system in place to trace production of an electronic-cigarette substance through the labeled batch number to the ingredients used in manufacturing.~~

~~(b) The retailer shall provide documents produced from batch tracing to the enforcing agency within five working days of a request.~~

~~(c) The retailer shall ensure that documents produced through batch tracing provide evidence in support of the electronic-cigarette substances transaction statement.]~~

~~(2) The retailer shall provide evidence that supports the documents described in Subsection R384-415-8(1) to the Department or the local health department within 5 working days of a request.~~

~~(3)[(a)] The retailer shall have access to the documents described in Subsections R384-415-[10]8(1) and R384-415-[10]8(2) for a period of two years after the retailer purchases the electronic-cigarette substance.~~

~~[(b)]the retailer shall provide the documents described in Subsections R384-415-10(1) and R384-415-10(2) to the Department or the local health department within 5 working days of a request.]~~

R384-415-[11]9. Enforcement.

~~(1) The Department may enforce and seek penalties for the violation of public health rules including, the standards for electronic cigarettes set forth in this rule as prescribed in Sections 26-23-1 through 26-23-10.~~

~~(2) A local health department may enforce and seek penalties for the violation of the standards for electronic cigarettes set forth in this rule. A local health department shall have authority to enforce and seek penalties for violations of public health law including this rule as is found in Sections 26-23-1 through 26-23-10, 26A-1-108, 26A-1-114(1) and 26A-1-123.~~

(3) The Department or local health department is responsible to make a determination as to if a person holding a Utah State Tax Commission license to sell electronic cigarettes has violated the standards of this rule. If the Department or local health department makes such a determination it shall notify the Utah State Tax Commission to revoke the person's license as provided in Subsection 59-14-803(5).

(4) Administrative or civil enforcement of this rule by the Department or local health departments does not preclude criminal enforcement by a law enforcement agency and prosecution of any violation of the standards in this rule that can constitute a criminal offense under state law.

KEY: electronic cigarettes, nicotine, standards, Electronic-Cigarette Regulation Act

Date of Enactment or Last Substantive Amendment: [April 15,] 2016

Authorizing, and Implemented or Interpreted Law: 26-57-103; 59-14-803(5)

Health, Disease Control and Prevention, Environmental Services **R392-400** Temporary Mass Gatherings Sanitation

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40662

FILED: 08/12/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes to Rule R392-400 update the sanitation requirements for temporary mass gatherings.

SUMMARY OF THE RULE OR CHANGE: Citations to authorizing statutes now include Sections 26-1-5 and 26-1-30. The definition of a temporary mass gathering is changed to be 1,000 people for 2 hours or more per day. The definitions for "operator" and "wastewater" are clarified. Changes are made to accommodate the change from 500 to 1,000 people. Temporary mass gathering limits are changed from 30 days to 16 consecutive days. Requirements for medical personnel are clarified and simplified. Information to be included in applications is updated. Requirements for how permitting by the local health departments is accomplished and a subsection pertaining to appeals are removed since such requirements fall outside the purview of Title 26 and are covered in Title 26a. Parking areas are now included as part of an event site which would be required to be kept clean and in good repair. Changes are made to solid waste, site maintenance, drinking water, and waste water requirements.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-30 and Section 26-1-5 and Section 26-15-2

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings at the state level. Any costs or savings will come out of existing budgets.

◆ **LOCAL GOVERNMENTS:** There may be a loss of permit fees, from \$0 to \$8,000 annually, to individual local health departments or other municipal entities using this rule due to fewer permits needing to be issued. Any costs or savings will come out of existing budgets. There are no anticipated costs or savings for existing events currently in compliance with this rule.

◆ **SMALL BUSINESSES:** There are no anticipated costs for existing events currently in compliance with this rule. There may be savings to businesses due to fewer permits being required, including permits for events across multiple health department jurisdictions. Permit costs for events less than 1,000 people may vary depending on the duration, type, and location of events and may be in the range of \$0 to \$250. A precise number of permits to not be issued as a result of these amendments cannot be calculated due to a lack of data, but is estimated to be around 80 statewide.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs for existing events currently in compliance with this rule. There may be savings due to fewer permits being required, including permits for events across multiple health department jurisdictions. Permit costs for events less than 1,000 people may vary depending on the duration, type, and location of events and may be in the range of \$0 to \$250. A precise number of permits to not be issued as a result of these amendments cannot be calculated due to a lack of data, but is estimated to be around 80 statewide.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These changes may specifically affect fun runs which cross over multiple health jurisdictions. The change in definition of a temporary mass gathering may require fewer permits needing to be issued resulting in a possible savings for those persons. There are no anticipated additional costs associated with these changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There would be no fiscal impact to business because it is already a requirement in the existing rule.

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

HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
CANNON HEALTH BLDG

288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Chris Nelson by phone at 801-538-6739, or by Internet E-mail at chrisonelson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R392. Health, Disease Control and Prevention, Environmental Services.

R392-400. Temporary Mass Gatherings Sanitation.

R392-400-1. Authority.

This rule is authorized under Utah Code Sections 26-15-2, 26-1-5 and 26-1-30.

R392-400-2. Purpose.

It is the purpose of this rule:

- (1) to protect, preserve and promote the ~~[physical]~~ health and safety of the public;
- (2) to prevent and control the incidence of communicable diseases;
- (3) to reduce hazards to health and environment;
- (4) to maintain adequate sanitation and public health; and
- ~~[(5) to protect the safety of the public; and]~~
- ~~[(6)]~~ (5) to promote the general welfare of the public.

R392-400-3. Definitions.

- (1) "Department" means the Utah Department of Health (UDOH).
- (2) "Director" means the executive director of the Utah Department of Health or the executive director's designee.
- (3) "Drinking Water Station" means a location where a person may obtain safe drinking water free of charge.
- (4) "Emergency Medical Provider" means the same as Emergency Medical Services Provider as defined in 26-8a-102.
- ~~[(4)]~~ (5) "First Aid Station" means a temporary or permanent enclosed space or structure where a person can receive first aid and emergency medical care.
- ~~[(5)]~~ (6) "Health Officer" means the director of the local health department having jurisdiction or the health officer's designee.
- ~~[(6)]~~ (7) "Operator" means a person who represents a group, corporation, partnership, governing body, association, or other public or private organization legally responsible for obtaining the necessary permits for the overall operation of a temporary mass gathering.
- ~~[(7)]~~ (8) "Owner" means any person who alone, jointly, or severally with others:

(a) has legal title to any premises, with or without accompanying actual possession thereof or;

(b) has charge, care, or control of any premises, as legal or equitable owner, agent of the owner, or lessee.

~~[(8)]~~ (9) "Permit" means a written form of authorization written in accordance with this rule.

~~[(9)]~~ (10) "Person" means any individual, public or private corporation and its officers, partnership, association, firm, trustee, executor of an estate, the State or its departments, institution, bureau, agency, county, city, political subdivision, or any legal entity recognized by law.

~~[(10)]~~ (11) "Safe Drinking Water" means potable water meeting State safe drinking water rules or bottled water as regulated by the Utah Department of Agriculture and Food.

~~[(11)]~~ (11) "Safe Drinking Water System" means a system for delivering safe drinking water that is approved by the local health officer.

(12) "Solid Waste" means garbage, refuse, trash, rubbish, hazardous waste, dead animals, sludge, liquid or semi liquid waste, other spent, useless, worthless, or discarded materials or materials stored or accumulated for the purpose of discarding, materials that have served their original intended purpose.

(13) "Staff" means any person who:

(a) works for or provides services for or on behalf of the operator or a vendor, or

(b) is a vendor at a gathering.

(14) "Temporary Mass Gathering" or "Gathering" means an actual or reasonably anticipated assembly of ~~[500]~~ 1000 or more people, which continues or can reasonably be expected to continue for two or more hours per day, at a site or sites for a purpose different from the designed use and usual type of occupancy. A temporary mass gathering does not include an assembly of people at a location with permanent facilities designed for that specific assembly, unless the designed occupancy levels are exceeded.

(15) "Vendor" means any person who sells or offers food for public consumption.

(16) "Wastewater" means used water or water carried wastes ~~[produced by man, animal, or fowl]~~.

R392-400-4. Permit To Operate Required.

(1) A person may not operate a temporary mass gathering without a valid written permit issued by the health officer.

(2) The health officer may exempt a parade from the permit requirement if the operator submits an application as required in Section R392-400-6 and the health officer determines that the availability of existing public sanitary facilities, drinking water and trash containers is sufficient to protect public health.

(3) A temporary mass gathering may not exceed ~~[30]~~ 16 consecutive days unless otherwise approved by the health officer.

~~[(4)]~~ (4) The health officer may attach conditions or grant waivers to a permit, in accordance with this rule, in order to meet specific public health and safety concerns.

R392-400-5. Gathering Operator Required On Site.

(1) The operator shall establish a headquarters at the gathering site.

(2) The operator or the operator's designee shall be present at the gathering at all times during operating hours.

R392-400-6. Permit Application Required.

(1) The health officer shall prescribe the application process, and shall require the applicant to submit an application at least 15 days prior to the first advertisement of the gathering and at least 30 days prior to the first day of the gathering. The health officer may grant an exception to this requirement on a case by case basis because of the nature of the event, scarcity of problems associated with the event in the past or other public health related criteria.

(2) An application for a permit shall be ~~[in writing]~~ submitted to the health officer and include the following information:

(a) name, address, telephone number, email and fax number (if applicable) of the operator;

(b) number of people expected to attend the gathering;

(c) a description of the type of gathering to be held with the date(s) and times the gathering will be held;

(d) estimated length of stay of attendees;

(e) name, address, telephone number, email and fax number (if applicable) of property owner;

(f) location of the gathering and a site plan delineating the area where the gathering is to be held including the following:

(i) the parking area available for patrons;

(ii) location of entrance, exit, and interior roadways and walks;

(iii) location, type, and provider of restroom facilities;

(iv) location and description of water stations;

(v) location and number of food stands, and the types of food to be served if known;

(vi) location, number, type, and provider of solid waste containers;

(vii) location of operator's headquarters at the gathering;

(viii) a plan to provide lighting adequate to ensure the ~~[comfort and]~~ safety of attendees and staff;

(ix) location of all parking areas designated for the gathering and under the operator's control.

~~(x) location of all first aid stations and emergency medical resources.~~

(g) the name of the solid and liquid waste haulers with whom the operator has contracted, unless exempted by this rule;

(h) a site clean up plan after the gathering;

(i) total number, and qualifications of first aid station personnel;

(j) plan for directional and exit signs;

(k) a plan developed by the operator to address nuisances or health hazards associated with animals present at the gathering;

(l) plans to address hazardous conditions as required in Section R392-400-~~[13]~~12;

~~(m) information and plans on any artificially constructed structure or modified natural structure intended for recreational or therapeutic purposes where the public may be exposed to water via contact, ingestion, or aerosolization.~~

~~(n) emergency medical services operational plan [approved by the local licensed emergency medical services agency director, including the location of all first aid stations and emergency medical resources] and the contact information of the emergency medical provider;~~

~~(n) any other information specifically requested by the health officer as necessary to protect public health.~~

~~(3) The health officer shall require a separate application for each temporary mass gathering.~~

~~(4) The health officer shall consider the proximity and risk of known health hazards when determining the acceptability of a proposed gathering site.~~

[R392-400-7. Permit.

~~(1) The health officer may attach conditions or grant waivers to a permit, in accordance with this rule, in order to meet specific public health and safety concerns.~~

~~(2) The health officer may deny a permit for any of the following reasons:~~

~~(a) failure of the applicant to show that the gathering will be held or operated in accordance with the requirements and standards of this rule;~~

~~(b) submission of incorrect, incomplete, or false information in the application;~~

~~(c) the gathering will be in violation of law.~~

~~(3) The health officer shall return a denied permit application to the applicant within 5 working days of submission, specifying the basis for denial in writing.~~

~~(4) The applicant may appeal a denied permit in accordance with the procedures established by the local Board of Health.]~~

R392-400-~~[8]~~7. Inspections.

(1) The ~~[director and]~~health officer may conduct inspections before, during, and after a gathering to ensure compliance with R392-400 and approved plans.

(2) The operator shall provide the ~~[director and]~~health officer with access to all areas of the gathering that the ~~[director and]~~health officer deem necessary and the number of access credentials they request.

(3) The operator shall effectively communicate the ~~[director's and]~~health officer's access privileges to staff.

R392-400-~~[9]~~8. Notice Of Violation Or Closing.

(1) The health officer may issue a notice of violation to the owner, operator or the operator's designee if the gathering fails to meet the requirements of this rule or the conditions of the permit.

(2) The health officer shall, in accordance with R392-100 Food Service Sanitation, direct the disposition of any food items, including ice and water, that have been adulterated or are otherwise unfit for human consumption.

(3) The health officer may issue a notice of closure of the gathering or part thereof to the owner, operator or the operator's designee if the health officer determines that conditions at the gathering constitute a serious or imminent health hazard.

(4) No gathering site or part thereof that has been closed may be used for a gathering until the ~~[department or]~~health officer determines that the conditions causing the closure have been abated and written approval is received from the ~~[department or]~~health officer. The ~~[director or]~~health officer shall remove the posted notice whenever the violation(s) upon which closing, and posting were based has been remedied.

(5) No unauthorized person may deface or remove a posted notice from any gathering site that has been closed by the ~~[director or local]~~health officer.

(6) The operator may appeal a notice or closure in accordance with the procedures established by the local Board of Health or the Utah Administrative Procedures Act, whichever is applicable.

R392-400-[10]9. Solid Waste Management.

(1) The operator shall contract with a solid waste hauler approved by the health officer. ~~—The operator is exempt from this requirement if the operator is approved by the health officer as a solid waste hauler and is identified as the solid waste hauler for the gathering. The health officer shall establish written criteria for approving a solid waste hauler.~~

(2) The operator shall provide and strategically locate a sufficient number of covered waste containers approved by the health officer to effectively accommodate the solid waste generated at the gathering.

(a) The operator shall provide waste containers next to the hand wash stations.

(3) The operator shall ensure that the waste containers are emptied as often as necessary to prevent overflowing, littering, or insect or rodent infestation.

(4) The operator shall ensure that solid waste ~~[and litter are]~~ is cleaned from the property periodically during the gathering and that, within 24 hours following the gathering, the property is free of solid waste and is clean. ~~[On a case by case basis, t]~~ The health officer may allow for more than 24 hours to clean up the site because of the time of year, nature of the event or other extenuating circumstances if the health officer is satisfied that the extension will not adversely affect ~~[the]~~ public health

(5) The operator shall ensure that ~~[litter]~~ solid waste is prevented from being blown from the gathering site onto adjacent properties.

(6) The operator shall ensure that all solid waste is collected and disposed of at a solid waste disposal or recycling facility meeting State and local solid waste disposal facility requirements.

(7) The operator, staff, participants, and spectators shall comply with all applicable State and local requirements for solid waste management.

R392-400-[11]10. Site Maintenance.

(1) All buildings ~~[or]~~, structures and overnight parking provided for the gathering shall be maintained ~~[in a]~~ safe, clean ~~[condition]~~, in good repair, and ~~[in compliance with]~~ shall comply with all applicable laws.

~~—(2) A gathering that provides overnight parking for occupied recreational vehicles in connection with the gathering, shall comply with R392-301 Recreational Vehicle Park Sanitation and local recreational vehicle parks regulations.~~

(3) The operator shall eliminate any infestation of vermin within any part of a structure intended for occupancy, food storage, or restroom facilities prior to, during, and immediately following a gathering.

(4) The operator is responsible for the maintenance and ~~[sanitary condition]~~ sanitation of the gathering site and facilities. The operator shall ~~[prevent the]~~ take steps to prevent and abate ~~[occurrence of]~~ any nuisance ~~[and immediately take steps to cause the abatement of any nuisance.]~~ or insanitary condition ~~[that]~~ which may develop.

(5) A gathering site shall be constructed to provide surface drainage adequate to prevent flooding of the gathering site and to prevent water related nuisances on adjacent properties.

(6) Sufficient signs shall identify and show the location of first aid, restroom and drinking water facilities so spectators and participants can readily find them from any place on the gathering site.

(7) The operator shall provide lighting adequate to ensure the ~~[comfort and]~~ safety of attendees.

(8) All parking areas used for the gathering and under the control of the gathering operator must meet the requirements of this rule.

R392-400-[12]11. Emergency Medical Care Requirements.

(1) The operator shall ensure that the gathering has at least one first aid station. Emergency medical care and necessary supplies and equipment shall be provided as determined by the emergency medical provider and the emergency medical operations plan. The health officer or ~~[local licensed emergency medical services agency director(s)]~~ emergency medical provider may require more than one first aid station ~~[as they deem necessary because of the nature of the event, time of year, risk of injuries or other public health and safety needs].~~

~~—(2) First aid stations shall contain the following minimum equipment and maintain the minimum levels over the duration of the gathering:~~

- ~~—(a) 1 Bag mask ventilation unit with adult, child, and infant mask sizes~~
- ~~—(b) 3 Oropharyngeal airways, adult, child, and infant sizes~~
- ~~—(c) 1 Pocket mask~~
- ~~—(d) 1 portable oxygen apparatus (tank, regulator, ease)~~
- ~~—(e) 1 Oxygen extension tubing~~
- ~~—(f) 2 adult and 1 child nasal cannula~~
- ~~—(g) 2 adult and 1 child non-rebreather mask~~
- ~~—(h) 1 adult and 1 child blood pressure cuff~~
- ~~—(i) 1 stethoscope~~
- ~~—(j) 2 pillows~~
- ~~—(k) 2 emesis basins~~
- ~~—(l) 4 blankets~~
- ~~—(m) 4 sheets~~
- ~~—(n) 12 towels~~
- ~~—(o) six 5x9 or 8x10 trauma dressings~~
- ~~—(p) thirty 4x4 gauze dressings~~
- ~~—(q) 12 kerlix or other roller bandage~~
- ~~—(r) 3 rolls of adhesive tape~~
- ~~—(s) 3 cervical collars, 1 regular, 1 no-neck, one pediatric~~
- ~~—(t) 1 back board with straps~~
- ~~—(u) 6 non-traction extremity splints (e.g., cardboard, ladder, SAM splints, air splints)~~
- ~~—(v) 10 triangular bandages~~
- ~~—(w) 2 pair of shears~~
- ~~—(x) 1 obstetrical kit~~
- ~~—(y) 2 pen lights~~
- ~~—(z) 100 assorted bandaids~~
- ~~—(aa) 1 traction splint~~
- ~~—(bb) 2 tubes of oral glucose~~
- ~~—(cc) 1 box of exam gloves~~
- ~~—(dd) 4 biohazard bags~~

~~(cc) 1 portable suction device~~
~~(ff) 1 basic life support jump kit for every 2 gathering-medical providers~~

~~(gg) 1 automatic external defibrillator~~
~~(hh) 1 examination table, cot or bed.]~~

([3]2) First aid stations shall afford privacy to a person receiving care or treatment.

([4]3) First aid stations shall be of sufficient size to accommodate the number of care givers required, and the predicted number of sick or injured persons.

([5]4) First aid stations shall be strategically located to provide expedient medical care for those attending or participating in the gathering.

([6]5) First aid stations shall be easily accessible by emergency vehicles. The operator shall provide the ~~[local licensed emergency medical services director(s)]~~ emergency medical provider a map of the gathering site which includes location of first aid stations, emergency vehicle ingress and egress routes, landing zones (if applicable) and rendezvous locations.

([7]6) A first aid station shall be clearly marked and identifiable as a first aid station.

([8]7) ~~[At least two state licensed or certified medical providers, such as an emergency medical technician, paramedic, nurse, physician's assistant or medical doctor shall be present to staff each first aid station. A gathering having more than 2,500 attendees shall have at least two additional emergency medical providers for each additional 5,000 attendees or fraction thereof.]~~ The health officer or ~~[local licensed emergency medical services agency director(s)]~~ emergency medical provider may require additional emergency medical services personnel as deemed necessary ~~[because of the nature of the event, time of year, risk of injuries or other public health and safety needs].~~

~~(9) First aid stations shall be staffed by individuals meeting the following minimum requirements:~~

~~(a) is at least 18 years of age;~~

~~(b) has a current state license or certification showing competency to be an emergency medical technician, paramedic, nurse, physician's assistant or physician.]~~

([10]8) The operator shall ensure that ~~[the]~~ all medical staff have access to telephones or radios to contact outside emergency medical services. ~~[The operator shall provide the local licensed emergency medical services director(s) the telephone numbers and radio frequencies for accessing the gathering medical providers.]~~

([11]9) The local health officer or ~~[local licensed emergency medical services agency director]~~ emergency medical provider may require the operator to provide dedicated stand-by ambulances and personnel at the gathering. ~~[The operator will be financially responsible for the costs of funding dedicated stand-by ambulances and personnel, but not for the costs of providing transportation services to individual patients.]~~

([12]10) The operator shall ensure that the staff person in charge of the first aid station keeps accurate records of patients and treatment, and that the health officer is notified of all cases involving a serious injury or communicable disease in accordance with R386-702 Communicable Disease Rule and R386-703 Injury Reporting Rule.]

~~(13) The operator shall ensure that the staff person in charge of the first aid station completes a Department approved pre-hospital care form showing all assistance given each person attended and that these forms are submitted to the Department within 72 hours following the gathering.]~~

R392-400-[13]12. Hazardous Conditions.

The operator shall develop contingency plans for dangerous conditions which may occur during the gathering. The plans may include evacuation, cancellation or delay of the gathering and provision for support facilities.

R392-400-[14]13. Food Protection.

(1) The operator and vendors shall comply with R392-100 Food Service Sanitation.

(2) The operator shall assure that food vendors obtain required food service operating permits from the health officer.

R392-400-[15]14. Safe Drinking Water Supply Requirements.

(1) The operator shall ensure that all drinking water is from a state-approved ~~[safe]~~ drinking water [supply] system or commercially bottled water meeting 21 CFR 129 (April 1, 2015) and 21 CFR 165.110 (April 1, 2015) [approved by] from a company registered with the U.S. Food and Drug Administration and the Utah Department of Agriculture and Food.

(2) ~~[Safe d]~~ Drinking water hauled to the gathering shall be hauled and dispensed in a manner that protects public health as determined by the health officer.

(3) The operator shall provide water free of charge and strategically locate drinking water stations to effectively meet the drinking water needs of attendees and staff.

(4) At least four drinking water stations are required. An additional drinking water station is required for each additional ~~[450]500 attendees [or fraction thereof,] above [500]1000 persons.~~ The health officer may reduce the number of additional drinking water stations or require more than one drinking water station for each additional ~~[450]500 attendees [or fraction thereof,] above [500]1000 persons~~ because of the time of year, heat index, nature of the event or other public health related criteria. If containers are needed to drink the water at the required drinking water stations, the operator must provide single use containers.

R392-400-[16]15. Wastewater Disposal Requirements.

(1) All wastewater shall ~~[discharge to a public wastewater treatment system unless no such system is available or practical for use as determined by the health officer]~~ be disposed of in accordance with state and local wastewater rules.

