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

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

Inquiries concerning the substance or applicability of an administrative rule that appears in the Bulletin should be addressed to the contact person for the rule. Questions about the Bulletin or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3003. Additional rulemaking information and electronic versions of all administrative rule publications are available at http://www.rules.utah.gov/.

The information in this Bulletin is summarized in the Utah State Digest (Digest) of the same volume and issue number. The Digest is available by e-mail subscription or online. Visit http://www.rules.utah.gov/publicat/digest.htm for additional information.
Office of Administrative Rules, Salt Lake City 84114

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Section 110(l) of the Clean Air Act (CAA) indicates that EPA cannot approve a state implementation plan (SIP) revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. When the SIP is revised, the Act requires that an analysis is conducted to verify that the SIP will not be relaxed in a way that would be impermissible under Section 110(l).

The Utah Air Quality Board is proposing amendments to three SIP rules that trigger the 110(l) requirements. These include: Rule R307-343, Emissions Standards for Wood Furniture Manufacturing Operations; Rule R307-335, Degreasing and Solvent Cleaning Operations; and new Rule R307-304, Solvent Cleaning.

Comments will be accepted by the Utah Division of Air Quality (DAQ) from July 1 to July 31, 2017. The 110(l) demonstration will be posted on the DAQ website at https://deq.utah.gov/NewsNotices/notices/air/Pubrule.htm.

Comments may be submitted by e-mail to Jkarmazyn@utah.gov or by mail to: Joel Karmazyn, DAQ, PO Box 144820, 195 North 1950 West, Salt Lake City, UT 84114-4820
EXECUTIVE DOCUMENTS

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

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

Executive Order Creating an Executive Water Finance Board, Utah Exec. Order No. 2017-5

EXECUTIVE ORDER
Executive Order Creating an Executive Water Finance Board

WHEREAS, Utah has been ranked by the United States Census Bureau as the fastest growing state in the country with a population growth rate that is double the national average;

WHEREAS, Utah is one of the driest states in the nation and water use and conservation is a topic of significant concern;

WHEREAS, the United States Geological Survey indicates that Utah has one of the highest per capita municipal and industrial water use rates in the nation;

WHEREAS, assuming current municipal and industrial water usage rates continue unchanged, the demand for water will exceed supply in coming decades;

WHEREAS, most of Utah's projected population growth will occur in areas that will require a combination of increased conservation, new water resources, and more efficient use of existing infrastructure;

WHEREAS, the federal government has greatly reduced its participation in paying for water projects;

WHEREAS, new development and growth frequently occurs in agricultural areas and conversion of that land may allow for conversion of those existing water resources;

WHEREAS, more judicious use of existing water could delay the need for the construction of new major water development projects;

WHEREAS, the estimated costs of repair and replacement for existing infrastructure is billions of dollars for the coming decades;

WHEREAS, expanding water infrastructure is expensive, and requires increases in local water rates and potential increases in taxes statewide;

WHEREAS, state funds are currently allocated to finance certain water projects;

WHEREAS, current requests and proposals for future water projects involve the use of state tax dollars and state bonding capacity—often with delayed and indeterminate repayment schedules in excess of several decades;
WHEREAS, Utah’s water user rates are among the lowest in the country, due both to a favorable natural topographic condition and public policy decisions to subsidize water use;

WHEREAS, the Legislature has appropriated funds for rebates to improve outdoor watering efficiency, which may help to reduce future per capita demand for outdoor water;

WHEREAS, technological advancements and analytical tools that provide additional information to water users have proven successful in reducing water use in implemented locations throughout the state;

WHEREAS, many customers have not been paying the true cost of water due to tax subsidies and failure to build budgetary reserves for repairing and replacing existing infrastructure;

WHEREAS, Utah needs a comprehensive view of water management and other strategies, including an understanding of the role of meaningful price signals on water demand;

WHEREAS, it is in the best interest of the taxpayer and the state to ensure the highest return on every taxpayer dollar invested;

WHEREAS, a prudent study of the fiscal implications of water delivery must be considered prior to state commitment to and involvement in any major water project;

WHEREAS, while other committees and task forces have been established to review water policy, none focus on the financial, budgetary, and economic impacts of significant, state-sponsored water projects and none have the required expertise to thoroughly analyze the financing models, bonding scenarios, and budgetary impacts of such projects.