~~(2) Where a public sewer is not available or practical for connection, wastewater shall discharge into a wastewater treatment system approved in accordance with State and local wastewater rules.]~~

(3) The ~~[health officer]~~ operator may [allow] use portable restroom facilities and wastewater holding tanks ~~[only where an approved sewer system is not available or practical for connection]~~ as determined by the health officer.

(4) The number of toilets ~~[and facilities]~~ shall be provided in accordance with ~~[the following.]~~ Table 1.

TABLE 1

Minimum Numbers of Toilets Required

Peak Crowd	Average Time at Gathering (hours)				
	1	2	3	4	5
[500	2	4	4	5	6]
1000	4	6	8	8	9
2000	5	6	9	12	14
3000	6	9	12	16	20
4000	8	13	16	22	25
5000	12	15	20	25	31
6000	12	15	23	30	38
7000	12	18	26	35	44
8000	12	20	30	40	50
10000	15	25	38	50	63
12500	18	31	47	63	78
15000	20	38	56	75	94
17500	22	44	66	88	109
20000	25	50	75	100	125
25000	38	69	99	130	160
30000	46	82	119	156	192
35000	53	96	139	181	224
40000	61	109	158	207	256
45000	68	123	178	233	288
50000	76	137	198	259	320
55000	83	150	217	285	352
60000	91	164	237	311	384
65000	98	177	257	336	416
each additional 10,000	15	25	38	50	63

(table continued for 6-10 hours)

	6	7	8	9	10
[500	7	9	9	10	12]
1000	9	11	12	13	13
2000	16	18	20	23	25
3000	24	26	30	34	38
4000	30	35	40	45	50
5000	38	44	50	56	63
6000	45	53	60	68	75
7000	53	61	70	79	88
8000	60	70	80	90	100
10000	75	88	100	113	125
12500	94	109	125	141	156
15000	113	131	150	169	188
17500	131	153	175	197	219
20000	150	175	200	225	250
25000	191	221	252	282	313
30000	229	266	302	339	376
35000	267	310	352	395	438
40000	305	354	403	452	501
45000	343	398	453	508	563
50000	381	442	503	564	626
55000	419	486	554	621	688
60000	457	531	604	677	751
65000	495	575	654	734	813
each additional 10,000	75	88	100	113	125

(a) If alcoholic beverages are consumed at the gathering, the operator shall increase the number of required toilets by 40%.

~~[(b) For one year following the effective date of this rule the health officer may allow portable multi-urinal stations to substitute for up to 1/3 of the estimated men's portion of the required toilets.]~~

~~[(e)b] [The operator shall provide a minimum of one toilet that is accessible by handicapped persons and at a rate of 5% of total toilets]Five percent, with a minimum of one, of the required number of toilets shall be handicap accessible and shall be identified by the International Symbol of Accessibility in compliance with 36 CFR 1191 (July 1, 2011), Appendices B and D, of the Americans with Disabilities Act.~~

~~[(d)c] [Toilet facilities for men and women located in the same building and adjacent to each other shall be separated by an opaque, sound resistant wall. Direct line of sight from outside a toilet facility to the toilets and urinals shall be effectively obstructed.]For an event lasting longer than ten hours, the number of required toilets is calculated by adding the number of toilets for ten hours to the number of toilets for those hours over ten or a portion thereof, as determined in Table 1.~~

~~[(e)d] The operator shall locate portable toilets a minimum of 100 feet from any food service operation and not more than 300 feet from grand stand or spectator or from other areas of activity which pertain to the gathering, as outlined in the permit application. Where site conditions limit the placement of portable toilets, the health officer may allow exemptions to these distances.~~

~~[(f)e] The operator shall provide working hand wash stations at a minimum rate of one per [40]ten portable toilets or portion thereof. The operator shall provide soap, water and single use towels at each hand wash station. Where conditions make the use of soap and water impractical, the health officer may allow sanitizing gel in place of soap and water. Sanitizing gel may not be used in place of soap and water at hand wash stations used by food service workers.~~

~~[(g)f] The operator shall provide a minimum of one covered trash container for every [40]ten portable toilets or portion thereof.~~

~~[(h)g] The operator [or coordinator]shall ensure that all portable toilets are of sound construction (such as non-absorbent polyethylene), easily cleanable, and durable.~~

~~[(i) The tank capacity of each portable toilet shall not be less than 60 gallons. Chemicals used for sanitizing agents in portable toilets must be acceptable for use by the treatment facility accepting the sewage.]~~

~~[(j)h] Each portable toilet must be secured against vandalism and adverse weather conditions by tie downs, anchors or similar effective means.~~

~~[(k)i] The operator shall contract with a liquid waste hauler that [meets]is permitted by the local health department [requirements]in accordance with R317-550, Rules for Liquid Waste Operations.[The operator is exempt from this requirement if the operator is approved by the health officer as a liquid waste hauler and is identified as the liquid waste hauler for the gathering.]~~

~~[(i) the operator shall require in the contract with the liquid waste hauler that the hauler shall meet the requirements of this Subsection:~~

~~[(ii) the liquid waste hauler shall have a written contract with a wastewater treatment facility indicating that the wastewater treatment facility will accept the wastewater.~~

~~[(iii) the liquid waste hauler must manifest all disposal of liquid waste materials. The liquid waste hauler shall present the manifest to the health officer for the health officer's review upon request.]~~

(l) The operator shall ensure that all wastewater is removed from each portable toilet at least once every 24 hours or more frequently as necessary. On a case by case basis, the health officer may change this frequency because of the time of year, weather conditions, nature of the event or other public health related criteria. All wastewater removed shall be disposed of at a wastewater treatment facility in accordance with State and local wastewater disposal laws.

(m) ~~The operator shall ensure that~~ [E]each portable toilet ~~[must be]~~is serviced and sanitized ~~[at time intervals]~~as necessary to ~~[that will]~~maintain sanitary conditions~~[-of each toilet]~~.

(n) At the conclusion of the gathering, each portable restroom unit must be serviced ~~[and then]~~ removed within 48 hours. The health officer may extend or shorten this time because of the time of year, weather conditions, the nature of the event or to meet other public health ~~[needs]~~related criteria.

R392-400-~~[17]~~16. Penalty.

(1) Any person who violates any provision of this rule may be assessed a penalty as provided in Subsection 26-23-6.

(2) Each day such violation is committed or permitted to continue shall constitute a separate violation.

(3) In addition to other penalties imposed, any person who violates any requirement of this rule shall be liable for all expenses incurred by the department and local health department in removing or abating any nuisance, source of filth, cause of sickness or infection, health hazard, or sanitation violation.

R392-400-~~[18]~~17. Severability.

If a provision, clause, sentence, or paragraph of this rule or the application thereof to any person or circumstances shall be ruled invalid, such ruling shall not affect the other provisions or applications of this rule, and to this end the provisions of this rule are severable.

KEY: public health, temporary mass gatherings, special events
Date of Enactment or Last Substantive Amendment: ~~[March 15, 2010]~~2016

Notice of Continuation: January 20, 2012

Authorizing, and Implemented or Interpreted Law: 26-15-2

Human Services, Substance Abuse
 and Mental Health
R523-5-7
 Requirements to Remain Qualified as
 an Adult Peer Support Specialist

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40653

FILED: 08/08/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to correct an error in the continuing education requirements in Section R523-5-7.

SUMMARY OF THE RULE OR CHANGE: The amendment is to change the number of hours of general mental health and/or substance use disorder training from 12 to 11.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-15-402

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There is not any anticipated cost or savings. This is correcting an error in the number of hours required by one hour.

◆ LOCAL GOVERNMENTS: There is not any anticipated cost or savings. This is correcting an error in the number of hours required by one hour.

◆ SMALL BUSINESSES: There is not any anticipated cost or savings. This is correcting an error in the number of hours required by one hour.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is not any anticipated cost or savings. This is correcting an error in the number of hours required by one hour.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is not any anticipated compliance cost. This is correcting an error in the number of hours required by one hour.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is not any anticipated fiscal impact on businesses. This is simply correcting an error in the number of hours required by one hour.

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

HUMAN SERVICES

SUBSTANCE ABUSE AND MENTAL HEALTH

195 N 1950 W

SALT LAKE CITY, UT 84116

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

◆ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at raywinger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2016

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.
R523-5. Adult Peer Support Specialist Training and Certification.
R523-5-7. Requirements to Remain Qualified as an Adult Peer Support Specialist.

(1) Complete at least twenty (20) hours of continuing education every two (2) years including two (2) hours of ethics training, six (6) hours pertaining specifically to Peer Support Services, one (1) hour of suicide prevention training[s] and [~~twelve~~eleven] (~~12~~11) hours of general mental health and/or substance use disorder training.

(2) Each Adult Peer Support Specialist shall maintain adequate documentation as proof of compliance with this Section, such as a certificate of completion, school transcript, course description, or other course materials. The Adult Peer Support Specialist shall retain this proof for a period of three years after the end of the renewal cycle for which the continuing education is due; and

(a) At a minimum, the documentation shall contain the following:

- (i) Date of the course;
- (ii) Name of the course provider;
- (iii) Name of the instructor;
- (iv) Course title;
- (v) Number of hours of continuing education credit; and
- (vi) Course objectives.

KEY: peer support specialists, PSS program, certification of programs, substance use disorder

Date of Enactment or Last Substantive Amendment: [~~December 22, 2015~~2016]

Authorizing, and Implemented or Interpreted Law: 62A-15-402

Human Services, Services for People with Disabilities
R539-1
Eligibility

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 40648
 FILED: 08/04/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to remove the confusing references to the Internal Classifications of Diseases (ICD) from rule and clarify the eligibility requirements for non-waiver brain injury services through the Division of Services for People with Disabilities.

SUMMARY OF THE RULE OR CHANGE: The rule change removes the lengthy and confusing listing of ICD references from rule and instead incorporates the use of the these codes by reference to internal Division Directive 1.40, titled "Qualifying Acquired Brain Injury Diagnoses". This amendment also makes needed changes to state rule and

statute references that have become outdated over the past year.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-5-103 and Section 62A-5-105

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Review of the amendments to this rule confirms that there is no additional anticipated cost or savings to the state budget as a result of these changes. This amendment only updates references and codes. There is no change in procedure and no costs are incurred by this amendment.

◆ **LOCAL GOVERNMENTS:** Review of the amendments to this rule confirms that there is no additional anticipated cost or savings to local government as a result of these changes. This amendment only updates references and codes. There is no change in procedure and no costs are incurred by this amendment.

◆ **SMALL BUSINESSES:** Review of the amendments to this rule confirms that there is no additional anticipated cost or savings to small business as a result of these changes. This amendment only updates references and codes. There is no change in procedure and no costs are incurred by this amendment.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Review of the amendments to this rule confirms that there is no additional anticipated cost or savings to other persons as a result of these changes. This amendment only updates references and codes. There is no change in procedure and no costs are incurred by this amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this rule do not result in any compliance costs for persons with disabilities, persons' families or guardians, or any other persons or entities. This amendment only updates references and codes. There is no change in procedure and no costs are incurred by this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact in any way as a result of this rule amendment on business.

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

HUMAN SERVICES
 SERVICES FOR PEOPLE WITH DISABILITIES
 195 N 1950 W 3RD FLR
 SALT LAKE CITY, UT 84116
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Jolene Hanna by phone at 801-538-4154, or by Internet E-mail at jhanna@utah.gov
- ◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2016

AUTHORIZED BY: Angella Pinna, Director

R539. Human Services, Services for People with Disabilities.

R539-1. Eligibility.

R539-1-1. Purpose.

- (1) The purpose of this rule is to provide:
- (a) procedures and standards for the determination of eligibility for Division services as required by Title 62A, Chapter 5, Part[-].1; and
- (b) notice to Applicants of hearing rights and the hearing process.

R539-1-2. Authority.

- (1) This rule establishes procedures and standards for the determination of eligibility for Division services as required by Title 62A, Chapter 5, Part[-].1.
- (2) The procedures of this rule constitute the minimum requirements for eligibility for Division funding. Additional procedures may be required to comply with any other governing statute, federal law, or federal regulation.

R539-1-3. Definitions.

- (1) Terms used in this rule are defined in Section 62A-5-101.
- (2) In addition:
- (a) "Agency Action" means an action taken by the Division that denies, defers, or changes services to an Applicant applying for, or a person receiving, Division funding;
- (b) "Applicant" means an individual or a representative of an individual applying for determination of eligibility;
- (c) "Brain Injury" means any acquired injury to the brain and is neurological in nature. This would not include those with deteriorating diseases such as Multiple Sclerosis, muscular dystrophy, Huntington's chorea, ataxia, or cancer, but would include cerebral vascular accident;
- (d) "Department" means the Department of Human Services;
- (e) "Division" means the Division of Services for People with Disabilities;
- (f) "Electronic Surveillance" is observing or listening to persons, places, or activities with the aid of electronic devices such as cameras, web cams, global positioning systems, motion detectors, weight detectors or microphones, in real time.
- (g) "Electronic Surveillance Certification" is documentation signed by members of the Provider Human Rights Committee that contains the location of the site under surveillance, description of the types of surveillance to be used, names of persons to be under surveillance and signed consent from each person affected as required by Subsections R539-3-7(3)(~~Ⓐ~~) and R539-3-7(4)(~~Ⓐ~~).
- (h) "Form" means a standard document required by Division rule or other applicable law;

(i) "Guardian" means someone appointed by a court to be a substitute decision maker for a person deemed to be incompetent of making informed decisions;

(j) "Hearing Request" means a written request made by a person or a person's representative for a hearing concerning a denial, deferral or change in service;

(k) "ICF/ID" means Intermediate Care Facility for People with Intellectual Disability;

(l) "Person" means someone who has been found eligible for Division funding for support services due to a disability and who is waiting for or receiving services at the present time;

(m) "Qualifying Acquired Neurological Brain Injury" means an eligible International Classification of Diseases code diagnosis from the most recent revision of the classification, clinical modification, as outlined in Division Directive 1.40 Qualifying Acquired Brain Injury Diagnoses.

(~~Ⓝ~~n) "Related Conditions" means a severe, chronic disability that meets the following conditions:

- (i) It is attributable to:
- (A) Cerebral palsy or epilepsy; or
- (B) Any other condition, other than mental illness, found to be closely related to intellectual disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of people with intellectual disability, and requires treatment or services similar to those required for these persons.

- (ii) It is manifest before the person reaches age 22.
- (iii) It is likely to continue indefinitely.
- (iv) It results in substantial functional limitations in three or more of the following areas of major life activity:

- (A) Self-care.
- (B) Understanding and use of language.
- (C) Learning.
- (D) Mobility.
- (E) Self-direction
- (F) Capacity for independent living.
- (~~Ⓝ~~o) "Representative" means the person's legal representative including the person's parents if the person is a minor child, a court appointed guardian or a lawyer retained by the person;

(~~Ⓝ~~p) "Resident" is an Applicant or Guardian who is physically present in Utah and provides a statement of intent to reside in Utah.;

(~~Ⓝ~~q) "Support" is assistance for portions of a task allowing a person to independently complete other portions of the task or to assume increasingly greater responsibility for performing the task independently;

(~~Ⓝ~~r) "Support Coordinator" is an employee of the Division or an individual contracted with the Division to provide assistance in assessing the needs of, and developing services and supports for, persons receiving Division funding. Support Coordinators complete written documentation of supports and assist with monitoring the appropriate spending of a person's annual budget, as well as monitor the quality of the services provided.

(~~Ⓝ~~s) "Team Member" means members of the person's circle of support who participate in the planning and delivery of services and supports with the Person. Team members may include the Person applying for or receiving services, his or her parents, Guardian, the support coordinator, friends of the Person, and other professionals and Provider staff working with the Person; and

([s]t) "Waiver" means the Medicaid approved plan for a state to provide home and community-based services to persons with disabilities in lieu of institutionalization in a Title XIX facility, the Division administers three such waivers; the intellectual disabilities or related conditions waiver, the brain injury waiver and physical disabilities waiver.

R539-1-4. Non-Waiver Services for People with Intellectual Disabilities or Related Conditions.

(1) The Division will serve those Applicants who meet the definition of a person with a disability in Subsections 62A-5-101([9]8).

(2) When determining functional limitations in the areas listed below for Applicants ages 7 and older, age appropriate abilities must be considered.

(a) Self-care - An Applicant who requires assistance, training and/or supervision with eating, dressing, grooming, bathing or toileting.

(b) Expressive and/or Receptive Language - An Applicant who lacks functional communication skills, requires the use of assistive devices to communicate, or does not demonstrate an understanding of requests or is unable to follow two-step instructions.

(c) Learning - An Applicant who has a valid diagnosis of mental retardation based on the criteria found in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

(d) Mobility - An Applicant with mobility impairment who requires the use of assistive devices to be mobile and who cannot physically self-evacuate from a building during an emergency without the assistive device.

(e) Capacity for Independent Living - An Applicant (age 7-17) who is unable to locate and use a telephone, cross streets safely, or understand that it is not safe to accept rides, food or money from strangers. An adult who lacks basic survival skills in the areas of shopping, preparing food, housekeeping, or paying bills.

(f) Self-direction - An Applicant (age 7-17) who is significantly at risk in making age appropriate decisions. An adult who is unable to provide informed consent for medical/health care, personal safety, legal, financial, habilitative, or residential issues and/or who has been declared legally incompetent. A person who is a significant danger to self or others without supervision.

(g) Economic self-sufficiency - (This area is not applicable to children under 18.) An adult who receives disability benefits and who is unable to work more than 20 hours a week or is paid less than minimum wage without employment support.

(3) Applicant must be diagnosed with an intellectual disability ~~[as per R539-1-3]~~ or related condition[s] as set forth in Section 62A-5-101(8).

(a) Applicants who have a primary diagnosis of mental illness, hearing impairment and/or visual impairment, learning disability, behavior disorder, substance use disorder or personality disorder do not qualify for services under this rule.

(4) The Applicant, parent of a minor child, or the Applicant's Guardian must be a resident of the State of Utah prior to the Division's final determination of eligibility.

(5) The Applicant or Applicant's Representative shall be provided with information about all service options available through the Division as well as a copy of the Division's Guide to Services.

(6) It is the Applicant's or Applicant's Representative's responsibility to ensure that the appropriate documentation is provided to the intake worker to determine eligibility.

(7) The following documents are required to determine eligibility for non-waivered intellectual disability or related conditions services.

(a) A Division Eligibility for Services Form 19 completed by the designated staff. For children under seven years of age, Eligibility for Services Form 19C, completed by the designated staff within the Division office, will be accepted in lieu of the Eligibility for Services Form 19. The staff member will indicate on the Eligibility for Services Form 19C that the child is at risk for substantial functional limitation in three areas of major life activity due to intellectual disability or related conditions; that the limitations are likely to continue indefinitely; and what assessment provides the basis of this determination.

(b) Inventory for Client and Agency Planning (ICAP) assessment shall be completed by the Division;

(c) Social History completed by or for the Applicant within one year of the date of application;

(d) Psychological Evaluation provided by the Applicant or, for children under seven years of age, a Developmental Assessment may be used as an alternative; and

(e) Supporting documentation for all functional limitations identified on the Division Eligibility for Services Form 19 or Division Eligibility for Services Form 19C shall be gathered and filed in Applicant's record. Additional supporting documentation shall be required when eligibility is not clearly supported by the above-required documentation. Examples of supporting documentation include, but are not limited to, mental health assessments, educational records, neuropsychological evaluations, and medical health summaries.

(8) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to Applicant or Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(9) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, Division staff shall determine the Applicant eligible or ineligible for funding for non-waiver intellectual disability or related conditions services within 90 days of receiving the required documentation.

(10) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(11) People receiving services will have their eligibility re-determined on an annual basis. If people are determined to no longer be eligible for services, a transition plan will be developed to discontinue services and ensure health and safety needs are met.

(12) This section does not apply to Applicants who meet the separate eligibility criteria for physical disability and brain injury outlined in Subsections~~[Rule]~~ R539-1-6 and ~~[Rule]~~R539-1-8 respectively.

(13) Persons not participating in a Waiver or Persons participating in a Waiver but receiving non-Waiver services may have reductions in non-Waiver service packages or be discharged from non-Waiver services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-5. Medicaid Waiver Eligibility for People with Intellectual Disability or Related Conditions.

(1) Matching federal funds may be available through the Community Supports Waiver for People with Intellectual Disabilities or Related Conditions to provide an array of home and community-based services that an eligible person needs.

(2) Within appropriations from the Legislature, as set forth by UT Code Subsections 62A-5-102(3) and (4), persons may be found eligible for Waiver funding according to the following methods:

(a) A person's needs score, as determined by the Division's needs assessment tool, identifies the person as ranking among persons with the most critical needs.

(b) A person is identified by the Division as a person whose only need is respite services.

(i) The Division determines that a person only needs respite services by:

(A) Identifying those persons who, according to the Division's records, have indicated that the person is in need of respite services only;

(B) Conducting an additional needs assessment to update the person's needs score and determine if the person is in need of additional services beyond respite.

(ii) Persons identified by the Division as needing only respite services will be grouped together, from which the Division shall randomly select persons, using a simple random sampling method.

(3) Pursuant to Section R414-510, where the Department of Health determines that sufficient funds are available, a person meeting the eligibility requirements set forth by the Department of Health in Subsection R414-510-3 may receive Medicaid Home and Community-Based Waiver Services by transitioning out of an ICF/ID into the Community Supports Waiver for People with Intellectual Disabilities or Related Conditions.

(4) Pursuant to Section R414-502, where the Department of Health determines that a person meets nursing facility level of care and is medically approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid Home and Community-Based Waiver program, a person may be found eligible for funding through the Community Supports Waiver for People with Intellectual Disabilities or Related Conditions when all other eligibility requirements of Section R414-502 are met.

(5) Persons who are found eligible for funds through the Medicaid Home and Community-Based Waiver for People with Intellectual Disabilities or Related Conditions may choose not to participate in the Waiver. Persons who choose not to participate in the Waiver will receive only the state funded portion of the budget the person would have received had the person participated in the Waiver.

R539-1-6. Non-Waivered Services for People with Physical Disabilities.

(1) The Division will serve those Applicants who meet the eligibility requirements for physical disabilities services. To be determined eligible for non-waivered Physical Disabilities Services, the Applicant must:

(a) Have the functional loss of two or more limbs;

(b) Be 18 years of age or older;

(c) Have at least one personal attendant trained or willing to be trained and available to provide support services in a residence that is safe and can accommodate the personnel and equipment (if any) needed to adequately and safely care for the Person; and

(d) Be medically stable~~[-]~~ and have a physical disability ~~[-and require in accordance with the Person's physician's written documentation, at least 14 hours per week of personal assistance services in order to remain in the community and prevent unwanted institutionalization.]~~

(e) Have their physician document that the Person's qualifying disability and need for personal assistance services are attested to by a medically determinable physical impairment which the physician expects will last for a continuous period of not less than 12 months and which has resulted in the individual's functional loss of two or more limbs, to the extent that the assistance of another trained person is required in order to accomplish activities of daily living/instrumental activities of daily living;

(f) Be capable, as certified by a physician, of selecting, training and supervising a personal attendant;

(g) Be capable of managing personal financial and legal affairs; and

(h) Be a resident of the State of Utah.

(2) Applicants seeking non-Waiver funding for physical disabilities services from the Division shall apply directly to the Division's State Office, by submitting a completed Physical Disabilities Services Application Form 3-1 signed by a licensed physician.

(3) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the Applicant indicating that the intake case will be placed in inactive status.

(a) The Applicant may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant shall be required to update information.

(4) When all necessary eligibility documentation is received from the Applicant and the Applicant is determined eligible, the Applicant will be assessed by a Nurse Coordinator, according to the Physical Disabilities Needs Assessment Form 3-2 and the Minimum Data Set-Home and Community-based (MDS-HC), and given a score prior to placing a Person into services. The Physical Disabilities Nurse Coordinator shall:

(a) use the Physical Disabilities Needs Assessment Form 3-2 to evaluate each Person's level of need;

(b) determine and prioritize needs scores;

(c) rank order the needs scores for every Person eligible for service, and

(d) if funding is unavailable, enter the Person's name and score on the Physical Disabilities wait list.

(5) The Physical Disabilities Nurse Coordinator assures that the needs assessment score and ranking remain current by updating the

needs assessment score as necessary. A Person's ranking may change as needs assessments are completed for new Applicants found to be eligible for services.

(6) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant of eligibility determination and placement on the pending list. The Applicant may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(7) This does not apply to Applicants who meet the separate eligibility criteria for intellectual disability or related condition and brain injury outlined in Subsections[Rule] R539-1-4 and [Rule]R539-1-8 respectively.

(8) Persons not participating in a waiver or Persons participating in a waiver but receiving non-waiver services may have reductions in non-waiver service packages or be discharged from non-waiver services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-7. Medicaid Waiver Eligibility for People with Physical Disabilities.

(1) Matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Physical Disabilities to provide an array of home and community-based services that an eligible person needs.

(2) Within appropriations from the Legislature, as set forth by UT Code Subsections 62A-5-102(3) and (4), persons with physical disabilities may be found eligible for Waiver funding according to the following methods:

(a) A person's needs score, as determined by the Division's needs assessment tool, identifies the person as ranking among persons with the most critical needs.

(b) A person who is eligible for waiver service through the Medicaid Home and Community-Based Waiver for People with Disabilities is not eligible for respite services.

(3) Pursuant to Section R414-502, where the Department of Health determines that an applicant meets nursing facility level of care and is medically approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid Home and Community-Based Waiver program, an applicant may be found eligible for funding through the Medicaid Home and Community-Based Waiver for People with Physical Disabilities when all other eligibility requirements of Section R414-502 are met.

(4) Persons who are found eligible for funds through the Medicaid Home and Community-Based Waiver for People with Physical Disabilities may choose not to participate in the Waiver. Persons who choose not to participate in the Waiver will receive only the state funded portion of the budget the person would have received had the person participated in the Waiver.

R539-1-8. Non-Waiver Services for People with Brain Injury.

(1) The Division will serve those Applicants who meet the eligibility requirements for brain injury services. To be determined eligible for non-waiver brain injury services the Applicant must:

(a) have a documented qualifying acquired neurological brain injury from[(by) a licensed physician (MD or DO)]). [according

~~to the International Classifications of Diseases, 9th Revision, (ICD-9-CM). The following codes listed below qualify for ABI services:~~

- ~~047.9--aseptic meningitis (unspecified viral meningitis)~~
- ~~290 -- 294 Codes not accepted as stand alone diagnosis (needing additional diagnosis)~~
- ~~290.4--vascular dementia~~
- ~~290.10--Prehensile dementia, uncomplicated~~
- ~~293.9--psychotic, post traumatic brain injury syndrome~~
- ~~294.0--amnesia~~
- ~~294.9--unspecified persistent mental disorders due to conditions classified elsewhere~~
- ~~294.9--with psychotic reaction~~
- ~~294.10-294.11--dementia without and with behavior disturbance Aggression, combative violent behaviors and wandering off~~
- ~~310.0 -- 310.9 nonpsychotic disorder, brain damage~~
- ~~310.0--frontal lobe syndrome~~
- ~~310.1--mild memory loss or lack following organic brain damage~~
- ~~310.1--personality change due to conditions classified elsewhere~~
- ~~310.2--post concussion syndrome~~
- ~~310.2--post contusion syndrome, includes encephalopathy~~
- ~~310.2--post contusion syndrome, includes TBI~~
- ~~310.2--post contusion syndrome, includes TBI~~
- ~~310.2--post traumatic brain injury~~
- ~~310.2--post traumatic brain injury syndrome~~
- ~~310.8 -- 310.9--other nonpsychotic mental disorder, following organic brain damage~~
- ~~310.8--other specified mental disorder following organic brain damage~~
- ~~310.8--other specified nonpsychotic mental disorders following organic brain damage~~
- ~~310.9--organic brain syndrome~~
- ~~310.9--Organic brain syndrome~~
- ~~310.9--organic brain syndrome (chronic or acute)~~
- ~~310.9--unspecified nonpsychotic mental disorder following organic brain damage~~
- ~~320.9--meningitis, bacterial~~
- ~~322.0--meningitis, nonpyogenic~~
- ~~322.2--meningitis, chronic~~
- ~~322.9--meningitis~~
- ~~323.0 -- 323.82--choose to pick cause of encephalitis, not 323.9~~
- ~~324.0 -- 324.9--Intracranial and intraspinal abscess~~
- ~~325--Phlebitis and thrombophlebitis of intracranial venous sinuses~~
- ~~326--Late effects of intracranial abscess or pyogenic infection~~
- ~~348.0--arachnoid cyst, brain; not as stand alone diagnosis (needs additional diagnosis)~~
- ~~348.1--anoxic brain damage~~
- ~~349.82--Toxic encephalopathy~~
- ~~430--subarachnoid hemorrhage~~
- ~~431--intracerebral hemorrhage~~
- ~~432.0--hematoma, non-traumatic brain~~
- ~~432.1--subdural hematoma~~
- ~~432--other and unspecified intracranial hemorrhage~~

- ~~433 Occlusion and stenosis of precerebral arteries (only if 5th digit is 1)~~
- ~~434 Occlusion of cerebral arteries (only if 5th digit is 1)~~
- ~~436--brain or cerebral, acute seizure; need another diagnosis in combination~~
- ~~438 -- 438.89 Late effects of cerebrovascular disease (excluding 438.9)~~
- ~~780.93--Memory loss amnesia only in combination with an E Code -- (excludes 310.1 Mild Memory Disturbance due to organic brain damage) need an E code secondary to cause~~
- ~~List codes from 800 -- 804 then 5th digit list only those that are 2 -- 9 exclude 0 to 1(excluding 802's)~~
- ~~800.0--closed skull fracture, vault (parietal, frontal, vertex)~~
- ~~800.1 Fracture skull vault (frontal parietal) closed with laceration and contusion~~
- ~~800.1--closed skull fracture, vault with cerebral contusion~~
- ~~800.2 closed head injury with subarachnoid, subdural, and extradural hemorrhage~~
- ~~800.2 Closed skull fracture, with subarachnoid, subdural, and extradural hemorrhage~~
- ~~800.2--closed skull fracture, vault with epidural, extradural hemorrhage~~
- ~~800.2--closed skull vault fracture with subdural hemorrhage~~
- ~~800.3--closed skull fracture, vault with intracranial hemorrhage~~
- ~~800.3--Closed skull fx with other and unspecified intracranial hemorrhage~~
- ~~800.4--closed skull fracture, vault with intracranial injury~~
- ~~800.4--closed skull fx with intracranial injury of other and unspecified nature~~
- ~~800.5 -- 800.9--Open skull fracture, vault (parietal or frontal area)~~
- ~~800.6--open skull fx with cerebral laceration and contusion~~
- ~~800.7--open skull fx with subarachnoid, subdural, and extradural hemorrhage~~
- ~~800.7--open skull vault fracture with subdural hemorrhage~~
- ~~800.8--open skull fx other and unspecified intracranial hemorrhage~~
- ~~800.9--Open skull fx with intracranial injury of other and unspecified nature~~
- ~~800.9--open vault fracture with intracranial injury of other and unspecified nature~~
- ~~801.0 -- 801.9 Fracture of base of skull~~
- ~~801.0--closed skull fracture, base~~
- ~~801.1--closed skull fracture, with cerebral hemorrhage~~
- ~~801.2--closed skull base fracture with subdural hemorrhage~~
- ~~801.2--closed skull fracture with epidural hemorrhage~~
- ~~801.3 -- 801.4--closed skull fracture, base with intracranial hemorrhage~~
- ~~801.5 -- 801.9--open skull fracture, base of skull~~
- ~~801.7--open skull base fracture with subdural hemorrhage~~
- ~~803.0 -- 804.9--Other and unqualified skull fractures (includes single or multiple fx)~~
- ~~803.0--closed skull fracture with facial injuries~~
- ~~803.1--closed skull fracture with cerebral contusion~~
- ~~803.2--closed skull fracture with epidural, extradural hemorrhage~~
- ~~803.2--closed skull fracture, with subachnoid, subdural, and extradural hemorrhage~~
- ~~803.2--other and unqualified skull fractures, closed, subdural hemorrhage~~
- ~~803.3--closed skull fracture with intracranial hemorrhage~~
- ~~803.4--closed skull fracture with intracranial injury~~
- ~~803.5 -- 803.9--open skull fracture, other and unqualified~~
- ~~803.7--other and unqualified skull fractures, open, subdural hemorrhage~~
- ~~804.2--multiple fractures skull and face, closed, subdural hemorrhage~~
- ~~804.5 -- 804.9--Open skull fracture, multiple fractures skull and face~~
- ~~804.7--multiple fractures skull and face, open, subdural hemorrhage~~
- ~~List codes from 850-854 then 5th digit list only those that are 2 -- 9 exclude 0 to 1~~
- ~~850.1 -- 850.5--concussion with loss of conscious~~
- ~~851.0 -- 851.9--cerebral laceration and contusion, open or closed, specifies site~~
- ~~851.0--cerebral contusion without mention open wound~~
- ~~851.2--cerebral laceration without mention of open wound~~
- ~~851.4 or 851.6--cerebral or brain stem contusion s mention open wnd~~
- ~~851.4--contusion brain stem~~
- ~~851.8--cerebral contusion (851.0 -- 851.9--specify site, open, closed)~~
- ~~851.8--contusion brain~~
- ~~851.8--other and unspecified cerebral contusion~~
- ~~851.8--other unspecified cerebral s mention open wound~~
- ~~852.0, 852.2, 854.4 hemorrhage s mention open wound~~
- ~~852.0 -- 852.5--Subarachnoid, subdural, and extradural hemorrhage following injury~~
- ~~852.0--subarachnoid hemorrhage~~
- ~~852.2 -- 852.3--subdural hemorrhage, injury, without mention open, open~~
- ~~852.2--subdural hemorrhage following injury, s mention open wound~~
- ~~852.2--traumatic brain injury, subdural~~
- ~~852.3--subdural hemorrhage following injury, with open wound~~
- ~~852.4 -- 852.5--extradural hemorrhage injury, without mention open~~
- ~~853.0--other intracranial hemorrhage after injury s mention open wound~~
- ~~853.0 -- 853.1--other and unspecified intracranial hemorrhage following injury~~
- ~~853.0--hematoma, traumatic brain~~
- ~~854.0 -- 854.1--Intracranial injury of other and unspecified nature~~
- ~~854.0--injury intracranial~~
- ~~854.0--intracranial hemorrhage due to injury~~
- ~~854.1--intracranial injury of other and unspecified nature s mention open w~~
- ~~905.0 Late effects of fracture of skull and face bones (5th digit list only those that are 2 -- 9 exclude 0 -- 1)~~
- ~~906.0 Late effects of open wound of head, neck, and trunk (5th digit list only those that are 2 -- 9 exclude 0 -- 1)~~
- ~~907.0--late effect of intracranial injury (5th digit list only those that are 2 -- 9 exclude 0 -- 1);]~~
- (b) Be 18 years of age or older;

(c) score between 40 and 120 on the Comprehensive Brain Injury Assessment Form 4-1.

(d) meet at least three of the functional limitations listed under number (4).

(2) Applicants with functional limitations due solely to mental illness, substance use disorder or deteriorating diseases like Multiple Sclerosis, Muscular Dystrophy, Huntington's Chorea, Ataxia or Cancer are ineligible for non-waiver services.

(3) Applicants with intellectual disability or related conditions are ineligible for these non-waiver services.

(4) In addition to the definitions in Section 62A-5-101([3]2) and ([5]8), eligibility for brain injury services will be evaluated according to the Applicant's functional limitations as described in the following definitions:

(a) Memory or Cognition means the Applicant's brain injury resulted in substantial problems with recall of information, concentration, attention, planning, sequencing, executive level skills, or orientation to time and place.

(b) Activities of Daily Life means the Applicant's brain injury resulted in substantial dependence on others to move, eat, bathe, toilet, shop, prepare meals, or pay bills.

(c) Judgment and Self-protection means the Applicant's brain injury resulted in substantial limitation of the ability to:

(i) provide personal protection;

(ii) provide necessities such as food, shelter, clothing, or mental or other health care;

(iii) obtain services necessary for health, safety, or welfare;

(iv) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(d) Control of Emotion means the Applicant's brain injury resulted in substantial limitation of the ability to regulate mood, anxiety, impulsivity, agitation, or socially appropriate conduct.

(e) Communication means the Applicant's brain injury resulted in substantial limitation in language fluency, reading, writing, comprehension, or auditory processing.

(f) Physical Health means the Applicant's brain injury resulted in substantial limitation of the normal processes and workings of the human body.

(g) Employment means the Applicant's brain injury resulted in substantial limitation in obtaining and maintaining a gainful occupation without ongoing supports.

(5) The Applicant shall be provided with information concerning service options available through the Division and a copy of the Division's Guide to Services.

(6) The Applicant or the Applicant's Guardian must be physically present in Utah and provide evidence of residency prior to the determination of eligibility.

(7) It is the Applicant's or Applicant's Representative's responsibility to provide the intake worker with documentation of brain injury, signed by a licensed physician;

(8) The intake worker will complete or compile the following documents as needed to make an eligibility determination:

(a) Comprehensive Brain Injury Assessment Form 4-1, Part I through Part VII; and

(b) Brain Injury Social History Summary Form 824L, completed or updated within one year of eligibility determination;

(9) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent

to the Applicant or the Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(10) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, Division staff shall determine the Applicant eligible or ineligible for funding for brain injury supports.

(11) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(12) Persons receiving Brain Injury services will have their eligibility re-determined on an annual basis. Persons who are determined to no longer be eligible for services will have a transition plan developed to discontinue services and ensure that health and safety needs are met.

R539-1-9. Medicaid Waiver Eligibility for People with Acquired Brain Injury.

(1) Matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Acquired Brain Injury to provide an array of home and community-based services that an eligible person needs.

(2) Within appropriations from the Legislature, as set forth by UT Code Subsections 62A-5-102(3) and (4), persons may be found eligible for Waiver funding according to the following methods:

(a) A person's needs score, as determined by the Division's needs assessment tool, identifies the person as ranking among persons with the most critical needs.

(b) A person is identified by the Division as a person whose only need is respite services.

(i) The Division determines that a person only needs respite services by:

(A) Identifying those persons who, according to the Division's records, have indicated that the person is in need of respite services only;

(B) Conducting an additional needs assessment to update the person's needs score and determine if the person is in need of additional services beyond respite.

(ii) Persons identified by the Division as needing only respite services will be grouped together, from which the Division shall randomly select persons, using a simple random sampling method.

(3) Pursuant to Section R414-502, where the Department of Health determines that an applicant meets nursing facility level of care and is medically approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid Home and Community-Based Waiver program, an applicant may be found eligible for funding through the Medicaid Home and Community-

Based Waiver for People with Acquired Brain Injury when all other eligibility requirements of Section R414-502 are met.

(4) Persons who are found eligible for funds through the Medicaid Home and Community-Based Waiver for People with Acquired Brain Injury may choose not to participate in the Waiver. Persons who choose not to participate in the Waiver will receive only the state funded portion of the budget the person would have received had the person participated in the Waiver.

R539-1-10. Graduated Fee Schedule.

(1) Pursuant to ~~[Utah Code]~~Subsections 62A-5-105(2)(b) and (c) the Division establishes a graduated fee schedule for use in assessing fees to individuals. The graduated fee schedule shall be applied to Persons who do not meet the Medicaid eligibility requirements for Waiver services. Family size and gross income shall be used to determine the fee. This rule does not apply to Persons who qualify for Medicaid waiver funding but who choose to have funding reduced to the state match per R539-1-5(~~2~~5), R539-1-7(~~2~~4), and R539-1-9(~~2~~4) rather than participate in the Medicaid Waiver.

(a) Persons who do not participate in a Medicaid Waiver who do not meet Waiver level of care must apply for a Medicaid Card within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver who meet Waiver level of care must apply for determination of financial eligibility using Form 927 within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver shall provide the Support Coordinator or Nurse Coordinator with the financial determination letter within 10 days of the receipt of such documentation. Persons who do not participate in a Medicaid Waiver and who fail to comply with these requirements shall have funding reduced to the state match rate.

(b) Persons who do not participate in a Medicaid Waiver due to financial eligibility, must be reduced to the state match rate.

(c) Persons who only meet the general eligibility requirements, as per Sections R539-1-4, R539-1-6, and R539-1-8, must report all cash assets (stocks, bonds, certified deposits, savings, checking and trust amounts), annual income and number of family members living together using Division Form 2-1G. Persons with Discretionary Trusts are exempt from the Graduated Fee Schedule as per Subsection 62A-5-110(6). The Form 2-1G shall be reviewed at the time of the annual planning meeting. The Person / family shall return Form 2-1G to the support coordinator prior to delivery of new services. Persons / families currently receiving services will have 60 days from receiving notice of this rule to return a completed and signed Form 2-1G to the Division. Persons / families who complete the Division Graduated Fee Assessment Form 2-1G shall be assessed a fee no more than 3% of their income. If the form is not received within 60 days of receiving notice of this rule, the Person will have funding reduced to the state match rate.

(d) Cash assets, income and number of family members will be used to calculate available income (using the formula: (assets + income) / by the total number of family members = available income). Available income will be used to determine the fee percent (0 percent to 3 percent). The annual fee amount will be calculated by multiplying available income by the fee percent. Persons who do not participate in a Medicaid Waiver, who only meet general eligibility requirements, and have available incomes below 300 percent of the poverty level will not be assessed a fee. Persons with available incomes between 300 and 399 percent of poverty will be assessed a 1 percent fee, Persons with available incomes between 400 and 499 percent of poverty will

be assessed a 2 percent fee and those with available income over 500 percent of poverty will be assessed a 3 percent fee.

(e) No fee shall be assessed for a Person who does not participate in a Medicaid Waiver and who receives funding for less than 31 percent of their assessed need. A multiplier shall be applied to the fee of Persons who do not participate in a Medicaid Waiver and who receive 31 to 100% percent of their assessed need.

(f) If a Person's annual allocation is at the state match rate, they will not be assessed a fee.

(g) Only one fee will be assessed per family, regardless of the number of children in the family receiving services. Persons who do not participate in a Medicaid Waiver under the age of 18 shall be assessed a fee based upon parent income. Persons who do not participate in a Medicaid Waiver over the age of 18 shall be assessed a fee based upon individual income and assets.

(h) If the Person is assessed a fee, the Person shall pay the Division of Services for People with Disabilities or designee 1/12th of the annual fee by the end of each month, beginning the following month after the notice of this rule was sent to the Person.

(i) If the Person fails to pay the fee for six months, the Division may reduce the Person's next year annual allocation to recover the amount due. If a Person can show good cause why the fee cannot be paid, the Division Director may grant exceptions on a case-by-case basis.

R539-1-11. Social Security Numbers.

(1) The Division requires persons applying for services to provide a valid Social Security Number. The Division adopts the same standard as ~~[Utah Administrative Code, Rule]~~Sections R414-302[-5] and 42 CFR 435.910, ~~[1997]~~2014 ed., which is incorporated by reference.

KEY: human services, disabilities, social security numbers

Date of Enactment or Last Substantive Amendment: ~~[December 30, 2013]~~2016

Notice of Continuation: November 5, 2012

Authorizing, and Implemented or Interpreted Law: 62A-5-103; 62A-5-105

Natural Resources, Water Rights **R655-3** Reports of Water Right Conveyance

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 40659

FILED: 08/11/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The current rule requires clarification and update to current industry practice.

SUMMARY OF THE RULE OR CHANGE: These rules are issued pursuant to Section 73-1-10 and Subsection 73-2-1(4) (1), which provide that the state engineer shall adopt rules

that specify when a water right owner is authorized to prepare a Report of Conveyance to the state engineer; the kinds of information required in such reports; and the procedures for processing such reports. A brief summary of what was in the old rule that is not in the new version of the rule is mainly a list of examples that have been omitted and are now to be included in a training manual rather than the rule. Items that are in the new rule that are not in the old rule are an expanded list of definitions from the old rule; establishment of when maps are required and standards for title maps; and a clarification of the use of an addendum to update title as now authorized by statute.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 73-1-10 and Subsection 73-2-1(4)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: No cost involved--Clarification of processing does not require a dollar figure.
- ◆ LOCAL GOVERNMENTS: No cost involved--Clarification of processing does not require a dollar figure.
- ◆ SMALL BUSINESSES: No cost involved--Clarification of processing does not require a dollar figure.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No cost involved--Clarification of processing does not require a dollar figure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No cost is involved--Clarifications of processing does not require a dollar figure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact. Clarification of process procedures does not require a dollar figure.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 NATURAL RESOURCES
 WATER RIGHTS
 ROOM 220
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Marianne Burbidge by phone at 801-538-7370, by FAX at 801-538-7467, or by Internet E-mail at marianneburbidge@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/11/2016

AUTHORIZED BY: Michael Styler, Executive Director

R655. Natural Resources, Water Rights.

[R655-3. Reports of Water Right Conveyance.

R655-3-1. Scope and Purpose.

~~These rules are issued pursuant to Section 73-1-10 which provides that the state engineer shall adopt rules that specify when a water right owner is authorized to prepare a Report of Conveyance to the state engineer; the kinds of information required in such reports; and the procedures for processing such reports.~~

R655-3-2. Definitions.

~~BENEFICIAL USE - the basis, the measure and the limit of a water right. It is the amount of water use allowed by the water right expressed in terms of the purpose(s) to which the water may be applied. For example, in the case of irrigation, the beneficial use is expressed as the number of acres that may be irrigated by the water right (e.g. 40 acres).~~

~~CHANGE APPLICATION - as allowed by Section 73-3-3, any person entitled to the use of water may make permanent or temporary changes in the point of diversion, place of use, or nature of use of a water right by making application upon forms furnished by the state engineer~~

~~DIVERSION LIMIT - the total volume of water in acre feet or the flow rate in cubic feet per second which may be diverted as allowed by the water right to meet the needs of the beneficial uses authorized by the water right.~~

~~DIVISION - the Utah Division of Water Rights within the Department of Natural Resources.~~

~~PROFESSIONAL - for the purposes of this rule, a person, as specified in Section 73-1-10, who is licensed in Utah as an attorney, a professional engineer, a title insurance agent, or a professional land surveyor.~~

~~REPORT OF CONVEYANCE - a report of water right conveyance to the state engineer as required by Section 73-1-10.~~

R655-3-3. When a Water Right Owner is Authorized to Prepare a Report of Conveyance.