NOW THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and laws of the State of Utah, do hereby establish the Executive Water Finance Board and order the following:

1. Purpose

   There is established an Executive Water Finance Board to provide detailed review and analysis of proposed major water projects that would rely on state funding and financing to:

   a. ensure the State of Utah maintains a financial policy related to water that is fiscally prudent and sustainable;
   b. ensure Utah’s limited water resources are used wisely;
   c. conduct financial and economic reviews and analysis of proposed water projects that may rely on state funding and/or financing; and
   d. examine the financial and economic aspects of both the demand for and the supply of water

2. Membership

   a. The Executive Water Finance Board shall include, but not be limited to, the following members appointed by the Governor:
      i. a representative of the Governor’s Office of Management and Budget;
      ii. the State Planning Coordinator;
      iii. the State Treasurer, or their designee;
      iv. a representative of the private sector with extensive experience in bonding and financial markets;
      v. a representative of local government with extensive experience in water related issues and water infrastructure;
      vi. an individual with extensive experience in economics; and
      vii. a representative of the Department of Natural Resources
   b. members shall be appointed to serve 4 year terms.
3. Governance

a. the Governor shall appoint the chair of the Board;
b. the chair shall establish the Board's agenda and meeting schedule;
c. the Board shall be staffed by the Governor's Office of Management and Budget;
d. the Board shall meet as often as is needed.

4. Duties

The Board shall:

a. analyze the fiscal and economic impacts of proposed water supply projects;
b. provide a public forum in which to discuss water funding and financing scenarios, data, and the potential conservation impacts of changes in water prices;
c. recommend strategies to minimize the financial burden to state taxpayers related to water projects, use state funds invested in water in the most prudent manner possible, and use market-driven solutions to more efficiently direct existing resources;
d. review and make recommendations related to the impact of proposals and plans that impact water demand, including water prices and water demand data; and

e. make an annual report to the Governor on the status of water funding, financing, and other relevant issues by December 15th of each year.

5. This Board is authorized and shall carry out the provisions of this order until July 1, 2027, at which point it may be reauthorized.

IN WITNESS, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, on this, the 13th day of June 2017.

(State Seal)

Gary R. Herbert
Governor

Attest:

Spencer J. Cox
Lieutenant Governor

2017/005/EO

End of the Executive Documents Section
NOTICES OF PROPOSED RULES

A state agency may file a **Proposed Rule** when it determines the need for a substantive change to an existing rule. With a **Notice of Proposed Rule**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between June 02, 2017, 12:00 a.m., and June 15, 2017, 11:59 p.m., are included in this, the July 01, 2017, 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 July 31, 2017. 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 October 29, 2017, 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** or a **Change in Proposed Rule**, the **Proposed Rule** lapses.

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

**Proposed Rules** are governed by Section 63G-3-301, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5a, R15-4-9, and R15-4-10.

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The Proposed Rules Begin on the Following Page
Administrative Services, Finance  
R25-7  
Travel-Related Reimbursements for State Employees

NOTICE OF PROPOSED RULE  
(Amendment)  
DAR FILE NO.: 41798  
FILED: 06/09/2017

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Due to the increase in consumer price index for food, the Division of Finance has determined that reimbursement rates should also increase. Also, the reimbursement rate will increase per mile for a private vehicle. This is because the rate is based on the Utah Division of Fleet Operations costs for mileage reimbursements, which increased.

SUMMARY OF THE RULE OR CHANGE: The rule increases reimbursement rates for in-state food reimbursements, and increases mileage reimbursements for use of a private vehicle. 

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-3-106 and Section 63A-3-107

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will potentially be an increased cost to the state as in-state food per diem rates have increased, and mileage reimbursement rates have increased for private vehicles. However, the Division cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.
♦ LOCAL GOVERNMENTS: There will potentially be an increased cost to certain local governments as in-state food per diem rates have increased, and mileage reimbursement rates have increased for private vehicles. However, the Division cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.
♦ SMALL BUSINESSES: Small businesses may see an increase in revenue. However, the Division cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Individuals eligible for reimbursement will see a slight increase in their per diem reimbursement amounts for in-state travel, and people will see a slight increase in their mileage reimbursement if using a private vehicle. However, the Division cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the amendment only changes reimbursement rates and does not require any new action on the part of persons applying for reimbursements, there are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed these changes with the Division of Finance Director and believe these changes are reasonable and warranted. After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact.

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

ADMINISTRATIVE SERVICES  
FINANCE  
ROOM 2110 STATE OFFICE BLDG  
450 N STATE ST  
SALT LAKE CITY, UT 84114-1201  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Richard Beckstead by phone at 801-538-3100, by FAX at 801-538-3562, or by Internet E-mail at rbeckstead@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

AUTHORIZED BY: John Reidhead, Director

R25-7. Travel-Related Reimbursements for State Employees.  
R25-7-1. Purpose.  
The purpose of this rule is to establish procedures to be followed by departments to pay travel-related reimbursements to state employees.

R25-7-2. Authority and Exemptions.  
This rule is established pursuant to:
(1) Section 63A-3-107, which authorizes the Division of Finance to make rules governing in-state and out-of-state travel expenses; and
(2) Section 63A-3-106, which authorizes the Division of Finance to make rules governing meeting per diem and travel expenses for board members attending official meetings.
R25-7.3. Definitions.
(1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.
(2) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.
(3) "Department" means all executive departments of state government.
(4) "Finance" means the Division of Finance.
(5) "Home-Base" means the location the employee leaves from and/or returns to.
(6) "Per diem" means an allowance paid daily.
(7) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."
(8) "Rate" means an amount of money.
(9) "Reimbursement" means money paid to compensate an employee for money spent.
(10) "State employee" means any person who is paid on the state payroll system.