~~A water right owner may prepare a Report of Conveyance without the certification of a professional in the situations described below in subsections 3.2, 3.3, and 3.4. In all other situations, a Report of Conveyance must be prepared by or under the direct supervision of, and certified by, a professional.~~

~~3.1 On each of the documents (deed, marriage certificate, divorce decree, death certificate, or probate document) required in the situations described in subsections 3.2, 3.3, and 3.4, the name appearing on the document (the grantor in the case of a deed) must be exactly the same as the name of the water right owner as shown on the division's records. If there are differences in the names, the discrepancy may be addressed by attaching to the Report of Conveyance affidavits executed by the appropriate parties asserting that the persons named are one and the same.~~

~~3.2 Ownership changes which involve simple water rights conveyances:~~

~~3.2.1 A deed which conveys an entire water right and which specifically identifies the water right being conveyed by the state engineer's water right number (for example 43-1638):~~

~~3.2.2 A deed which conveys more than one water right and which meets the criteria of paragraph 3.2.1 for each water right conveyed.~~

3.2.3 A deed which conveys a portion of a water right and which conforms to the following suggested Water Right Deed format:

3.2.3.1 The deed must be clearly labeled "WATER RIGHT DEED".

3.2.3.2 The deed must contain standard warranty deed or quit claim deed conveyance language.

3.2.3.3 The deed must be limited to the conveyance of water rights and must convey only one water right.

3.2.3.4 The deed must contain all of the information necessary to clearly identify the water right conveyed. The deed must show the water right number. If this interest in the water right has been segregated from another water right, the deed must show the currently assigned water right number. The water right number will be the basis for identifying the water right, however, the deed may also show other numbers pertinent to the water right such as a diligence claim number, an application number, an award number from a decree, etc.

3.2.3.5 The deed must name a grantee. (The name of the grantee as shown on the deed will be the name used to update the division's records.)

3.2.3.6 The deed must show the current mailing address for the grantee. (This will be the address to which the division will mail official notices regarding administrative actions on the water right.)

3.2.3.7 The deed must describe the beneficial uses conveyed by type and amount. For example:

TABLE 1

Irrigation	38.50 acres
Stockwatering	10 cattle or equivalents
Domestic	1 family

(The division will use the beneficial use information to update the water right ownership.) The volume of water conveyed in acre feet or the flow rate conveyed in cubic feet per second or gallons per minute, is not required on the deed. However, if it is shown on the deed, it must be consistent with the beneficial use(s) shown on the deed.

3.2.3.8 If there are multiple grantors and/or multiple grantees, the deed must clearly indicate the interest conveyed from each grantor and/or the interest acquired by each grantee.

3.2.3.9 The deed must list by number any approved or unapproved pending change applications which are associated with the water right. The deed must also describe the type and amount of beneficial use associated with each of these applications that is being conveyed with the water right. For example:

TABLE 2

Irrigation	20.50 acres
Stockwatering	5 cattle or equivalents
Domestic	1 family

3.2.3.10 The deed must be signed by all grantors, notarized, and recorded in the county where the water is diverted and in the county where the water is used. If the water is diverted or used in more than one county, the deed must be recorded in each county where the water is diverted or used.

3.2.4 Reports of Conveyance prepared by water right owners may be based on more than one deed in the chain of deeds as long as each deed complies with the requirements of 3.2.1, 3.2.2, or 3.2.3.

3.3 Name changes which are due to marriage or divorce

3.3.1 In the case of marriage, a water right owner's name may be changed from the prior or maiden name to the married name. The Report of Conveyance must be accompanied by a copy of the marriage certificate.

3.3.2 In the case of divorce, a water right owner's name may be changed from the married name to the prior or maiden name. The Report of Conveyance must be accompanied by a copy of the divorce decree.

3.3.3 To add or remove a spouse, the water right ownership may be updated according to the procedure described in 3.2 above.

3.4 Ownership changes which are due to the death of the water right owner

3.4.1 When the water right is held in joint tenancy, the ownership may be updated to remove the name of the deceased joint tenant. The Report of Conveyance must be accompanied by a copy of the death certificate.

3.4.2 When the water right is not held in joint tenancy and there is only one successor to the deceased and the probate document clearly defines the distribution of the estate, the ownership may be updated to the successor. The Report of Conveyance must be accompanied by a copy of the probate document.

R655-3-4. Content of the Report of Conveyance.

A Report of Conveyance must have sufficient documentation presented in a standard statement format to demonstrate the chain of title connecting the owner as shown on the Division's water right records to the person currently claiming ownership of all or a portion of the water right. The Report of Conveyance shall be submitted on forms provided by the state engineer. The information required in a Report of Conveyance for most ownership transactions includes the information described below and any other information deemed necessary by the state engineer to process the report.

4.1 Information required on all Reports of Conveyance

4.1.1 The type of conveyance document.

4.1.2 The date the document was signed and the county recorder information.

4.1.3 The grantor name(s) as it appears on the conveyance document.

4.1.4 The grantee name(s) exactly as it appears on the conveyance document.

4.1.5 The current mailing address of the grantee.

4.1.6 Any pending change applications or non-use applications associated with the conveyance document.

4.1.7 Any special conditions of the conveyance document

4.1.8 Unless the Report of Conveyance is prepared by the water right owner as allowed by R655-3-3, it must include a certification by a professional stating that (s)he has prepared or supervised the preparation of the Report of Conveyance, that the report is true and accurate to the best of the preparer's knowledge, and that the attached documents evidence the ownership interest of the grantee. The certification must include the professional's name, profession, license number, and phone number. The certification also requires the name and phone number of the grantee.

4.2 In addition to the information described in 4.1, a Report of Conveyance which involves conveyance of only a portion of the water right must also include the following information:

~~4.2.1 The amount and type of each beneficial use that was conveyed by this document.~~

~~4.2.2 If applicable, the amount of each type of beneficial use associated with any pending change that was conveyed by the documents.~~

~~4.2.3 The diversion limit conveyed as applicable (see subsection 3.2.3.7).~~

~~4.3 The supporting information which must accompany each Report of Conveyance include the following items:~~

~~4.3.1 Maps (if needed to establish water right appurtenance to land or to establish the portion of the water right conveyed by appurtenance)~~

~~4.3.2 Any explanatory narrative deemed necessary by the certifier.~~

~~4.3.3 Any necessary affidavits~~

~~4.3.4 Copies of all conveyance documents listed on the summary sheet.~~

~~4.3.4.1 Conveyance documents (deeds, etc.) must bear county recorder's stamp with all recording information (document number, book, page, recording date, etc.).~~

~~4.3.4.2 Documents must be legible.~~

~~4.3.4.3 Documents must be arranged in chronological order by recording date/number.~~

R655-3-5. Procedures for Processing a Report of Conveyance.

~~5.1 Upon receiving a Report of Conveyance and the prescribed fee, the state engineer shall review the Report to see that it is acceptably complete. A Report of Conveyance is acceptably complete if the Report includes all the information and material required in section R655-3-4 which is necessary to update the water right ownership records of the state engineer to the name of the person claiming water right ownership and which does not conflict with other water right ownership information of record with the state engineer.~~

~~5.2 If a Report of Conveyance is acceptably complete, the state engineer shall file the Report and update the water right ownership records according to the Report.~~

~~5.3 If a Report of Conveyance is not acceptably complete, the state engineer shall return the Report with an explanation of why it is not acceptably complete. The state engineer may not file the Report and update the water right ownership records unless the Report is resubmitted with the necessary information and material.]~~

R655-3. Reports of Water Rights Conveyance.

R655-3-1. Scope and Purpose.

These rules are issued pursuant to Utah Code Section 73-1-10 and 73-2-1(4)(a) which provides that the state engineer shall adopt rules that specify when a water right owner is authorized to prepare a Report of Conveyance to the state engineer; the kinds of information required in such reports; and the procedures for processing such reports.

R655-3-2. Definitions.

APPURTENANCE - A right or improvement to a property that passes with the property upon the transfer of the property. As applied to water rights, it is as described in Utah Code Section 73-1-11.

APPROPRIATION - an application seeking to appropriate water pursuant to Utah Code Section 73-3-2.

BENEFICIAL USE - the basis, the measure and the limit of a water right. It is the specific use(s) authorized under a water right expressed in terms of the purpose(s) to which the water may be applied and the quantity of that purpose. For example, in the case of irrigation, the beneficial use is expressed as the number of acres that may be irrigated (e.g. 11.22 acres).

CHAIN OF TITLE - A series of deeds or other properly filed and recorded documents which demonstrate the transfer of a water right, a portion of a water right, or land with appurtenant water rights. Deeds establishing a chain of title begin with the owner listed on records of the Division of Water Rights as grantor of the first deed through a chronological succession of transfer documents where the right is ultimately conveyed to the grantee listed as new owner on the Report of Water Right Conveyance.

CHANGE APPLICATION - an application authorized to be made under Utah Code Section 73-3-3 to change the point of diversion, place of use, nature of use, period of use or storage of a water right.

CONFLICTED HOLDER - a person or entity claiming ownership of all or a portion of a water right that conflicts with the ownership claim of another person or entity claiming ownership of the same right or portion in question. Conflicted holders may also include title holders whose title is not directly disputed, but is the part-owner of a right where a title question exists, and to resolve the question, the State Engineer deems the holder should be involved.

DIVERSION LIMIT - the total volume of water in acre-feet or the flow rate in cubic feet per second which may be diverted as allowed by the water right to supply the needs of the beneficial uses authorized by the water right.

DIVISION - the Utah Division of Water Rights within the Department of Natural Resources.

EXCHANGE APPLICATION - as authorized under Utah Code Section 73-3-20, an application to allow water from one source to be exchanged for water from another source. Exchanges are conditional rights that do not modify the underlying rights (right on which the exchange is based). The water may be exchanged to the extent it is available and not used under the underlying right. For the purpose of updating title, an approved Exchange Application is appurtenant to land and transfers as other water right interests.

PLACE OF USE - the specific acreage where water under a water right may be placed to beneficial use as described on the records of the State Engineer or a decree.

PROFESSIONAL - for the purposes of this rule, a person authorized to submit a Report of Conveyance as specified in Utah Code Section 73-1-10. A professional must be licensed in Utah as an attorney, a professional engineer, a title insurance producer, or a professional land surveyor.

REPORT OF CONVEYANCE (ROC) - a report of water right conveyance to the state engineer as required by Section 73-1-10.

SHARE STATEMENT - A water right file created on state engineer records for purposes of administration in instances where the owner of shares of stock in a water company is authorized under statute to file an application (nonuse or change application) based on stock ownership. Water rights based on share statements are a conditional right. A water right change application based on shares

of stock is appurtenant to the land where it is used and transfers as other interests in water rights. Shares of Stock do not transfer under rules of other rights to use water but transfer as securities as set forth in Title 70A, Chapter 8, Uniform Commercial Code - Investment Securities.

SOLE SUPPLY - means the amount of Beneficial Use allowed under a particular water right when used alone and separate from all Supplemental Rights. If a water right is assigned to more than one Water Use Group, the Sole Supply of the water right is the sum of its Beneficial Use Amounts.

SUPPLEMENTAL GROUP - Also referred to as a Water Use Group, means one or more water rights listed together and assigned a unique number in the records of the State Engineer as being applied to a common Beneficial Use. The unique number referred to is shown on the Division's computer data base as Supplemental Group No.

WATER RIGHT NUMBER - a unique file number assigned by the Division beginning with a two digit prefix associated with a specific geographic area designated by the Division, followed by a dash followed by another number to establish a specific number for the administrative functions of the Division. (e.g. 43-3231)

WATER RIGHTS ADDENDUM - an addendum to a deed clarifying the water rights conveyed by the deed pursuant to Section 73-1-10(1)(d)(i) and 73-1-11(6). Addendums are recorded with the deed it accompanies at the County Recorder's Office and are forwarded by the County Recorder to the State Engineer pursuant to Utah Code Section 57-3-109.

R655-3-3. When a Water Rights Addendum Acts as a Report of Conveyance.

3.1 When a recorded Deed and water right or land addendum is transmitted to the State Engineer by a County Recorder, as required by Utah Code Section 57-3-109, the state engineer under Utah Code Section 73-1-10(1)(d)(ii) will process the Water Rights Addendum as though it were a submitted Report of Water Right Conveyance.

3.2 Water Right Addendums submitted in conformance with this rule shall be processed by the state engineer and ownership updated on water right records of the Division if:

3.2.1 The grantor listed on the deed and addendum is the owner as listed on water right records of the Division;

3.2.2 The Water Rights Addendum document is properly completed as instructed on the form; and

3.2.3 The addendum is signed by all grantors and grantees on the deed.

3.3 If the state engineer does not update water right ownership on records of the Division upon submittal of a Water Rights Addendum as described in this rule, the state engineer shall provide written notice to the grantee at the address stated on the addendum of the reasons ownership was not updated.

3.4 If the state engineer does not update water right ownership on records of the Division upon submittal of a Water Right Addendum as described in this rule, a water right owner shall submit a report of water right conveyance as directed in Utah Code Section 73-1-10(3) and these rules.

R655-3-4. Content of the Report of Conveyance.

4.1 A Report of Conveyance consists of:

4.1.1 A form provided by the state engineer which must be completed by the submitter;

4.1.2 Sufficient documentation presented as copies of properly recorded or authenticated documents to demonstrate the Chain of Title connecting the owner as shown on the Division's water right records to the person currently claiming ownership of all or a portion of the water right; and

4.1.3 Maps conforming to Rule R655-3-5 when conveyance by Appurtenance to land is asserted in the report of conveyance.

4.1.4 Additional information in the form of affidavits, opinions, and explanations if deemed necessary by the state engineer to process the ROC.

4.1.5 A fee paid to the State Engineer to process the Report of Conveyance pursuant to Utah Code Section 73-2-14(1)(q).

4.2 The content of a Report of Conveyance form is as follows:

4.2.1 A single specified water right number to which the report pertains. The ownership record of the Division for this water right number is the only record which will be updated when the ROC is deemed acceptably complete.

4.2.2 A summary of the documents relied upon to establish a Chain of Title including:

4.2.2.1 The type of conveyance document;

4.2.2.2 Recording information on a deed including the date it was signed and recorded, and the Recorder's entry number;

4.2.2.3 The grantor name(s) as it appears on the conveyance document;

4.2.2.4 The grantee names exactly as they appear on the conveyance document;

4.2.2.5 Any reservations or special conditions of conveyance.

4.2.2.6 If a portion of the owner's interest in a water right is conveyed, the "Portion" Report of Conveyance form must be used which additionally requires:

4.2.2.6.1 The quantity of each beneficial use conveyed.

4.2.2.6.2 If applicable, the quantity of use on a change application that was conveyed.

4.2.2.6.3 The diversion limit if applicable.

4.2.3 The number of any change application to which the report also pertains.

4.2.4 The mailing address of all new owner(s) as identified in the Chain of Title as the mailing address is to be shown on records of the state engineer.

4.2.5 A signed certification of the owner if the ROC is submitted by an individual without a professional certification attesting that the information contained in the ROC is true and accurate.

4.2.6 A signed certification by a Professional unless submittal by a Professional is exempted in these rules. The certification shall state: "The professional was retained by an owner of the water right to prepare or supervise the preparation of the Report of Conveyance; that the report is true and accurate to the best of the preparer's knowledge; that an appropriate search of County Recorder records has been made and that the attached documents evidence the ownership interest of the grantee." The certification must include the professional's name, profession, license number, mailing address and phone number.

4.3 Copies of deeds submitted as supporting documentation must be properly recorded in the county where water is diverted and, if different, the county where the water is used. The recording information must appear on deeds submitted.

4.4 A water right deed conveys only the water right or portion thereof expressly identified in the deed.

4.5 A document relied upon by a County Recorder's office to maintain a tract index for land with an appurtenant water right will be accepted as a conveyance document consistent with Utah Code Section 73-1-11(1)(b). Documents submitted must include: a chain of title from the person identified on the State Engineer's records as owning the water right to the person shown on the County Recorder's records as owning the property to which the water right is appurtenant;

a copy of the tract index from the County Recorder; and/or an affidavit endorsed by the Report of Conveyance professional affirming that the water right has not been severed from the land but remains appurtenant to the property.

4.6 If an interest in a water right has been segregated from another water right, a deed recorded subsequent to the segregation must show the currently assigned water right number for the segregated water right.

4.7 The document required to support the change of the name of a corporation is a certificate of name change, or other similar document, stamped by the Utah Department of Commerce, or by the appropriate agency in the State in which the corporation is incorporated, accompanying the Report of Conveyance.

4.8 A copy of a marriage license evidences the change of name of an individual specified in the license.

4.9 A copy of a decree of a court of competent jurisdiction evidences the change of name of an individual as declared in the decree.

4.10 A copy of a death certificate evidences the dissolution of joint tenancy in favor of the surviving party (removal of a joint tenant as an owner on Division records).

4.11 A properly executed affidavit by an individual evidences aliases by which the individual may be named in other documents.

4.12 In the case of poor copies, improved copies may be requested.

4.13 Supporting documents must be arranged in ascending chronological order (oldest to youngest) by recording date.

R655-3-5. Maps and Mapping Standards for Reports of Conveyance.

5.1 Maps are required when a water right is conveyed as an appurtenance to property. A map is a graphical depiction of the water right place of use overlain by the metes and bounds description of the property conveyed in a land deed demonstrating graphically and to scale the portion of the water right which is appurtenant to the property described.

5.2 Maps shall meet the following standards:

5.2.1 Maps must be legible.

5.2.2 Maps may be 8 1/2 x 11 or 8 1/2 x 14 inches in size.

5.2.3 Maps are to state the water right number conveyed.

5.2.4 Maps are to include a north arrow.

5.2.5 Maps are to be drawn to scale with a graphical scale bar contained thereon.

5.2.6 Maps are to include appropriate Public Land Survey lines and labelled with section(s), township, range, and base and meridian.

5.2.7 At least one section corner location or appropriate survey tie is to be shown on the map and labelled as such.

5.2.8 Maps are to include and depict the entire parcel described as conveyed on the land deed and the actual acreage of the parcel.

5.2.9 Maps are to show by hatching or shading the authorized place of use of the water right which is appurtenant to land described in a land deed.

5.2.10 Maps are to show any reservations from the property including property described by language such as "less and excepting" in the overall property description.

5.2.11 Each deed submitted must have a map accompanying it unless the property description in every deed is identical.

5.2.12 Maps should include a legend containing an identifier for the deed mapped, parcel numbers, subdivision name and lot numbers, and any other information needed to connect the map to the deed in a clear and consistent manner.

5.3 The accuracy and completeness of maps are the responsibility of the professional preparing the Report of Conveyance. Additional information may be required by the Division of Water Rights to adequately identify the property to which water rights are appurtenant or the place of use of a portion of a water right being conveyed.

R655-3-6. Procedures for Processing a Report of Conveyance.

6.1 Upon receipt of a Report of Conveyance, the state engineer shall assess if the Report of Conveyance is acceptably completed in form and substance.

6.2 If a Report of Conveyance is acceptably complete, it will be processed and Division records updated to reflect ownership of the water right in accordance with the Report. Written notice will be sent to the new owner identified in the Report of Conveyance.

6.3 If a Report of Conveyance is not acceptably complete, the ROC will be returned to the submitting party with an explanation of why it is not considered acceptably complete.

6.4 If the fee for the ROC has been processed by the state engineer prior to the return of a ROC to the submitting party, the state engineer will place a copy of the ROC on the water right file but will not update ownership records until the ROC is acceptably complete.

The submitting party will be allowed 90 days to return a corrected or completed ROC for processing without further fee.

6.5 The accuracy and completeness of the Report is the sole responsibility of the submitter.

6.6 A Report of Conveyance which conflicts with another Report on the same water right will not be processed and will be returned to the submitter. Its receipt will be noted on records of the state engineer and the disputing parties notified. The state engineer will take no further administrative action on a water right which is the subject of a conflict until the conflict is resolved.

6.6.1 Conflicted Holders may resolve the title conflict by filing documents that resolve the title question with the State Engineer. To be evaluated, any documents submitted, including court orders, must first be filed with the applicable county recorder

where the water right is diverted and used. Any resolution document, agreement or order between the Conflicted Holders must directly address the title conflict of record rather than appeal to state engineer discretion in resolving the matter.

6.6.2 Nothing in this Section 6.6 shall be construed to create a title conflict where a deed with precedence over subsequent deeds relied upon in a chain of title used to update state engineer records is submitted in a Report of Conveyance. However, the deed holder assumes ownership of the water right on state engineer records subject to all administrative actions which have occurred at the time the ROC is submitted and individual ROCs must be filed for each segregated portion of the water right affected by the conveyance documents.

R655-3-7. When a Water Right Owner Is Authorized to Prepare a Report of Conveyance Without a Professional.

7.1 A Report of Conveyance may be submitted by the owner of a water right without the certification of a professional only in the following situations:

7.1.1 When the deed or deeds convey 100% of a water right and state the water right number on the deed.

7.1.2 When the deed or deeds convey an owner's interest in a portion of a water right, all owners of that interest of the right shall sign the deed as grantors, the deed conveys the portion by stating the water right number on the deed, and the sole supply has been established for the portion conveyed.

7.1.3 When the Report of Conveyance is submitted to change the name of an owner but does not report the conveyance of an interest in the water right to a new party.

7.1.4 When the Report of Conveyance is submitted to remove the name of a joint tenant due to death.

KEY: water rights, conveyances, ownership, titles

Date of Enactment or Last Substantive Amendment: ~~July 1, 2000~~2016

Notice of Continuation: August 1, 2014

Authorizing, and Implemented or Interpreted Law: 73-1; 73-2-1(4)(a)

Natural Resources, Water Rights
R655-17
 Water Use Data Reporting and
 Verification

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40660

FILED: 08/11/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is issued pursuant to Subsection 73-2-1(5)(b) and Sections 73-5-4 and 73-5-8 which provides that

the Division of Water Rights shall adopt rules that specify what water use data a person shall report and how the Division of Water rights shall validate data submitted.

SUMMARY OF THE RULE OR CHANGE: The rule specifies what water use data a person shall report and how the Division of Water Rights shall validate data submitted.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 73-2-1(5)(b) and Section 73-5-4 and Section 73-5-8

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: No cost is involved. Clarification of processing does not require a dollar figure.
- ◆ LOCAL GOVERNMENTS: No cost is involved. Clarification of processing does not require a dollar figure.
- ◆ SMALL BUSINESSES: No cost is involved. Clarification of processing does not require a dollar figure.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No cost is involved. Clarification of processing does not require a dollar figure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No cost is involved. Clarification of processing does not require a dollar figure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact. Clarification of process procedures does not require a dollar figure.

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

NATURAL RESOURCES
 WATER RIGHTS
 ROOM 220
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Marianne Burbidge by phone at 801-538-7370, by FAX at 801-538-7467, or by Internet E-mail at marianneburbidge@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/11/2016

AUTHORIZED BY: Michael Styler, Executive Director

R655. Natural Resources, Water Rights.**R655-17. Water Use Data Reporting and Verification.****R655-17-1. Scope and Purpose.**

These rules are issued pursuant to Utah Code Section 73-2-1(5)(b), 73-5-4, and 73-5-8 which provides that the Division of Water Rights shall adopt rules that specify what water use data a person shall report and how the Division of Water Rights shall validate data submitted.

R655-17-2. Definitions.

"Certified Operator" means a person who operates, repairs, maintains, and is directly employed by or an appointed volunteer for a public drinking water system that is certified under Rule R309-300.

"Professional Engineer" is a professional engineer, licensed in Utah, retained to operate, repair, and maintain a public drinking water system.

"Public Water Supplier" is a system that meets the criteria under section 19-4-102(7) of the Utah Code.

"Telemetry" is an automated communications process by which measurements or data are collected at one location and transmitted electronically to receiving equipment for monitoring.

"Water Use Data Form" is the title of the report sent to water users annually requesting water use data.

"Water User" is an individual or group using water from any river system or water source in the State.

R655-17-3. Annual Water Use Report Collection.

3.1 Annually the Utah Division of Water Rights may request a Public Water Supplier or a Water User report to the Division:

3.1.1 the nature of any water use;

3.1.2 the area on which water was used;

3.1.3 the quantity of water diverted;

3.1.4 the quantity of water used;

3.1.5 the number of connections to which water is provided;

3.1.6 all water sources including water purchased from other systems;

3.1.7 the quantity of water wholesaled; and

3.1.8 water elevations on wells or tunnels.

3.2 The Utah Division of Water Rights shall send a request (Utah Water Use Data Form) for data the following calendar year of the water use either by mail or electronically.

3.3 The Water User shall return the Utah Water Use Data Form to the State within the timeframe stated upon the request, which shall not be less than 30 days.

3.4 If the Water User is a Public Water Supplier then the Certified Operator of Professional Engineer shall sign and provide their certification or license number attesting to the accuracy of the data reported on the Utah Water Use Data Form.

R655-17-4. Annual Water Use Report Validation.

4.1 The Utah Division of Water Rights may validate the data reported on the Utah Water Use Data Form by making further inquiries or conducting a site visit.

4.2 Utah Division of Water Rights staff may require systems to make the controlling works, measuring devices, points of diversions, and distribution facilities accessible for inspection.

4.3 If a Public Water Supplier does not return the Water Use Data Form or knowingly reports inaccurate data the system will be reported to the Division of Drinking Water.

R655-17-5. Other Data Requests.

5.1 Every person using water from any river system or water source, when requested by the Utah Division of Water Rights at any time, shall within 30 days after such request report to the state engineer in writing:

5.1.1 the nature of any water use;

5.1.2 the area on which water is being used;

5.1.3 the source and quantity of all water diverted; and

5.1.4 water elevations on wells or tunnels.

5.2 To facilitate the collection of water use data, the state engineer may require a water user install telemetry equipment on any measurement required under 73-5-4 in circumstances where conflicts among water users has been demonstrated.

5.3 The State Engineer shall approve:

5.3.1 the design of the telemetry equipment; and

5.3.2 the method for reporting the data to the State Engineer.

5.4 If a water user refuses or neglects to install or maintain telemetry equipment or refuses or neglects to report the measurements or data to the State Engineer, the State Engineer may:

5.4.1 forbid the use of water until the user complies with the State Engineer's requirements; and

5.4.2 commence enforcement proceedings authorized by Section 73-2-25.

KEY: water use, reporting, verification

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: 73-2-1(5)(b); 73-5-4; 73-5-8

Regents (Board of), Administration
R765-431
 State Authorization Reciprocity
 Agreement Rule

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40658

FILED: 08/11/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes application procedures, regulations, and policy for higher education institutions that wish to join the State Authorization Reciprocity Agreement.

SUMMARY OF THE RULE OR CHANGE: This rule establishes definitions, application procedures, surety requirements, eligibility requirements, and complaint procedures for higher education institutions that wish to join the State Authorization Reciprocity Agreements. The reciprocity agreement allows participating member institutions to avoid licensing and costs of compliance from each state in which it provides educational activities.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53B-16-109

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This program is self-funding through fees, depending on the size of the institution that wishes to apply. The reciprocity agreement is entirely voluntary for public and private institutions of higher education. Fees collected cover the administrative costs only.

◆ **LOCAL GOVERNMENTS:** This has no impact on local government. The reciprocity agreement is only available for accredited institutions of higher education (both private and public), which, in my understanding, do not qualify as local governments. Local governments do not participate in or are impacted by an institution's voluntary participation in these agreements.

◆ **SMALL BUSINESSES:** Presently, there are approximately 18 for-profit colleges operating in Utah. Some of them may qualify as small businesses. They all have the same requirement to comply with Utah's consumer protection laws but are not otherwise governed by the state system of higher education. This rule will not change that. However, small private institutions of higher education that wish to engage in online education in other states may join the State Authorization Reciprocity Agreement. To do that, they will have to also comply with the consumer protection laws of those states as well, which could incur the cost of licensing and/or compliance. Those costs are difficult to quantify for purposes of this rule because they would depend on the size of the college and the state in which the college wishes to engage in educational activities. Those same colleges, however, can voluntarily join in the reciprocity agreement, which will allow the institution to avoid the costs associated with compliance in other states. Those that voluntarily choose to join the consortium will incur an annual fee. The fee will be based on the size of the institution but will likely be \$2,000 for small institutions.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no other impacts. Institutions of higher education that wish to participate must meet the same consumer protection requirements as they normally would when engaging in educational activities in Utah or any other state.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Participation in the reciprocity agreement is voluntary. Institutions of higher education who wish to participate must meet the same consumer protection requirements as they normally would when engaging in educational activities in Utah or any other state. Therefore, there is no compliance cost associated with this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because participation is voluntary, public and private institutions may choose not to join the consortium and thereby avoid the application fees. However, all institutions bear the cost of licensing and compliance with consumer protection laws in each state they provide educational

activities. Entities that enter into the SARA agreements will likely save costs because they do not need to go through the cost and administrative burden of licensing in each individual state they provide educational activities, including online education.

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

REGENTS (BOARD OF)
ADMINISTRATION
BOARD OF REGENTS BUILDING, THE GATEWAY
60 SOUTH 400 WEST
SALT LAKE CITY, UT 84101-1284
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Geoff Landward by phone at 801-321-7136, or by Internet E-mail at glandward@ushe.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2016

AUTHORIZED BY: Dave Buhler, Commissioner of Higher Education

R765. Regents (Board of), Administration.
R765-431. State Authorization Reciprocity Agreement Rule.
R765-431-1. Purpose.

To administer a state authorization reciprocity agreement as authorized by Section 53B-16-109.

R765-431-2. Definitions.

In addition to the definitions set forth in Section 53B-16-109(1), the following definitions shall apply to this Rule.

(1) "OCHE" shall mean the Office of the Commissioner of Higher Education.

(2) "NC-SARA" shall mean the National Council for State Authorization Reciprocity Agreements.

(3) "SARA" shall mean the State Authorization Reciprocity Agreement overseen by NC-SARA and administered by four regional higher education compacts, including WICHE.

(4) "SARA portal agency" shall mean the single agency designated by each SARA member state to serve as the interstate point of contact for SARA questions, complaints, and other communications.

(5) "WICHE" shall mean the Western Interstate Commission for Higher Education.

R765-431-3. Applications for Institutional Participation in SARA.

(1) Institutions desiring to participate in SARA shall submit to OCHE the following:

(a) A completed Application and Approval Form for Institutional Participation in SARA that is approved by NC-SARA;

(b) Payment of the fee established by OCHE for administering SARA; and

(c) The following documents verifying the statements made in the application:

(i) Evidence supporting Institution's statement that its principal campus or central administrative unit is located in Utah and that it is authorized to operate in Utah;

(ii) Evidence supporting Institution's statement that it is a degree-granting institution that is accredited by an accrediting body recognized by the U.S. Secretary of Education;

(iii) Evidence showing (1) students are informed, before completing the enrollment process for an online course or program, of the student consumer complaint processes available to them, and (2) the student complaint processes are clearly defined and can be used electronically;

(iv) Evidence showing students are informed, before completing the enrollment process for an online course or program that customarily leads to professional licensure, whether or not the course or program meets licensure requirements in the state where the student resides or, if unknown, students are provided the contact information for the appropriate state licensing board(s); and

(v) For non-public Institutions, evidence of Institution's financial responsibility index score from the Department of Education that is 1.5 or above, or if its score is between 1.0 and 1.5, evidence that Institution has obtained the surety required in R765-431-4. Non-public Institutions with a score below 1.0 will not be eligible to participate in SARA.

(2) Institutions desiring to continue participating in SARA after one year of the initial application shall submit to OCHE annually thereafter the following:

(a) A completed Renewal Application for Institutional Participation in SARA that is approved by NC-SARA within 30 days of receipt of notice for opportunity to renew from NC-SARA;

(b) Payment of the fee established by OCHE for administering SARA; and

(c) The following documents verifying the statements made in the application:

(i) Evidence that Institution's principal campus or central administrative unit remains located in Utah and that Institution continues to be authorized to operate in Utah;

(ii) Evidence that Institution retains its accreditation by an accrediting body recognized by the U.S. Secretary of Education; and

(iii) For non-public Institutions, evidence of Institution's financial responsibility index score from the Department of Education.

(3) OCHE shall notify the Institution no later than 30 days after receipt of the initial or renewal application of its decision to approve, deny, or return the application for further information.

(4) If an Institution's initial or renewal application is denied, OCHE shall provide to the applicant a written reason for the denial.

(5) If any information contained in the initial or renewal application becomes incorrect or incomplete while it is in effect, the Institution shall, within 30 days after the information becomes incorrect or incomplete, correct the application or file the complete information as required by OCHE.

R765-431-4. Surety Requirements for Institutions with a Low Financial Responsibility Index Score.

(1) An Institution with a financial responsibility index score from the Department of Education between 1.0 and 1.5 shall satisfy the requirement that it is sufficiently financially stable to participate in SARA by submitting with its application a surety in the form of a bond, certificate of deposit, or irrevocable letter of credit.

(2) The amount of the surety shall be:

(a) \$187,500 for Institutions expecting to enroll more than 100 separate individual students (non-duplicated enrollments) during the year it is applying to participate in SARA;

(b) \$125,000 for Institutions expecting to enroll between 50 and 99 separate individual students during the year it is applying to participate in SARA;

(c) \$62,500 for Institutions expecting to enroll less than 50 separate individual students during the year it is applying to participate in SARA; and

(d) \$12,500 for an Institution that is able to establish that its gross tuition income from any source during the year it is applying to participate in SARA will be less than \$25,000.

(3) The obligation of the surety will be that the Institution, its officers, agents, and employees will:

(a) faithfully perform the terms and conditions of its application to participate in SARA; and

(b) conform to the standards and requirements required for participation in SARA.

(4) The bond, certificate of deposit, or letter of credit shall be in a form approved by OCHE and issued by a company authorized to do such business in Utah.

(5) The bond, certificate of deposit, or letter of credit shall be payable to OCHE to be used to satisfy any costs, losses, or damages resulting from the Institution's failure to meet any of its obligations as a participant in SARA.

(6) The surety company may not be relieved of liability on the surety unless it gives the Institution and OCHE 90 calendar days' notice by certified mail of the company's intent to cancel the surety.

(7) If at any time the company that issued the surety cancels or discontinues the coverage, the Institution's eligibility to participate in SARA is automatically revoked as a matter of law on the effective date of the cancellation or discontinuance of surety coverage unless a replacement surety is obtained on or before the cancellation date of the original coverage and provided to OCHE.

R765-431-5. Revocation of Eligibility to Participate in SARA.

(1) An Institution's eligibility to participate in SARA may be revoked by OCHE upon its finding that:

(a) the Institution's application contains material representations which are incomplete, improper, or incorrect;

(b) the Institution failed to perform as represented in its applications;

(c) the Institution violated any of the policies and procedures of OCHE as they relate to SARA;

(d) the Institution violated any of the policies and procedures of NC-SARA or any of the four regional compacts administering SARA;

(e) the Institution failed to maintain an adequate financial responsibility index score from the Department of Education;

(f) the Institution has engaged in any dishonest or fraudulent activity; or

(g) the Institution failed to comply with any laws in this state or another state that affect its ability to continue doing business in Utah.

(2) The revocation of the eligibility of an Institution shall be made in accordance with the procedures set forth in UT Admin. R765-134. A hearing is not required.

R765-431-6. Request for Review.

(1) Institutions shall have the right to submit to OCHE a Request for Review regarding a decision to deny the Institution's application or to revoke the Institution's eligibility to participate in SARA.

(2) Requests for Review shall be postmarked within 10 days of date of notification of the adverse decision.

(3) Requests for Review will be reviewed and decided by a review committee appointed by the Commissioner of Higher Education.

(4) At the time the Request for Review is made, the Institution shall provide evidence to the review committee that the adverse decision was made in error.

(5) The decision of the review committee shall be made in accordance with the procedures set forth in UT Admin. R765-134. A hearing is not required.

(6) The decision of the review committee shall be the final institutional action. An Institution may request judicial review of the review committee's decision in accordance with UT Admin. R765-134.

(7) The Institution may also request that WICHE review an adverse decision to see whether the SARA policies and standards were upheld during the review process.

R765-431-7. Consumer Complaints.

(1) Filing Complaints. Before filing a complaint with OCHE against an Institution, an individual must first work through the Institution's complaint process. To file a complaint against an Institution, an individual shall submit to OCHE:

(a) a completed complaint form as provided by OCHE; or

(b) a letter signed by the complainant, and including:

(i) all documentary evidence relating to the facts of the complaint;

(ii) evidence of the Institution's resolution of the complaint; and

(iii) contact information for the complainant.

(2) Complaint Resolution. OCHE may refer the complaints it receives to one or more of the following entities for resolution as it deems appropriate:

(a) the Institution complained against;

(b) the SARA portal agency in the home state of a non-Utah Institution complained against; and

(c) the Utah Division of Consumer Protection or other law enforcement agency.

(3) Action to Revoke Based on Consumer Complaint. OCHE may take action, in accordance with UT Admin. R765-431

-5. to revoke an Institution's eligibility to participate in SARA based on a consumer complaint that is received within two years of the incident complained of.

KEY: State Authorization Reciprocity Agreement (SARA), NC-SARA

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: 53B-16-109

Science Technology and Research Governing Authority (Utah), Administration **R856-1** Formation and Funding of Utah Science Technology and Research Innovation Teams

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 40655

FILED: 08/10/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Recent legislation (S.B. 166 from the 2016 General Session) has made the rule inapplicable.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety due to recent legislation (S.B. 166 (2016)) making it inapplicable.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63M-2-302(h)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: None--The repeal of this rule is a result of S.B. 166 (2016), which made this rule unnecessary. The potential revenue impacts were reviewed as a part of S.B. 166, and the fiscal note attached to that legislation concluded that there was not likely to be a direct, measurable revenue impact.

♦ LOCAL GOVERNMENTS: None--The repeal of this rule is a result of S.B. 166 (2016), which made this rule unnecessary. The potential revenue impacts were reviewed as a part of S.B. 166, and the fiscal note attached to that legislation concluded that there was not likely to be a direct, measurable revenue impact.

♦ SMALL BUSINESSES: None--The repeal of this rule is a result of S.B. 166 (2016), which made this rule unnecessary. The potential revenue impacts were reviewed as a part of S.B. 166, and the fiscal note attached to that legislation

concluded that there was not likely to be a direct, measurable revenue impact.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--The repeal of this rule is a result of S.B. 166 (2016), which made this rule unnecessary. The potential revenue impacts were reviewed as a part of S.B. 166, and the fiscal note attached to that legislation concluded that there was not likely to be a direct, measurable revenue impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There are no compliance costs associated with this repeal as it is obsolete and no longer applicable to any persons or entities in its current form.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The repeal of this rule is a result of S.B. 166 (2016), which made this rule unnecessary. The potential revenue impacts were reviewed as a part of S.B. 166, and the fiscal note attached to that legislation concluded that there was not likely to be a direct, measurable revenue impact.

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

SCIENCE TECHNOLOGY AND RESEARCH GOVERNING AUTHORITY (UTAH) ADMINISTRATION
60 E NORTH TEMPLE
THIRD FLOOR
SALT LAKE CITY, UT 84111
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Koa Perlac by phone at 801-538-8622, by FAX at 801-538-8881, or by Internet E-mail at kperlac@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2016

AUTHORIZED BY: Ivy Estabrooke, Executive Director

R856. Science Technology and Research Governing Authority (Utah), Administration.

[R856-1. Formation and Funding of Utah Science Technology and Research Innovation Teams.

R856-1-1. Authority.

— This rule is issued pursuant to Title 63M-2-302(f).

R856-1-2. Scope of Rule.

— This rule relates to all funds allocated to Utah Science Technology and Research innovation teams by the Utah Science Technology and Research Governing Authority.

R856-1-3. Definitions.

— (A) "Capital equipment" means an article of non-expendable tangible personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

— (B) "Core operating support" means telephone administrative support and equipment, consumables, and other recurring support of Utah Science Technology and Research innovation team hire.

— (C) "Executive director" means the person appointed by the governing authority under Section 63M-2-301.

— (D) "Governing authority" means the Utah Science Technology and Research Governing Authority created in Section 63M-2-301.

— (E) "Program budget" means the budget proposed by each Utah Science Technology and Research innovation team and approved by the Utah Science Technology and Research Governing Authority.

— (F) "Start-up funds" means Utah Science Technology and Research money allocated to pay for Utah Science Technology and Research innovation team hire's recruiting, moving, capital equipment, laboratory and office space build-out, and other expenses necessary for Utah Science Technology and Research project.

— (G) "Utah Science Technology and Research Project" means the buildings and activities described in Title 63M-2 Part 2, Utah Science Technology and Research Project.

— (H) "Utah Science Technology and Research innovation team" means the research teams recruited and hired through the Utah Science Technology and Research initiative to conduct science and technology research within the framework set forward by the Utah Science Technology and Research Governing Authority.

— (I) "Utah Science Technology and Research innovation team hire" means the researchers recruited and hired directly through the Utah Science Technology and Research initiative to conduct science and technology research within the framework set forward by the Utah Science Technology and Research Governing Authority.

R856-1-4. Initial Allocation of Funds to Utah Science Technology and Research Innovation Team.

— (A) 10% of program money is released for Utah Science Technology and Research innovation team when initial position is considered necessary and approved for by the governing authority.

— (1) Total amount of program money is determined by pro forma program budget approved by the governing authority.

R856-1-5. Secondary Allocation of Funds to Utah Science Technology and Research Innovation Team.

— (A) The remaining 90% of program money is eligible for release to Utah Science Technology and Research innovation team when a memorandum of understanding of first team hire is presented to the governing authority and the detailed program budget is deemed to be within the guidelines of the governing authority.

— (B) Utah Science Technology and Research innovation team hire and the appropriate university representatives such as department head, dean, provost, or vice president for research will agree upon and enter into a memorandum of understanding detailing:

- (1) capital equipment and other start-up requirements;
- (2) salary and benefits requirements;
- (3) core operating support requirements;

- ~~_____ (4) how the expected Utah Science Technology and Research innovation team will be organized;~~
- ~~_____ (5) Utah Science Technology and Research innovation team requirements and expectations;~~
- ~~_____ (6) other points important to Utah Science Technology and Research innovation team hire and university.~~

~~**R856-1-6. Ongoing Funding for Utah Science Technology and Research Innovation Team:**~~

- ~~_____ (A) Innovation team funding will have non-lapsing status based on the previous years funding, until:~~
 - ~~_____ (1) the governing authority cancels the Utah Science Technology and Research innovation team;~~
 - ~~_____ (2) the governing authority approves a motion to reduce innovation team budget; or~~
 - ~~_____ (3) program changes are mutually proposed by the authorized university representative and the executive director and approved by the governing authority.~~

~~**R856-1-7. Unused Funds for Utah Science Technology and Research Innovation Team:**~~

- ~~_____ (A) Utah Science Technology and Research innovation team funds allocated as start-up funds according to memorandum of understanding will have non-lapsing status between fiscal years for the first 3 fiscal years based on the date of the memorandum of understanding.~~
 - ~~_____ (1) Start-up funds unused after the first 3 fiscal years will revert back to the Utah Science Technology and Research General Fund.~~
- ~~_____ (B) Core operating support and salary and benefit funds unused by the end of the fiscal year will have a threshold 10% automatic carry over into the subsequent fiscal year.~~
 - ~~_____ (1) Institutions may request carry forward of the unused funds over the 10% threshold subject to executive director approval.~~

~~**KEY: USTAR, technology funding, research funding**
Date of Enactment or Last Substantive Amendment: July 31, 2012
Authorizing, and Implemented or Interpreted Law: 63M-2-302(f)]~~

Science Technology and Research
 Governing Authority (Utah),
 Administration
R856-1
 USTAR Technology Acceleration
 Program Grants

NOTICE OF PROPOSED RULE
 (New Rule)
 DAR FILE NO.: 40657
 FILED: 08/11/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is a direct result of S.B. 166 from the 2016 General Session) now codified in Title 63M, Chapter 2. Subsection 63M-2-503(2) requires USTAR to create rules governing all USTAR grant programs. These are the rules for one of USTAR's new grant programs, the USTAR Technology Acceleration Program (TAP) grants.

SUMMARY OF THE RULE OR CHANGE: This rule describes the eligibility, reporting, and other criteria required for an entity to receive a grant under Section 63M-2-503, including: 1) the form and process of submitting a grant application; 2) which entities are eligible to apply for a TAP grant; 3) specific categories of projects that are eligible for a TAP grant; 4) the criteria for awarding grants and determining grant amounts; and 5) the reporting requirements of grant recipients.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63M-2-302(h)

- ANTICIPATED COST OR SAVINGS TO:**
- ◆ **THE STATE BUDGET:** None--Although this is a new program, its funded by appropriations that have already been allocated to USTAR for these purposes.
 - ◆ **LOCAL GOVERNMENTS:** None--Although this is a new program it is funded with the same appropriations that have already been allocated to USTAR for these purposes.
 - ◆ **SMALL BUSINESSES:** None--Although this is a new program it is funded with the same appropriations that have already been allocated to USTAR for these purposes.
 - ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Although this is a new program it is funded with the same appropriations that have already been allocated to USTAR for these purposes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If successful in winning a grant, companies will be required to report data for at least five years subsequent at approximately an hour/year of effort.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Any potential fiscal impacts on businesses would be limited to the time and materials spent to complete an application and will affect only those that choose to apply.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 SCIENCE TECHNOLOGY AND RESEARCH
 GOVERNING AUTHORITY (UTAH)
 ADMINISTRATION
 60 E NORTH TEMPLE
 THIRD FLOOR
 SALT LAKE CITY, UT 84111
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Koa Perlac by phone at 801-538-8622, by FAX at 801-538-8881, or by Internet E-mail at kperlac@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/04/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/18/2016

AUTHORIZED BY: Ivy Estabrooke, Executive Director

R856. Science Technology and Research Governing Authority (Utah), Administration.

R856-1. USTAR Technology Acceleration Program Grants.

R856-1-1. Authority.

(1) Subsection 63M-2-503(2) requires the USTAR governing authority to make rules for the eligibility, award process, and reporting criteria for each grant program administered by USTAR.

R856-1-2. Purpose and Goals.

(1) The USTAR Technology Acceleration Program provides grants and other support to assist the following:

(a) start-ups and early stage companies to accelerate the development of a new technology; and,

(b) later-stage companies to mature a new technology.

(2) The goals of the program are to:

(a) enhance the state's innovation system by supporting the development, retention, and attraction of science and technology companies in Utah; and,

(b) accelerate the growth of high-potential technology companies in the state leading to the creation of high-paying science and technology jobs in Utah.

R856-1-3. Definitions.

(1) "Applicant" means a company applying for a USTAR TAP Grant.

(2) "Awardee" means a company that has been awarded a TAP Grant.

(3) "Company" means a privately owned corporation, limited liability company, partnership, or other business entity or association and:

(a) does not include an individual, sole proprietorship, or higher-education institution; and,

(b) is represented by persons at least 18 years old.

(4) "Governing authority" means the Utah Science, Technology and Research governing authority.

(5) "TAP" means the USTAR Technology Acceleration Program, its activities and services.

(6) "TAP grant" means the competitive grant funding awarded and administered by USTAR under TAP.

(7) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(8) "Technology Gap" means the disparity between a company's existing technology or technological capacity and what is needed to develop a commercial application for a product.

(9) "Technology Readiness Level" or "TRL" level means the method of estimating technology maturity used by the U.S. Department of Defense.

(10) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for TAP grant funding as described in Subsection R856-1-4(2) below.

(11) "USTAR" means the Utah Science, Technology and Research Initiative.

R856-1-4. Eligibility Criteria.

(1) Company must be Utah-based.

(a) To be considered "Utah-based," a company must:

(i) be registered with the Utah Division of Corporations as an active, domestic, for-profit business entity, in good standing;

(ii) maintain its principal place of business in Utah; and,

(iii) not relocate the business or substantial portions of its employees, operations, or management outside of the State of Utah.

(b) If a company does not meet the criteria in Subsection R856-1-4(1)(a) above, or if it cannot be reasonably determined whether the company meets the criteria, the governing authority, in its discretion and upon approval by a majority vote, may determine whether a company should be considered a Utah-based company for purposes of the TAP grant by weighing the following factors:

(i) relative size of the entity including the number of employees in Utah and the relative size of operations in the state;

(ii) whether the company is registered as a domestic, for-profit business entity in Utah and has a business license in the appropriate Utah city or county;

(iii) whether the company's principal place of business is Utah;

(iv) likelihood that the company will maintain a significant presence in the state of Utah; and,

(v) degree to which the company's activities and operations positively impact Utah's economy.

(2) Company must be developing a technology in a targeted industry sector.

(a) USTAR will identify the industry sector(s) eligible to receive a TAP grant in the TAP application materials.

(b) The USTAR governing authority will, according to its discretion and judgment, review and approve the targeted technology sectors to ensure they are strategically selected to align with USTAR's economic development objectives and maximize the potential benefit to the state

(i) In selecting industry sectors eligible to receive support from TAP, the governing authority may consider the following factors:

(A) statewide or regional importance of the industry to Utah's economy;

(B) relative size of the sector, its stability, and growth potential;

(C) characteristics of the state's existing workforce, including education and training;

(D) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;

(E) the potential for the industry sector to develop new jobs and business opportunities in the state; and,

(F) Likelihood that research in this sector will result in creation of a company in Utah or IP transfer to an existing Utah company;

(3) The company must be developing a technology assessed to be between a TRL of 3-5.

R856-1-5. Application Form and Submission Guidelines.

(1) For each new round of grants, USTAR will provide a program announcement and make applications and instructions available on USTAR's website and in paper form upon request.

(2) The instructions will include the following:

(a) The procedure for submitting an application.

(b) Specific instructions for application content which will include:

(i) description of the company's technology and commercialization objectives;

(ii) list of technical milestones;

(iii) potential market;

(iv) potential economic impact on Utah economy; and,

(v) timeline for completion.

(c) Specific instructions for the required budget outline, including:

(i) total project cost;

(ii) a description of funds already secured for activities related to this project;

(iii) an itemized budget detailing planned use of grant funds; and,

(iv) breakdown of costs to complete each milestone.

(d) Description of the application evaluation process and scoring system.

(e) Instructions for reporting project results and completing annual follow-up surveys.

(3) Completed applications must be received on or before the specified deadline in the application instructions.

(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Sections R856-1-6 and R856-1-7 herein.

R856-1-6. Application Review Procedure.

(1) Initial eligibility screening.

(a) USTAR will conduct an initial eligibility screening for each application to ensure:

(i) Completeness;

(ii) Verification of minimum eligibility requirements; and

(iii) Appropriateness of applicant's reported TRL assessment, proposed timelines, and budget.

(b) Any application that fails to meet the criteria in Rule 6 Section (2) will be rejected.

(2) Panel Review.

(a) Accepted applications will be reviewed by a panel of independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-1-7.

(i) Each expert panel will consist of at least two technical expert one business expert, and one investment expert.

(ii) Technical subject-matter experts will assess the scientific and technical merits of the proposal.

(iii) Business subject-matter experts will evaluate the business model, project cost, commercialization strategy, and potential economic impacts of the proposal

(iv) Investment experts will evaluate the proposal and provide feedback to USTAR.

(v) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:

(A) academic qualifications, including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;

(B) relevant work experience and practical training in the field;

(C) knowledge of the target industry sector in Utah;

(D) experience evaluating grant proposals;

(E) general investment experience; and,

(F) any other factors USTAR deems important.

(vi) USTAR will screen the experts for conflicts of interest before reviews are initiated.

(3) Governing authority review.

(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.

(b) Recommendations from the subcommittee concerning which projects should be awarded a grant will be presented to the full governing authority for final approval.

R856-1-7. Application Evaluation Criteria.

(1) The panel of subject matter experts will use a scoring system to evaluate and rank grant applications and determine grant amounts.

(a) The scoring criteria will be made available during the application period.

(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:

(i) technical merit;

(ii) strength and maturity of company and management;

(iii) potential for economic impact, as measured by:

(A) job creation;

(B) product sales;

(C) potential revenue due to expansion of current business or development of new businesses; and/or

(D) projected time to revenue or job creation;

(iv) market need, technical and management experience and qualifications;

(v) reasonableness of cost proposal (i.e. size and allocation of budget is appropriate for the work proposed and matching funds available);

(vi) reasonableness of proposed milestones and timelines; and

(vii) any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.

(2) TAP Grants must be used to accelerate the development and commercialization of a technology and project proposals must identify specific technical milestones leading to the proposed outcome.

(3) Examples of acceptable milestones must be specific to the project may include:

- (a) research and development activities;
- (b) proof of concept;
- (c) product validation; and,
- (d) product development.

R856-1-8. Grant Amount, Award, and Required Agreement.

(1) USTAR will have the discretion to determine the maximum amount of funding that may be awarded for each round of TAP based on available funds and quality of applicant pool.

(2) USTAR reserves the right to award funding for any application in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of the governing authority.

(3) Upon award of the TAP grant, and prior to any disbursement of funds, Company must enter into a written agreement with USTAR governing the use of grant funding.

(4) Unless addressed in the terms and conditions of the written agreement between company and USTAR, the following provisions shall apply:

- (a) company must remain a Utah-based company for at least five years from initial disbursement of TAP funding;
- (b) company may not use TAP grant funding to provide a primary benefit to any state other than Utah; and,
- (c) for all other eligibility requirements, company must maintain eligibility status for the TAP program until the project is complete, all milestones have been met, final dispersant of funding has been made, and first year reporting has been completed.

(5) A company that violates the requirements of Subsection R856-1-8(4) forfeits the grant funding and must repay all or a portion of funds received as part of the TAP grant.

R856-1-9. Contract Modifications.

(1) Company may request a modification to the terms of a TAP agreement.

(2) USTAR may deny a modification request for any reason.

(3) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.

(a) Nonsubstantive changes may include the following:

- (i) changes to timelines of less than one month if it is the first such modification;
- (ii) corrections to clerical errors in the application materials;
- (iii) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law;

(4) Substantive changes must be approved by the USTAR governing authority.

(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant agreement.

R856-1-10. Funding Distribution.

(1) Initial funding of no more than 50% of the total grant award will be provided within a reasonable time after a TAP grant is approved to allow company to meet initial milestones.

(2) Remaining grant funds will be disbursed upon successful completion of designated milestones.

(3) Specific funding details will be provided in the program announcement and in each TAP grant contract.

(4) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

R856-1-11. Milestones and Reporting.

(1) Companies are required to provide reporting as specified in Section 63M-2-703 for at least five (5) years following initial receipt of grant funds.

KEY: Utah Science Technology and Research (USTAR), Technology Acceleration Program (TAP) grants, technology readiness level (TRL)

Date of Enactment or Last Substantive Amendment: 2016 Authorizing, and Implemented or Interpreted Law: 63M-2-302(h)

Science Technology and Research
Governing Authority (Utah),
Administration
R856-2
Distribution of Utah Science
Technology and Research
Commercialization Revenues

**NOTICE OF PROPOSED RULE
(Repeal)**

DAR FILE NO.: 40656
FILED: 08/10/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Recent legislation (S.B. 166 from the 2016 General Session) has made the rule inapplicable.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety due to recent legislation (S.B. 166) making it inapplicable.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63M-2-302(h)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** None--The repeal of this rule is a result of S.B. 166 (2016), which made this rule unnecessary. The potential revenue impacts were reviewed as a part of S.B. 166, and the fiscal note attached to that legislation concluded that there was not likely to be a direct, measurable revenue impact.

◆ **LOCAL GOVERNMENTS:** None--The repeal of this rule is a result of S.B. 166 (2016), which made this rule

unnecessary. The potential revenue impacts were reviewed as a part of S.B. 166, and the fiscal note attached to that legislation concluded that there was not likely to be a direct, measurable revenue impact.

♦ **SMALL BUSINESSES:** None--The repeal of this rule is a result of S.B. 166 (2016), which made this rule unnecessary. The potential revenue impacts were reviewed as a part of S.B. 166, and the fiscal note attached to that legislation concluded that there was not likely to be a direct, measurable revenue impact.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--The repeal of this rule is a result of S.B. 166 (2016), which made this rule unnecessary. The potential revenue impacts were reviewed as a part of S.B. 166, and the fiscal note attached to that legislation concluded that there was not likely to be a direct, measurable revenue impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There are no compliance costs associated with this repeal as it is obsolete and no longer applicable to any persons or entities in its current form.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No likely impact--The repeal of this rule is a result of S.B. 166 (2016), which made this rule unnecessary. The potential revenue impacts were reviewed as a part of S.B. 166, and the fiscal note attached to that legislation concluded that there was not likely to be a direct, measurable revenue impact. Nothing has transpired in the meantime that would change the analysis of this rule which was caused to become ineffective by that legislation, thus necessitating this repeal would not have any fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
SCIENCE TECHNOLOGY AND RESEARCH
GOVERNING AUTHORITY (UTAH)
ADMINISTRATION
60 E NORTH TEMPLE
THIRD FLOOR
SALT LAKE CITY, UT 84111
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Koa Perlac by phone at 801-538-8622, by FAX at 801-538-8881, or by Internet E-mail at kperlac@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2016

AUTHORIZED BY: Ivy Estabrooke, Executive Director

R856. Science Technology and Research Governing Authority (Utah), Administration.

~~[R856-2. Distribution of Utah Science Technology and Research Commercialization Revenues.~~

~~R856-2-1. Authority.~~

~~————— This rule is issued pursuant to Subsection 63M-2-302(1)(f).~~

~~R856-2-2. Scope of Rule.~~

~~————— This rule relates to all revenues generated through the Utah Science Technology and Research Project.~~

~~R856-2-3. Definitions.~~

~~————— (A) "Commercialization revenues" means dividends, realized capital gains, license fees, royalty fees, and other revenues received by a university as a result of commercial applications developed from the project, less:~~

~~————— (1) the portion of those revenues allocated to the inventor; and~~

~~————— (2) expenditures incurred by the university to legally protect the intellectual property beyond that paid out of the outreach program.~~

~~————— (B) "Executive director" means the person appointed by the governing authority under Section 63M-2-301.~~

~~————— (C) "Governing authority" means the Utah Science Technology and Research Governing Authority created in Section 63M-2-301.~~

~~————— (D) "Utah Science Technology and Research Project" means the buildings and activities described in Title 63M, Chapter 2, Part 2, Utah Science Technology and Research Project.~~

~~R856-2-4. Collection and Allocation of Initial Commercialization Revenues Generated Through the University of Utah and Utah State University.~~

~~————— (A) The University of Utah and Utah State University will collect commercialization revenues generated through the Utah Science Technology and Research project conducted at each respective university.~~

~~————— (B) The University of Utah and Utah State University will report commercialization revenues to the executive director on an annual basis 45 days after the end of the fiscal year.~~

~~————— (1) Annually, the money will be distributed 2/3 to Utah State University and the University of Utah, with the monies distributed proportionately based upon which university conducted the research that generated the license fees and royalty fees; and 1/3 to the Technology Commercialization and Innovation Program created by Title 63M, Chapter 1, Part 7, Technology Commercialization and Innovation Act.~~

~~————— (C) The University of Utah and Utah State University will continue to report commercialization revenues until the total reaches \$15,000,000; at which point the allocation described in R856-2-5 will be commenced.~~

~~R856-2-5. Collection and Allocation of Subsequent Commercialization Revenues Generated Through the University of Utah and Utah State University.~~

~~————— (A) Subsequent to the initial \$15,000,000 of commercialization revenues received, the University of Utah and Utah State University will collect commercialization revenues generated through the Utah Science Technology and Research project conducted~~

~~at each respective university, and will report commercialization revenues to the executive director on an annual basis.~~

~~(1) Annually, the money will be distributed 50% to Utah State University and the University of Utah with the monies distributed proportionately based upon which university conducted the research that generated the commercialization revenues; and 50% to the governing authority or other entity designated by the state to be used for:~~

~~(i) the Technology Commercialization and Innovation Program created by Title 63M, Chapter 1, Part 7, Technology Commercialization and Innovation Act;~~

~~(ii) replacement or maintenance of equipment in the research buildings;~~

~~(iii) recruiting and paying additional research teams;~~

~~(iv) construction of additional research buildings; and~~

~~(v) other activities approved by the governing authority.~~

~~(2) the University of Utah and Utah State University will collect revenues generated through the Utah Science Technology and Research project conducted at each respective university.~~

~~(3) the University of Utah and Utah State University will report commercialization revenues to the executive director on an annual basis.~~

~~(4) the University of Utah and Utah State University will deposit the commercialization revenues at their discretion until:~~

~~(i) commercialization revenues are allocated according to the schedule set by the governing authority.~~

~~**KEY:** USTAR, commercialization revenues, distribution of revenues~~

~~**Date of Enactment or Last Substantive Amendment:** July 31, 2012~~

~~**Authorizing, and Implemented or Interpreted Law:** 63M-2-302(a) (f)]~~

Science Technology and Research
Governing Authority (Utah),
Administration
R856-2

USTAR University-Industry Partnership
Program Grants

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40681

FILED: 08/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is a direct result of recently passed legislation, S.B. 166 (2016 General Session), as now codified in Title 63M, Chapter 2. Subsection 63M-2-503(2) requires USTAR to create rules governing all USTAR grant programs. This rule is for USTAR's second proposed new grant

program, the USTAR University-Industry Partnership Program Grants.

SUMMARY OF THE RULE OR CHANGE: This rule establishes the USTAR Industry Partnership Program Grants and describes the eligibility, evaluation, and reporting criteria for the program including: 1) the form and process of submitting a grant application; 2) a description of the entities eligible to apply for a grant; and 3) the specific types of research projects eligible for a grant.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63M-2-302(h)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** None--Although this is a new program, it's funded by appropriations that have already been allocated to USTAR for these purposes.

◆ **LOCAL GOVERNMENTS:** None--Although this is a new program, it's funded by appropriations that have already been allocated to USTAR for these purposes.

◆ **SMALL BUSINESSES:** None--Although this is a new program, it's funded by appropriations that have already been allocated to USTAR for these purposes.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Although this is a new program, it's funded by appropriations that have already been allocated to USTAR for these purposes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If successful in winning a grant, companies will be required to report data via an online and/or telephonic survey for at least five years subsequent at approximately an hour/year of effort.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Any potential fiscal impacts on businesses would be limited to the time and materials spent to complete an application and will affect only those that choose to apply.

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

SCIENCE TECHNOLOGY AND RESEARCH
GOVERNING AUTHORITY (UTAH)
ADMINISTRATION
60 E NORTH TEMPLE
THIRD FLOOR
SALT LAKE CITY, UT 84111
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Koa Perlac by phone at 801-538-8622, by FAX at 801-538-8881, or by Internet E-mail at kperlac@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/11/2016

AUTHORIZED BY: Ivy Estabrooke, Executive Director

R856. Science Technology and Research Governing Authority (Utah), Administration.

R856-2. USTAR University-Industry Partnership Program Grants.

R856-2-1. Authority.

Subsection 63M-2-503(2) requires the USTAR governing authority to make rules establishing the eligibility, award process, and reporting criteria for each grant program administered by USTAR.

R856-2-2. Purpose.

USTAR's Industry Partnership Program promotes the development of industry-university partnerships for technology development. This program will accelerate the commercialization of technology and innovation by teaming industry and university research expertise to address specific technology problems or gaps identified by a Utah company. The technology development will lead to a new product or a market advantage for the company.

R856-2-3. Definitions.

(1) "Applicant" means a collaboration between a company and university researcher for a particular project.

(2) "Awardee(s)" means a project that has been awarded an Industry Partnership Program Grant.

(3) "Governing authority" means the Utah Science, Technology and Research Governing Authority.

(4) "Company" means a privately-owned corporation, limited liability company, partnership, or other business entity or association and:

(a) does not include an individual, sole proprietorship, or higher-education institution; and

(b) is represented by persons at least 18 years old.

(5) "Commercialization plan" means the strategy or process by which a company will introduce a technology into the market.

(6) "IPP" means the USTAR Industry Partnership Program, its activities and services.

(7) "IPP Grant" means the competitive grants awarded and administered as part of the USTAR Industry Partnership Program.

(8) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(9) "Technology gap" means the disparity between a company's existing technology or technological capacity and what is needed to develop a commercial application for a product.

(10) "Technology Readiness Level" or "TRL" level means the method of estimating technology maturity used by the U.S. Department of Defense.

(11) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for IPP grants using the selection criteria described in these rules.

(12) "University" means any public or not-for-profit institution of higher education located in Utah.

(13) "USTAR" means the Utah Science, Technology and Research Initiative.

R856-2-4. Eligibility Criteria.

(1) Proposal must be jointly developed by a Utah-based company and a university.

(2) Proposal must be submitted by an authorized body within the university.

(3) An authorized representative from the company must certify that:

(a) Company lacks technical capacity to resolve stated technology gap;

(b) The proposed university technology will resolve the technology gap; and,

(c) Company commits to provide a cost-share contribution in the form of a defined amount of funding paid to the university and/or in-kind contributions as defined in Sections R856-2-4 and R856-2-5.

(4) Company must have a substantial presence in Utah.

(a) A substantial presence, for purposes of the IPP grant, requires the following:

(i) company must be properly registered with the Utah Division of Corporations as an active, for-profit business entity, in good standing; and,

(ii) company must be properly licensed in the appropriate city or county.

(b) Additionally, USTAR shall, according to its judgment and discretion, determine whether a company has a substantial presence for purposes of the IPP grant by weighing the following factors:

(i) size of workforce in Utah;

(ii) percentage of company's total workforce in Utah;

(iii) amount of matching funds

(iv) pays business taxes to the State of Utah.

(v) relative size of the entity including the number of employees in Utah and the relative size of operations in the state;

(vi) whether the company is registered as a domestic, for-profit business entity in Utah and has a business license in the appropriate Utah city or county;

(vii) whether the company's principal place of business is Utah;

(viii) likelihood that the company will maintain a significant presence in the state of Utah; and,

(ix) the degree to which the company's activities and operations positively impact Utah's economy.

(5) Cost-sharing required:

(a) Company must pledge a matching contribution to support the project;

(b) Company matching funds may be provided via:

(i) Direct payment to university for the research project; and/or

(ii) "In-kind" contribution, which may include:

(A) Company Subject Matter Expert(s) (SME);

(B) Materials and equipment;

(C) Work/research space;

(D) Travel and other company expenses budgeted for the project; or.

(E) Other contributions, as approved by USTAR.

(c) A one-to-one match is not required. USTAR retains discretion to approve the ratio of the match. In determining the ratio of the match, USTAR considerations may include:

(i) size of company; and.

(ii) potential economic impact to state.

(d) University will provide USTAR with documentation of funding received from company to fulfill the company cost-share commitment prior to completion of the project.

(e) All reported cost-share is subject to audit by USTAR.

(5) IPP is open to companies with a technology gap between TRL 2-5.

R856-2-5. Application Form and Submission Guidelines.

(1) USTAR will provide the following instructions for applicants:

(a) A general procedure for submitting an application.

(b) Instructions for application content, which includes:

(i) description of technology gap;

(ii) commercialization plan if technology gap is solved;

(iii) description of technical milestones and qualification of team to meet milestones;

(iv) potential economic impact on Utah economy; and.

(v) timeline for completion.

(c) Instructions for providing an outlined budget for total project cost, including:

(i) a description of funds already secured;

(ii) an itemized budget detailing planned use of grant funds; and.

(iii) funding by milestones and timelines.

(d) Description of the application evaluation process and scoring system.

(e) Instructions for reporting project results and completing annual follow-up surveys.

(2) The IPP grant application and instructions will be available on USTAR's website and in paper form upon request.

(3) All completed applications will be reviewed and awardees selected via the criteria and method outlined herein.

R856-2-6. Application Review Procedure.

(1) Pre-screening.

(a) Companies and researchers are encouraged to work with USTAR headquarters or a USTAR regional director in identifying appropriate researchers and developing a proposal.

(b) Universities may perform an initial analysis and assessment of the project to be submitted with the application.

(2) Initial eligibility screening.

(a) USTAR will conduct an initial eligibility screening for each application to ensure:

(i) completeness;

(ii) verification of minimum eligibility requirements; and

(iii) appropriateness of applicant's reported TRL assessment, proposed timelines, and budget.

(b) Any application that fails to meet the criteria in Subsection R856-2-6(2) will be rejected.

(3) Panel Review.

(a) Accepted applications will be reviewed by a panel of independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-2-7.

(i) Each expert panel will consist of at least two technical experts and one business expert.

(ii) Technical subject-matter experts will assess the scientific and technical merits of the proposal.

(iii) Business subject-matter experts will provide feedback on the applicant's evaluate the business model, project cost, commercialization strategy, and potential economic impacts of the proposal.

(iv) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:

(A) academic qualifications, including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;

(B) relevant work experience and practical training in the field;

(C) knowledge of the target industry sector in Utah;

(D) experience evaluating grant proposals; and.

(E) any other factors USTAR deems important.

(v) USTAR will screen the experts for conflicts of interest before reviews are initiated.

(4) Governing authority review.

(i) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.

(ii) Recommendations from the subcommittee concerning which projects should be awarded a grant will be presented to the full governing authority for final approval.

R856-2-7. Evaluation and Award Criteria.

(1) The peer review and business experts will use a scoring system to evaluate and rank grant applications and determine grant amounts:

(a) The scoring criteria will be made available during the application period;

(b) The scoring system will be designed to assess each proposal and may include:

(i) Technical merit;

(ii) Appropriate technology readiness level (TRL 2-5);

(iii) Proposed milestones are reasonably obtainable with the recommended technical approach;

(iv) Proposed timeline is achievable and will not exceed 18 months;

(v) Potential for economic impact, as measured by potential for:

(A) Potential revenue due to expansion of current business or development of new businesses;

(B) Product sales; and/or

(C) Projected time to revenue or job creation.

(vi) Commercialization plan/Market need;

(vii) Technical capabilities and experience of the team; and.

(viii) Realism of the proposed costs and commitment of matching funds.

R856-2-8. Grant Amount, Award, and Required Contract.

(1) USTAR will have the discretion to limit the maximum amount of funding that may be awarded for each IPP grant based on available funds, scope of project, and quality of proposal.

(2) USTAR reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgement and discretion of the governing authority.

(3) Upon award of an IPP grant, and prior to any disbursement of funds, university must enter into a contract with USTAR governing the use of grant funding.

(4) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:

(a) company must maintain a substantial presence in the state for at least five years subsequent to initial disbursement of grant funds;

(b) IPP grant funding may not be used to provide a primary benefit to any state other than Utah; and,

(c) for all other eligibility requirements, company must maintain eligibility status for the IPP program until the project is complete, all milestones have been met, final dispersant of funding has been made, and first year reporting has been completed.

(5) Violations of Subsection R856-2-8(4) of this section may result in forfeiture of grant funding and require repayment of all or a portion of the funding received as part of the IPP program.

R856-2-9. Contract Modifications.

(1) University and Company may request a modification to the terms of an IPP contract.

(2) USTAR may deny a modification request for any reason.

(3) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.

(a) Nonsubstantive changes may include the following:

(i) changes to timelines of less than one month if it is the first such modification;

(ii) corrections to clerical errors in the application materials;

(iii) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law;

(4) Substantive changes must be approved by the USTAR governing authority.

(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.

R856-2-10. Milestones and Reporting.

(1) Companies are required to provide the reporting, as applicable, specified in Section 63M-2-703 for at least five (5) years following initial receipt of grant funds.

(2) University is required to provide the reporting, as applicable, specified in Sections 63M-2-702 and 63M-2-704.

KEY: Utah Science Technology and Research (USTAR), Industry Partnership Program (IPP), technology readiness level (TRL)

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: 63M-2-302(h)

Science Technology and Research
Governing Authority (Utah),
Administration
R856-3
USTAR University Technology
Acceleration Grants

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40682

FILED: 08/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is a direct result of recently passed legislation, S.B. 166 (2016 General Session), as now codified in Title 63M, Chapter 2. Subsection 63M-2-503(2) requires USTAR to create rules governing all USTAR grant programs. This rule is for a new USTAR grant program, the USTAR University Technology Acceleration Grants.

SUMMARY OF THE RULE OR CHANGE: This rule establishes the USTAR University Technology Acceleration Grants program and describes the eligibility criteria for an entity to receive a grant including: 1) the form and process of submitting a grant application; 2) a description of which entities are eligible to apply for a grant; 3) the specific categories of projects that are eligible for a UTAG; and 4) the criteria for awarding grants and determining grant amount.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63M-2-302(h)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** None--Although this is a new program, it's funded by appropriations that have already been allocated to USTAR for these purposes.

♦ **LOCAL GOVERNMENTS:** None--Although this is a new program, it's funded by appropriations that have already been allocated to USTAR for these purposes.

♦ **SMALL BUSINESSES:** None--Although this is a new program, it's funded by appropriations that have already been allocated to USTAR for these purposes.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Although this is a new program, it's funded by appropriations that have already been allocated to USTAR for these purposes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If successful in winning a grant, companies will be required to report data for at least five years subsequent to approximately an hour/year of effort.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Any potential fiscal impacts on businesses would be limited to the time and materials spent to complete an application and will affect only those that choose to apply.

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

SCIENCE TECHNOLOGY AND RESEARCH
GOVERNING AUTHORITY (UTAH)
ADMINISTRATION
60 E NORTH TEMPLE
THIRD FLOOR
SALT LAKE CITY, UT 84111
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Koa Perlac by phone at 801-538-8622, by FAX at 801-538-8881, or by Internet E-mail at kperlac@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/11/2016

AUTHORIZED BY: Ivy Estabrooke, Executive Director

R856. Science Technology and Research Governing Authority (Utah), Administration.

R856-3. USTAR University Technology Acceleration Grants.

R856-3-1. Authority.

Subsection 63M-2-503(2) requires the USTAR governing authority to make rules establishing the eligibility, award process, and reporting criteria for each grant program administered by USTAR.

R856-3-2. Purpose and Goals.

(1) University Technology Acceleration Grants provide funding to individual researchers or research teams employed by a Utah not-for-profit college or university to support research, discovery and innovation that has a strong market potential.

(2) Proposals will be reviewed on a competitive basis. All projects funded through UTAG must have an identified market and/or commercialization path.

(3) Anticipated duration of projects will be 12-18 months. Funding must be budgeted by State fiscal year (1JUL-30JUN) and funding will be dependent on meeting milestones and continued USTAR appropriation.

R856-3-3. Definitions.

(1) "Applicant" means an individual researcher or a research team applying for a USTAR UTAG.

(2) "Awardee" means an individual researcher or team that have been awarded a UTAG.

(3) "Governing authority" means the Utah Science, Technology and Research Governing Authority.

(4) "University" means any public or not-for-profit institution of higher education located in Utah.

(5) "UTAG" means the University Technology Acceleration Grants administered by the Utah Science, Technology and Research Initiative.

(6) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(7) "Technology Readiness Level" or "TRL" level means Technology Readiness Level, as defined by the U.S. Department of Defense at <https://www.army.mil/e2/c/downloads/404653.pdf>

(8) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for UTAG grant funding as described in Rule 4 Section B, below.

(9) "USTAR" means the Utah Science, Technology and Research Initiative.

R856-3-4. Eligibility Criteria.

(1) Individual researchers or research teams employed by a Utah University are eligible to apply for UTAG.

(2) Individual researchers or research teams must be developing a technology in a targeted industry sector.

(a) USTAR will identify the "Industry Sector(s)" eligible to receive a UTAG in the UTAG application materials.

(b) The USTAR governing authority will, according to its discretion and judgment, review and approve the targeted technology sectors to ensure they are strategically selected to align with USTAR's economic development objectives and maximize the potential benefit to the state.

(c) In selecting industry sectors eligible to receive support from UTAG, the Governing Authority may consider the following factors:

(i) statewide or regional importance of the industry to Utah's economy;

(ii) relative size of the sector, its stability, and growth potential;

(iii) characteristics of the state's workforce including education and training;

(iv) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;

(v) the potential for the industry sector to develop new jobs and business opportunities in the state;

(vi) whether research in this sector will lead to creation of a company in Utah or IP transfer to an existing Utah company; and,

(vii) any other factor the governing authority deems relevant.

(3) If applicable, applicant must have an identified regulatory pathway.

(4) Realistic and verifiable commercialization path for market entry.

(5) Applicant must be developing a technology assessed to be between a TRL of 2-5.

R856-3-5. Application Form and Submission Guidelines.

(1) For each new round of grants, USTAR will provide a program announcement and make applications and instructions available on USTAR's website and in paper form upon request.

(2) The instructions will include the following:

- (a) The procedure for submitting an application.
- (b) Specific instructions for application content which will include:
 - (i) description of the company's technology and commercialization objectives;
 - (ii) list of technical milestones;
 - (iii) potential market;
 - (iv) potential economic impact on Utah economy; and
 - (v) timeline for completion.
- (c) Specific instructions for the required budget outline, including:
 - (i) total project cost;
 - (ii) a description of funds already secured for activities related to this project;
 - (iii) an itemized budget detailing planned use of grant funds; and
 - (iv) breakdown of costs to complete each milestone.
- (d) Description of the application evaluation process and scoring system.
- (e) Instructions for reporting project results and completing annual follow-up surveys.

(3) Completed applications must be received on or before the specified deadline in the application instructions.

(4) Completed applications must be received on or before the specified deadline in the application instructions.

(5) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Sections R856-3-6 and R856-3-7 herein.

R856-3-6. Application Review Process.

(1) University Pre-screening.

(a) Universities may perform an initial analysis and assessment of the project to be submitted with the application.

(2) Initial eligibility screening.

(a) USTAR will conduct an initial eligibility screening for each application to ensure:

- (i) completeness;
- (ii) verification of minimum eligibility requirements; and
- (iii) appropriateness of applicant's reported TRL assessment, proposed timelines, and budget.

(b) Any application that fails to meet the criteria in Subsection R856-3-6(2) will not be accepted.

(3) Panel Review.

(a) Accepted applications will be reviewed by a panel of independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-3-7.

- (i) Each expert panel will consist of at least two technical experts and one business expert.
- (ii) Technical subject-matter experts will assess the scientific and technical merits of the proposal.
- (iii) Business subject-matter experts will evaluate the business model, project cost, commercialization strategy, and potential economic impacts of the proposal;
- (iv) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:

- (A) academic qualifications, including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;
- (B) relevant work experience and practical training in the field;
- (C) knowledge of the target industry sector in Utah;
- (D) experience evaluating grant proposals; and
- (E) any other factors USTAR deems important.

(v) USTAR will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website.

(4) Governing authority review.

(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.

(b) The subcommittee will recommend projects and amounts of grant funding to the full governing authority for final approval.

R856-3-7. Evaluation and Award Criteria.

(1) The panel of subject matter experts will use a scoring system to evaluate and rank grant applications and determine grant amounts.

(a) The scoring criteria will be made available during the application period;

(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:

- (i) Technical merit;
- (ii) Strength and maturity of research or management team, as applicable;
- (iii) Appropriate technology readiness level (TRL 2-5);
- (iv) Potential economic impact, as measured by:
 - (A) Job creation;
 - (B) Product sales;
 - (C) Potential revenue due to expansion of current business or development of a new business; and, or
 - (D) Projected time to revenue or job creation;
 - (v) Market need, technical and management experience, and qualifications;
 - (vi) Reasonableness of cost proposal (i.e. size and allocation of budget is appropriate for the work proposed additional funds available to complete work);
 - (vii) Reasonableness of proposed milestones;
 - (viii) Proposed timeline is achievable and will not exceed 18 months; and
 - (ix) Any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.

R856-3-8. Grant Amount, Award, and Required Contract.

(1) USTAR will have the discretion to limit the amount of funding that may be awarded for each UTAG based on available funds, scope of project, and quality of proposal.

(2) USTAR reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation

criteria set forth in these rules and according to the judgement and discretion of the governing authority.

(3) Upon award of a UTAG, and prior to any disbursement of funds, university must enter into a contract with USTAR governing the use of grant funding.

(4) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:

(a) grant funding may not be used to provide a primary benefit to any state other than Utah; and,

(b) for all other eligibility requirements, awardee must maintain eligibility status for the UTAG program until the project is complete, all milestones have been met, final dispersant of funding has been made, and first year reporting has been completed.

(5) Violations of Subsection R856-3-8(4) may result in forfeiture of grant funding and require repayment of all or a portion of the funding received as part of the program.

R856-3-9. Contract Modifications.

(1) University may request a modification to the terms of an UTAG contract.

(2) USTAR may deny a modification request for any reason.

(3) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.

(a) Nonsubstantive changes may include the following:

(i) changes to timelines of less than one month if it is the first such modification;

(ii) corrections to clerical errors in the application materials;

(iii) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law;

(4) Substantive changes must be approved by the USTAR governing authority.

(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.

R856-3-10. Milestones.

(1) UTAG funding must be used to accelerate the development and commercialization of a technology and project proposals must identify specific milestones leading to the proposed outcome.

(2) Examples of acceptable milestones must be specific to the project, and may include:

(a) Research and development activities,

(b) Proof of concept,

(c) Product validation; or,

(d) Product development.

(3) Remaining grant funds will be disbursed upon successful completion of designated milestones. Specific funding details will be provided in the program announcement and in each UTAG contract.

R856-3-11. Funding Distribution.

(1) Initial funding of no more than 50% of the total grant award will be provided within 30 days of contract signature. Remaining grant funds will be disbursed upon successful completion of designated milestones.

(2) Specific funding details will be provided in the program announcement and in each UTAG grant contract.

(3) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

R856-3-12. Milestones and Reporting.

(1) Companies are required to provide reporting as specified in Section 63M-2-703 for at least five (5) years following initial receipt of grant funds; or,

(2) University is required to provide the reporting for researchers or research teams, as applicable, specified in Sections 63M-2-702 and 63M-2-704.

KEY: Utah Science Technology and Research (USTAR), University Technology Acceleration Grants (UTAG), technology readiness level (TRL)

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: 63M-2-302(h)

Transportation, Operations, Aeronautics **R914-1** Rules and Regulations

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40663

FILED: 08/12/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Legislature passed H.B. 448 during the 2016 General Session, which amended Section 72-10-116 and eliminated text that required the Department to license public use airports. The purpose of this amendment is to repeal Section R914-1-3, which requires the Department to license public use airports, provides the procedure for their inspection, and authorizes the Department to close public use airports that fail to obtain the license.

SUMMARY OF THE RULE OR CHANGE: This amendment deletes Section R914-1-3 and renumbers Sections R914-1-4 and R914-1-5.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 71-10-116

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Department anticipates that the amendment may lead to minor cost savings because it will no longer be required to perform the work needed to license and inspect public access airports. However, the Department does not have an accurate projection of what these cost

savings might be because it believes the benefit of preparing such a projection is likely outweighed by the cost of doing so.

♦ **LOCAL GOVERNMENTS:** The Department does not anticipate that this amendment affect the budget of any local government because it only addresses the regulation of public use airports.

♦ **SMALL BUSINESSES:** The Department does not anticipate that this amendment will affect the budgets of any small business because it only addresses the regulation of public use airports.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate that this amendment will affect the budgets of any person other than small businesses, businesses, or local government entities because it only addresses the regulation of public use airports.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment does not involve any compliance costs for the public use airports it affects. The amendment eliminates a requirement that public use airports, which are the affected persons, obtain operating licenses from the Department. Affected persons need not do anything to comply with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment will not have a fiscal impact on businesses. It only affects public use airports.

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

TRANSPORTATION
OPERATIONS, AERONAUTICS
135 N 2400 W
SALT LAKE CITY, UT 84116-2982
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cnewman@utah.gov
♦ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at jimpalmer@utah.gov
♦ Linda Hull by phone at 801-965-4253, or by Internet E-mail at lhull@utah.gov
♦ Michelle Jeronimo by phone at 801-965-3883, or by Internet E-mail at mjeronimo@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2016

AUTHORIZED BY: Carlos Braceras, Executive Director

R914. Transportation, Operations, Aeronautics.

R914-1. Rules and Regulations.

R914-1-1. Purpose and Authority.

The purpose of this rule is to regulate the use, licensing and supervision of airports, govern the establishment, location and use of air navigational aids, and establish minimum standards for operational safety as authorized and required by Section 72-10-103.

R914-1-2. Definitions.

As used in this rule:

- (1) "Department" means the Utah Department of Transportation;
- (2) "FAA" means the Federal Aviation Administration; and
- (3) Division means the Aeronautical Operations Division.

[R914-1-3. Licensing, Inspection and Closure of Airports.

~~In accordance with Section 72-10-116, all public use airports will be licensed annually by the Aeronautical Operations Division.~~

- ~~(1) A license will be granted provided the airport is found to substantially meet all safety requirements.~~
- ~~(2) The Division may refuse or revoke a license and close an airport if safety criteria is not met.~~
- ~~(3) Safety criteria required includes:~~
 - ~~(a) no pot holes or rutting in the surface of the runway, taxiway, or parking area;~~
 - ~~(b) no break up of paved surfaces or improperly maintained surface;~~
 - ~~(c) no obstructions in the approach path or near the airport that cause an unsafe condition;~~
 - ~~(d) no excessive growth of vegetation in the runway or taxiway surface;~~
 - ~~(e) no inoperative or obscured runway or taxiway lighting system;~~
 - ~~(f) no unsecured airport area that allows livestock, people, or vehicles uncontrolled access to the runways, taxiways, or airport area;~~
 - ~~(g) no improper or inadequate runway marking; and~~
 - ~~(h) no other items that can be determined to be a hazard to the operation of aircraft.~~
- ~~(4) A license may be issued at the discretion of the Division if an airport does not comply with all safety requirements but is satisfactorily working with the Division to correct any known deficiencies.]~~

R914-1-3[4]. Establishment and Location of Navigational Aids.

Procedure.

- (1) Location site is selected.
- (2) Site is surveyed for location and elevation.
- (3) Selected site is submitted to the FAA for approval.
- (4) Upon receiving FAA approval, navigational aid may be installed.
- (5) After installation, navigational aid is checked and certified for operation by the FAA.

R914-1-4[5]. Operational Safety.

In order to enhance the safety of aircraft operations and protect people and property, the Department imposes the following operational safety rules.

(1) All pilots operating aircraft in the State of Utah will comply with applicable Federal Aviation Regulations.

(2) Obstruction to flight. Any obstacle or structure which obstructs the airspace above the ground or water level which is determined to be a hazard to the safe flight of aircraft shall be plainly marked, lighted or removed.

(3) Determination of obstruction. When an obstacle or structure is determined to be a hazard to flight, the owner will be notified and will have ten days after receipt of the notice to take action to correct the hazard or appeal the determination to the Department.

KEY: air traffic, aviation safety, airports, airspace

Date of Enactment or Last Substantive Amendment: ~~December 8, 2014~~ **2016**

Notice of Continuation: October 1, 2012

Authorizing, and Implemented or Interpreted Law: 72-10-103; 72-10-116

Transportation, Program Development **R926-3** Class B and Class C Road Funds

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40664

FILED: 08/12/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is to recognize the full authority of local governments to use class B and C road funds by cooperative agreement as authorized by the "Regulations Governing Class B and Class C Road Funds" dated 09/11/2015.

SUMMARY OF THE RULE OR CHANGE: This amendment adds a subsection to Rule R926-3 that recognizes the full authority of local governments to use class B and C road funds by cooperative agreement as authorized by the "Regulations Governing Class B and Class C Road Funds" dated 09/11/2015. The amendment also makes one minor grammar change.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-2-107 and Section 72-2-109

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Updates Regulations Governing Class B and Class C Road Funds, published by Utah Department of Transportation, 09/11/2015

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Department does not anticipate the amendment will cause any change to the state's budget because it addresses the way local governments may utilize

funds allocated to them for uses related to class B and C roads.

◆ **LOCAL GOVERNMENTS:** The Department believes the amendment may lead to cost savings to local governments because it recognizes the breadth of their authority to use class B and C road funds in ways that might lead to cost savings. However, it is not possible to quantify any cost savings that may result from this amendment.

◆ **SMALL BUSINESSES:** The Department does not anticipate the amendment will cause any change to the budgets of small businesses because it only addresses the way local governments may utilize funds allocated to them for uses related to class B and C roads, and does not require anything from or provide any benefit to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate the amendment will cause any change to the budgets of persons other than small businesses, businesses, or local government entities because it only addresses the way local governments may utilize funds allocated to them for uses related to class B and C roads, and does not require anything from or provide any benefit to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendment only affects local governments, and the Department does not intend for the amendment to cost them anything.

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

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

TRANSPORTATION
PROGRAM DEVELOPMENT
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov
- ◆ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at jimpalmer@utah.gov
- ◆ Linda Hull by phone at 801-965-4253, or by Internet E-mail at lhull@utah.gov
- ◆ Michelle Jeronimo by phone at 801-965-3883, or by Internet E-mail at mjeronimo@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 10/10/2016

AUTHORIZED BY: Carlos Braceras, Executive Director

R926. Transportation, Program Development.

R926-3. Class B and Class C Road Funds.

R926-3-1. Authority.

Utah Code Ann. Sections 72-2-109, 72-3-103, and 72-3-104 authorize the Utah Department of Transportation and city and county officials to mutually adopt rules governing the expenditure of class B and class C road funds.

R926-3-2. Purpose.

The following rules are to govern the expenditure of class B and C road funds as mutually agreed upon by the City and County Joint Highway Committee and the Utah Department of Transportation.

R926-3-3. Incorporation of B and C Regulations by Reference.

The Department incorporates by reference the latest UDOT publication "Regulations Governing Class B and Class C Road Funds" dated September 11, 2015. This may be found on website <http://www.udot.utah.gov>.

R926-3-4. Authorized Use of Funds, Cooperative Agreements.

Nothing in this rule shall limit the authority of a recipient of class B or class C funds to expend those funds by cooperative agreement on any class B or class C road or use authorized in the regulations referenced in rule R926-3-3.

KEY: transportation policy, highway finances, highway, roads

**Date of Enactment or Last Substantive Amendment: [~~April 8,~~]
2016**

Notice of Continuation: September 19, 2011

**Authorizing, and Implemented or Interpreted Law: 72-2-107
through 72-2-110**

End of the Notices of 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.

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

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40637
FILED: 08/02/2016

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 4-40-102 grants authority for the department to make rules necessary for the operation of the Community Spay and Neuter Program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received by the department since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule provides the requirements and procedures for the community spay and neuter grants and defines what constitutes a person having low income for the purposes of the statute. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
ANIMAL INDUSTRY

350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Barry Pittman by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at bpittman@utah.gov
- ◆ 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

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 08/02/2016

Agriculture and Food, Regulatory Services **R70-920** Packaging and Labeling of Commodities

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40634
FILED: 08/02/2016

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: Sections 4-9-2 and 4-9-10 allow

the department to adopt uniform packaging and labeling regulations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received by the department since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The regulations require that the seller list the names of what is being sold and the quantity of the item being sold so the consumer can make a price quantity comparison. This rule further promotes fair competitions between business and provides uniformity and protections to consumers. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
 ♦ Michelle Jack by phone at 801-538-7151, by FAX at 801-538-4949, or by Internet E-mail at mjack@utah.gov
 ♦ Travis Waller by phone at 801-538-7150, by FAX at 801-538-7124, or by Internet E-mail at twaller@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 08/02/2016

**Agriculture and Food, Regulatory
 Services
 R70-930**

Method of Sale of Commodities

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 40635
 FILED: 08/02/2016

**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 4-9-2 allows the department to make rules necessary to administer Section 4-9-5.3 which adopts uniform regulations for the method of sale of commodities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received by the department since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The regulations require the seller list the names of what is being sold and the quantity of the item being sold so the consumer can make a price quantity comparison. This rule further promotes fair competitions between business and provides uniformity and protections to consumers. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
 ♦ Michelle Jack by phone at 801-538-7151, by FAX at 801-538-4949, or by Internet E-mail at mjack@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
 ♦ Travis Waller by phone at 801-538-7150, by FAX at 801-538-7124, or by Internet E-mail at twaller@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 08/02/2016

**Agriculture and Food, Regulatory
 Services
 R70-940**

Standards and Testing Motor Fuel

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 40636
 FILED: 08/02/2016

**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 4-33-4 grants the department authority to make rules regarding the motor fuel inspections. Section 4-33-7 allows the department to test motor fuel to ensure the fuel meets the standards for sale in the state.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received by the department since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes standards for the sale of motor fuel in the state. This rule also ensures fair competition among businesses and provides uniformity and protection to consumers. Therefore, this rule should be continued.

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

AGRICULTURE AND FOOD
REGULATORY SERVICES
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Brett Gurney by phone at 801-538-7158, by FAX at 801-538-7126, or by Internet E-mail at bgurney@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
- ◆ Travis Waller by phone at 801-538-7150, by FAX at 801-538-7124, or by Internet E-mail at twaller@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 08/02/2016

Commerce, Occupational and
Professional Licensing
R156-55a
Utah Construction Trades Licensing Act
Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40649
FILED: 08/04/2016

**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: Title 58, Chapter 55, provides for the licensure and regulation of contractors. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-55-103 (1)(b)(i) provides that the Commission shall, with the concurrence of the director, make reasonable rules. This rule was enacted to clarify the provisions of Title 58, Chapter 55, with respect to contractors.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in October 2011, it has been amended several times between 2012 and 2016. In July 2015, the Division filed proposed rule amendments in File No. 39461. Numerous written comments and emails were received with respect to the proposed rule amendments regarding public liability insurance policy requirements for contractors. Also, numerous written comments and emails were received with respect to the proposed requirement that three hours of the required six hours of continuing education are to be completed in a live setting. As a result of the comments received with respect to the public liability insurance matter, the Division and Construction Services Commission filed a change in proposed rule (CPR) filing in September 2015. The proposed amendments with respect to the public liability insurance matter were deleted in the CPR filing. On 11/18/2015, the Construction Services Commission reviewed all of the written comments and emails with respect to all of the amendments being proposed in File No. 39461 and determined that the proposed amendments would be made effective with no further changes beyond the public liability insurance amendments which were deleted in the September 2015 CPR filing. The proposed amendments with respect to continuing education hours required in a live setting were made effective on 11/23/2015 upon recommendation of the Construction Services Commission in its 11/18/2015 meeting. The Division also filed proposed rule amendments in September 2014 under File No. 38760 with regards to required 20-hour prelicensure education standards which were enacted during the 2014 Legislative Session. The Division received an 10/01/2014 written comment from Jerold Oldroyd of Ballard Spahr regarding the proposed prelicensure education standards and who could provide that training/education. The Construction Services Commission

had reviewed and heard Mr. Oldroyd's concerns during a 09/24/2014 rule hearing as Mr. Oldroyd appeared during that rule hearing and relayed the same information he later sent as a written comment in October 2014. The proposed amendments in File No. 38760 were made effective on 10/09/2014 with no additional changes. The Division also received a 03/24/2014 email from David Sime notifying the Division of a typographical error in Section 301, Table I. The Division filed a nonsubstantive change in File No. 38380 on 03/24/2014 as a result of this notification. The Division filed proposed rule amendments in August 2012 in File No. 36687. A 09/18/2012 email from Art Hovley to Senator Todd Weiler was provided to the Division. As a result of comments provided and additional discussions needed between various parties, the proposed amendments in this rule filing were allowed to lapse in October 2012.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 55, with respect to contractors. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Dan Jones by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dansjones@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 08/04/2016

**Commerce, Occupational and
 Professional Licensing
 R156-55b
 Electricians Licensing Act Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 40651
 FILED: 08/08/2016

**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: Title 58, Chapter 55, provides for the licensure of various classifications of electricians. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-55-201(2) provides that one of the Electricians Licensing Board's duties and responsibilities shall be recommending to the Construction Services Commission appropriate rules. Subsection 58-55-103 (1)(b)(i) provides that the Commission shall, with the concurrence of the director, make reasonable rules. This rule was enacted to clarify the provisions of Title 58, Chapter 55, with respect to electricians.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in October 2011, it has been amended one time in August 2014. The Division has received no written comments with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 55, with respect to various classifications of electricians. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Steve Duncombe by phone at 801-530-6235, by FAX at 801-530-6511, or by Internet E-mail at sduncombe@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 08/08/2016

**Commerce, Occupational and
Professional Licensing
R156-55c
Plumber Licensing Act Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION
DAR FILE NO.: 40652
FILED: 08/08/2016**

**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: Title 58, Chapter 55, provides for the licensure of various classifications of plumber. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-55-201(2) provides that one of the Plumbers Licensing Board's duties and responsibilities shall be recommending to the Construction Services Commission appropriate rules. Subsection 58-55-103 (1)(b)(i) provides that the Commission shall, with the concurrence of the director, make reasonable rules. This rule was enacted to clarify the provisions of Title 58, Chapter 55, with respect to plumbers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in October 2011, it has been amended one time in October 2014. The Division has received no written comments with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 55, with respect to various classifications of plumbers. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
OCCUPATIONAL AND PROFESSIONAL
LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Duncombe by phone at 801-530-6235, by FAX at 801-530-6511, or by Internet E-mail at sduncombe@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 08/08/2016

**Education, Administration
R277-530
Utah Effective Teaching and
Educational Leadership Standards**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION
DAR FILE NO.: 40667
FILED: 08/15/2016**

**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 53A-1-401 allows the Utah State Board of Education (Board) to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Subsections 53A-1-402(1)(a)(i) and (ii) require the Board to establish rules and minimum standards for the qualification and certification of educators and for required school administrative and supervisory services.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-530 continues to be necessary because it provides statewide effective teaching, educational

leadership, and educational school counselor standards for Utah teachers, administrators, and school counselors. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

EFFECTIVE: 08/15/2016

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

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40668
FILED: 08/15/2016

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 53A-1-401 allows the Utah State Board of Education (Board) to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; Subsections 53A-1-402(1)(a) (i) and (ii) require the Board to establish rules and minimum standards for the qualification and certification of educators and for required school administrative and supervisory services; and Section 53A-8a-301 directs the Board to adopt rules to guide schools' district employee evaluations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-531 continues to be necessary because it provides a statewide educator evaluation system framework that includes required Board-directed expectations and components and additional school district determined components and procedures to ensure the availability of data about educator effectiveness. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

EFFECTIVE: 08/15/2016

Education, Administration
R277-750
Education Programs for Students with
Disabilities

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40669
FILED: 08/15/2016

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: Subsection 53A-1-402(1) directs the Utah State Board of Education (Board) to adopt rules regarding services for persons with disabilities; Title 53A, Chapter 15, Part 3, requires the Board to adopt rules regarding educational services to students with disabilities; and Section 53A-1-401 allows the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-750 continues to be necessary because it specifies standards and procedures for special education programs. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

EFFECTIVE: 08/15/2016

Governor, Economic Development
R357-6

Technology and Life Science Economic Development and Related Tax Credits

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40638
FILED: 08/02/2016

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 63N-2-807 requires the office to make rules establishing criteria to prioritize the issuance of tax credits among applicants and to establish procedures for documenting the office's application of the criteria.

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 regarding this rule since the rule has been created and effective.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule should be continued because the program is still active and no comments have been made regarding the rule. Therefore, the agency feels the rule as written is sufficient to accomplish its statutory mandates in its current form and should be continued.

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

AUTHORIZED BY: Bill Colbert, Director

EFFECTIVE: 08/02/2016

Human Services, Recovery Services
R527-5

Release of Information

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40650
FILED: 08/08/2016

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 62A-11-107 gives the Office of Recovery Services (ORS) the authority to adopt, amend, and enforce rules necessary to carry out its responsibilities under state law. The terms and authority for the Government Records Access and Management Act (GRAMA) are outline in Title 63G, Chapter 2, as well as the

classification of the different types of records and the procedures for submitting an appeal, when needed. Section 62A-11-304.4 allows ORS to, upon written request, provide location information in its files on a custodial or noncustodial parent to the other party or the other party's legal counsel.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because ORS is required to allow access to properly classified agency records pursuant to Title 63G, Chapter 2, and this rule establishes the procedures for how ORS records may be accessed under Title 63G, Chapter 2; also, all of the statutes regarding GRAMA are still in effect.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN SERVICES
 RECOVERY SERVICES
 515 E 100 S
 SALT LAKE CITY, UT 84102-4211
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Casey Cole by phone at 801-741-7523, by FAX at 801-536-8509, or by Internet E-mail at cacole@utah.gov

AUTHORIZED BY: Liesa Stockdale, Director

EFFECTIVE: 08/08/2016

Human Services, Recovery Services
R527-201
Medical Support Services

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 40654
 FILED: 08/08/2016

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: Pursuant to Section 62A-11-107, the Office of Recovery Services (ORS) is authorized to adopt rules that are necessary to carry out the provisions of Title 62A, Chapter 11. Sections 62A-11-326, 62A-11-326.1, 62A-

11-326.2, 62A-11-326.3, and 78B-12-212 contain provisions requiring ORS to establish and enforce medical support orders. These statutes require the parents to provide verification of insurance coverage and notification of medical expenses to the other party. These same statutes also address the issues surrounding the parent's responsibility for insurance premium payments and receiving a child support credit for medical expenses paid. In addition, these statutes outline the conditions upon which ORS may issue notice to employers to enroll dependent children in health insurance plans. This rule incorporates by reference 45 CFR 303.30, 303.31, and 303.32, which outline the basic mandates for state IV-D agencies to establish, modify, and enforce orders requiring obligated parents to obtain and maintain medical insurance coverage for their children. This rule provides information on how ORS carries out the medical support duties outlined in these statutes.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Federal Regulations 45 CFR 303.30, 303.31, and 303.32, as well as state statutes found in Sections 62A-11-326, 62A-11-326.1, 62A-11-326.2, 62A-11-326.3, and 78B-12-212 are still in effect. This rule provides necessary details on how ORS carries out the medical support duties outlined in these statutes. It defines the agency's limits in providing medical support services, reiterates the condition under which medical support services are provided to non-TANF Medicaid recipients, explains how medical support orders are secured by the agency, describes the availability of credit based on the children's portion of the premiums paid, details enforcement remedies, and addresses the issue of the medical support obligation of parents who are receiving or have received Medicaid. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN SERVICES
 RECOVERY SERVICES
 515 E 100 S
 SALT LAKE CITY, UT 84102-4211
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Scott Weight by phone at 801-741-7435, by FAX at 801-536-8509, or by Internet E-mail at sweigh2@utah.gov

AUTHORIZED BY: Liesa Stockdale, Director

EFFECTIVE: 08/08/2016

Insurance, Administration
R590-178
Securities Custody

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40640
FILED: 08/02/2016

**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 31A-2-201 gives the commissioner authority to write rules to implement the insurance code, Title 31A. Section 31A-2-206 gives the commissioner authority to write rules regarding the receipt and handling of deposited securities. Section 31A-4-108 gives the commissioner authority to write rules to safeguard and ensure securities are not loaned to other insurers. Section R590-178-4 sets standards, guidelines, and forms to be used when an insurer transfers their securities to a custodian.

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 received no written comments during the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule authorizes domestic insurance companies to utilize modern systems for holding and transferring securities without physical delivery of securities certificates. It also sets standards for national banks, state banks, trust companies, and broker/dealers to qualify and operate as custodians for insurance company securities. Without the rule, insurers could place their investments under risky custodial arrangements or in situations that could threaten the security of the company's assets and, in the end, the security of its insureds. Therefore, this rule should be continued.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 08/02/2016

Transportation, Administration
R907-1
Administrative Procedures

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40643
FILED: 08/03/2016

**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: This rule is authorized by Subsection 72-1-201(1)(h), which grants the Department authority to "make policy and rules for the administration of the department, state transportation systems, and programs."

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 during and since the last five-year review of the rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule governs the procedures the Department follows when executing agency action. This rule is essential to protecting the due process rights of persons seeking to challenge agency action.

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:
 ♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cnewman@utah.gov
 ♦ 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: 08/03/2016

**Transportation, Operations,
 Construction
 R916-2
 Prequalification of Contractors**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 40641
 FILED: 08/03/2016

**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: This rule is authorized by Subsection 72-1-201(1)(h), which grants the Department authority to "make policy and rules for the administration of the department, state transportation systems, and programs," and by Section 63G-6a-410, which provides a process for and authorizes the use of a competitive process for identifying vendors qualified to provide goods and services the Department must procure regularly.

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 during and since the last five-year review of the rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is a useful tool the Department uses to streamline its competitive bidding processes to make them more efficient, while fostering competition and ensuring the fair and equitable treatment of all qualified vendors who deal with the Department's procurement systems. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 TRANSPORTATION
 OPERATIONS, CONSTRUCTION
 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:
 ♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cnewman@utah.gov
 ♦ 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: 08/03/2016

**Transportation, Operations,
 Construction
 R916-3
 Design-Build Contracts**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 40642
 FILED: 08/03/2016

**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: This rule is authorized by Subsection 72-1-201(1)(h), which grants the Department authority to "make policy and rules for the administration of the department, state transportation systems, and programs," and Subsection 63G-6a-1402(3)(a), which authorizes the Department to award a design-build contract for "any transportation project by following the requirements of" Section 63G-6a-1402.

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 during and since the last five-year review of the rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides a framework the Department follows when contracting on a design-build basis. It is essential to ensuring the fair and equitable treatment of all qualified vendors who deal with the Department's procurement systems. Therefore, this rule should be continued.

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

TRANSPORTATION
OPERATIONS, CONSTRUCTION
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:

♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cnewman@utah.gov
♦ 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: 08/03/2016

Transportation, Program Development **R926-15** Designated Scenic Backways

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40645
FILED: 08/03/2016

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: This rule is authorized by Subsection 72-1-201(1)(h), which grants the Department authority to "make policy and rules for the administration of the department, state transportation systems, and programs," and Subsection 72-4-303(4), which authorizes the Department to make rules to administer the state's scenic byway program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any written comments during and since the last five-year review of the rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: State and federal law that require the existence of the scenic byway program are still in effect. This rule provides a framework for administering the scenic byway program, so it is still needed. Therefore, this rule should be continued.

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

TRANSPORTATION
PROGRAM DEVELOPMENT
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cnewman@utah.gov
♦ 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: 08/03/2016

Transportation Commission, Administration **R940-5** Approval of Highway Facilities on Sovereign Lands

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40647
FILED: 08/03/2016

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: This rule is authorized by Subsection 72-1-201(1)(h), which grants the Department authority to "make policy and rules for the administration of the department, state transportation systems, and programs," and required by Subsection 72-6-303(1)(b), which mandates that the Commission to "make rules establishing minimum guidelines for an application to construct a highway facility over sovereign lakebed lands."

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 during and since the last five-year review of the rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Subsection 72-6-303(1)(b) is still in effect,

and it requires the Commission to maintain this rule. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION COMMISSION
ADMINISTRATION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov
♦ 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: 08/03/2016

End of the Five-Year Notices of Review and Statements of Continuation Section

**NOTICES OF
FIVE-YEAR REVIEW EXTENSIONS**

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR REVIEW EXTENSION (EXTENSION)** with the Office of Administrative Rules. The **EXTENSION** permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed **EXTENSIONS** for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

EXTENSIONS are governed by Subsection 63G-3-305(6).

Transportation, Administration
R907-63
Structure Repair and Loss Recovery
Procedure

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 40644

FILED: 08/03/2016

EXTENSION REASON AND NEW DEADLINE: The Department filed a Notice of Proposed Amendment on 06/30/2016. The filing was published in the July 15, 2016, issue of the Utah State Bulletin under Filing No. 40558. The 30-day comment period does not end until 08/15/2016. This rule expires on 08/11/2016. The Department needs to extend the time it has to file the Five-Year Notice of Review and Statement of Continuation to a date after the proposed amendment can be effectuated. New deadline is 12/09/2016.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov
- ◆ 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: 08/03/2016

End of the Notices of Five-Year Review Extensions Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the 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

Education

Administration

No. 40501 (AMD): R277-99 (Changed to R277-100).

Definitions for Utah State Board of Education (Board) Rules

Published: 07/01/2016

Effective: 08/11/2016

No. 40325 (REP): R277-200. Utah Professional Practices Advisory Commission (UPPAC), Definitions

Published: 05/01/2016

Effective: 08/12/2016

No. 40326 (REP): R277-201. Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure:

Notification to Educators, Complaints and Final Disciplinary Actions

Published: 05/01/2016

Effective: 08/12/2016

No. 40327 (REP): R277-202. UPPAC Hearing Procedures and Reports

Published: 05/01/2016

Effective: 08/12/2016

No. 40328 (REP): R277-203. Request for Licensure Reinstatement and Reinstatement Procedures

Published: 05/01/2016

Effective: 08/12/2016

No. 40329 (REP): R277-204. Utah Professional Practices Advisory Commission Criminal Background Review

Published: 05/01/2016

Effective: 08/12/2016

No. 40330 (REP): R277-205. Alcohol Related Offenses

Published: 05/01/2016

Effective: 08/12/2016

No. 40331 (REP): R277-206. Drug Related Offenses

Published: 05/01/2016

Effective: 08/12/2016

No. 40333 (REP): R277-207. Utah Professional Practices

Advisory Commission (UPPAC), Disciplinary Rebuttable Presumptions

Published: 05/01/2016

Effective: 08/12/2016

No. 40502 (NEW): R277-210. Utah Professional Practices Advisory Commission (UPPAC), Definitions

Published: 07/01/2016

Effective: 08/12/2016

No. 40503 (NEW): R277-211. Utah Professional Practices

Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary

Actions

Published: 07/01/2016

Effective: 08/12/2016

No. 40504 (NEW): R277-212. UPPAC Hearing Procedures and Reports

Published: 07/01/2016

Effective: 08/12/2016

No. 40505 (NEW): R277-213. Request for Licensure

Reinstatement and Reinstatement Procedures

Published: 07/01/2016

Effective: 08/12/2016

No. 40338 (NEW): R277-214. Utah Professional Practices Advisory Commission Criminal Background Review
 Published: 05/01/2016
 Effective: 08/12/2016

No. 40506 (NEW): R277-215. Utah Professional Practices Advisory Commission (UPPAC), Disciplinary Rebuttable Presumptions
 Published: 07/01/2016
 Effective: 08/12/2016

No. 40430 (NEW): R277-216. Surrender of License with UPPAC Investigation Pending
 Published: 06/01/2016
 Effective: 08/12/2016

No. 40507 (AMD): R277-404. Requirements for Assessments of Student Achievement
 Published: 07/01/2016
 Effective: 08/11/2016

No. 40508 (AMD): R277-490. Beverley Taylor Sorenson Elementary Arts Learning Program (BTSALP)
 Published: 07/01/2016
 Effective: 08/11/2016

No. 40509 (NEW): R277-511. Academic Pathway to Teaching (APT) Level 1 License
 Published: 07/01/2016
 Effective: 08/12/2016

No. 40510 (AMD): R277-515. Utah Educator Standards
 Published: 07/01/2016
 Effective: 08/12/2016

No. 40511 (AMD): R277-516. Background Check Policies and Required Reports of Arrests for Licensed Educators, Volunteers, Non-licensed Employees, and Charter School Governing Board Members
 Published: 07/01/2016
 Effective: 08/12/2016

No. 40512 (AMD): R277-533. District Educator Evaluation Systems
 Published: 07/01/2016
 Effective: 08/11/2016

No. 40513 (AMD): R277-710. Intergenerational Poverty Interventions in Public Schools
 Published: 07/01/2016
 Effective: 08/11/2016

No. 40514 (R&R): R277-713. Concurrent Enrollment of High School Students in College Courses
 Published: 07/01/2016
 Effective: 08/11/2016

No. 40515 (AMD): R277-726. Statewide Online Education Program
 Published: 07/01/2016
 Effective: 08/11/2016

No. 40516 (AMD): R277-911. Secondary Career and Technical Education
 Published: 07/01/2016
 Effective: 08/11/2016

No. 40518 (NEW): R277-923. American Indian and Alaskan Native Education State Plan Pilot Program
 Published: 07/01/2016
 Effective: 08/11/2016

Environmental Quality

Air Quality

No. 40423 (AMD): R307-101-3. Version of Code of Federal Regulations Incorporated by Reference
 Published: 06/01/2016
 Effective: 08/04/2016

No. 40424 (AMD): R307-210. Stationary Sources
 Published: 06/01/2016
 Effective: 08/04/2016

No. 40425 (AMD): R307-214. National Emission Standards for Hazardous Air Pollutants
 Published: 06/01/2016
 Effective: 08/04/2016

Waste Management and Radiation Control, Waste Management

No. 40488 (AMD): R315-261. General Requirements - Identification and Listing of Hazardous Waste
 Published: 07/01/2016
 Effective: 08/15/2016

Governor

Criminal and Juvenile Justice (State Commission on)
 No. 40497 (AMD): R356-101-10. Evaluation Criteria
 Published: 07/01/2016
 Effective: 08/10/2016

Health

Health Care Financing, Coverage and Reimbursement Policy
 No. 40491 (AMD): R414-19A. Coverage for Dialysis Services by a Free-Standing State-Licensed Dialysis Facility
 Published: 07/01/2016
 Effective: 08/10/2016

No. 40492 (NEW): R414-505. Participation in the Nursing Facility Non-State Government-Owned Upper Payment Limit Program
 Published: 07/01/2016
 Effective: 08/12/2016

No. 40493 (NEW): R414-513. Intergovernmental Transfers
 Published: 07/01/2016
 Effective: 08/12/2016

Family Health and Preparedness, Licensing
 No. 40453 (AMD): R432-2. General Licensing Provisions
 Published: 06/15/2016
 Effective: 08/04/2016

No. 40452 (AMD): R432-104. Specialty Hospital - Long-Term Acute Care
 Published: 06/15/2016
 Effective: 08/03/2016

Public Safety
 Fire Marshal

No. 40479 (AMD): R710-1. Concerns Servicing Portable Fire Extinguishers
 Published: 07/01/2016
 Effective: 08/15/2016

No. 40484 (AMD): R710-3. Assisted Living Facilities
 Published: 07/01/2016
 Effective: 08/15/2016

No. 40485 (AMD): R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board
 Published: 07/01/2016
 Effective: 08/15/2016

Public Service Commission
 Administration

No. 40472 (AMD): R746-200-7. Termination of Service
 Published: 07/01/2016
 Effective: 08/08/2016

No. 40299 (AMD): R746-360-6. Eligibility for Fund Distributions
 Published: 05/01/2016
 Effective: 08/08/2016

No. 40299 (CPR): R746-360-6. Eligibility for Fund Distributions
 Published: 07/01/2016
 Effective: 08/08/2016

Transportation

Operations, Traffic and Safety

No. 40494 (AMD): R920-50. Ropeway Operation Safety
 Published: 07/01/2016
 Effective: 08/09/2016

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 August 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).

DAR NOTE: Due to technical difficulties, neither Index is printed in this Bulletin.

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/>).