R25-7.4. Eligible Expenses.
(1) Reimbursements are intended to cover all normal areas of expense.
(2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.

R25-7.5. Approvals.
(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.
(2) Both in-state and out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI 5 - "Request for Out-of-State Travel Authorization".
(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.
(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

(1) State employees who travel on state business may be eligible for a meal reimbursement.
(2) The reimbursement will include tax, tips, and other expenses associated with the meal.
(3) Allowances for in-state travel differ from those for out-of-state travel.
   (a) The daily travel meal allowance for in-state travel is $41.00 and is computed according to the rates listed in the following table.

<table>
<thead>
<tr>
<th>Meals</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Breakfast</td>
<td>$10.00</td>
</tr>
<tr>
<td>Lunch</td>
<td>$14.00</td>
</tr>
<tr>
<td>Dinner</td>
<td>$18.00</td>
</tr>
<tr>
<td>Total</td>
<td>$42.00</td>
</tr>
</tbody>
</table>

(b) The daily travel meal allowance for out-of-state travel is $46.00 and is computed according to the rates listed in the following table.

<table>
<thead>
<tr>
<th>Meals</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Breakfast</td>
<td>$10.00</td>
</tr>
<tr>
<td>Lunch</td>
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</tr>
<tr>
<td>Dinner</td>
<td>$22.00</td>
</tr>
<tr>
<td>Total</td>
<td>$46.00</td>
</tr>
</tbody>
</table>

(4) When traveling to a Tier I premium location (Anchorage, Chicago, Hawaii, New York City, San Francisco, and Seattle), the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to $66.07 per day.

When traveling to a Tier II premium location (Atlanta, Baltimore, Boston, Dallas, Los Angeles, San Diego, and Washington, DC), the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to $57.58 per day.
   (a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.
   (b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the premium location allowance as follows:
      Tier I Location
      (i) If breakfast is provided deduct $15, leaving a premium allowance for lunch and dinner of actual up to $44.52.
      (ii) If lunch is provided deduct $20, leaving a premium allowance for breakfast and dinner of actual up to $46.47.
      (iii) If dinner is provided deduct $22, leaving a premium allowance for breakfast and lunch of actual up to $35.
      Tier II Location
      (i) If breakfast is provided deduct $13, leaving a premium allowance for lunch and dinner of actual up to $44.45.
      (ii) If lunch is provided deduct $17, leaving a premium allowance for breakfast and dinner of actual up to $40.41.
      (iii) If dinner is provided deduct $28, leaving a premium allowance for breakfast and lunch of actual up to $30.
   (c) The traveler must use the same method of reimbursement for an entire day.
   (d) Actual meal cost includes tips.
   (e) Alcoholic beverages are not reimbursable.
(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to $70.47 per day. The actual meal cost allowance is $57.58 and is computed according to the rates listed in the following table.

<table>
<thead>
<tr>
<th>Meals</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Breakfast</td>
<td>$10.00</td>
</tr>
<tr>
<td>Lunch</td>
<td>$14.00</td>
</tr>
<tr>
<td>Dinner</td>
<td>$22.00</td>
</tr>
<tr>
<td>Total</td>
<td>$57.58</td>
</tr>
</tbody>
</table>

When traveling to a foreign country, the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to $66.07 per day. The actual meal cost allowance is $46.00 and is computed according to the rates listed in the following table.

<table>
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<th>Rate</th>
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<tbody>
<tr>
<td>Breakfast</td>
<td>$10.00</td>
</tr>
<tr>
<td>Lunch</td>
<td>$14.00</td>
</tr>
<tr>
<td>Dinner</td>
<td>$22.00</td>
</tr>
<tr>
<td>Total</td>
<td>$46.00</td>
</tr>
</tbody>
</table>
or to be reimbursed the actual meal cost, with original receipts, not to exceed the United States Department of State Meal and Incidental Expenses (M and IE) rate for their location.

(a) The traveler may combine the use both reimbursement methods during a trip; however, they must use the same method of reimbursement for an entire day.

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

(6) The meal reimbursement calculation is comprised of three parts:

(a) The day the travel begins. The traveler's entitlement is determined by the time of day the traveler leaves their home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the daily meal allowance. However, continental breakfasts will not reduce the meal allowance. Please Note: For breakfast, if a hot food item is offered, it is considered a complimentary meal, no matter how it is categorized by the hotel/conference facility. The meal is considered a "continental breakfast" if no hot food items are offered.

(ii) Meals provided on airlines will not reduce the meal allowance.

(c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day the traveler returns to their home base, as illustrated in the following table.


(1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.

(2) Where salaried employees of the State of Utah or other advisors or consultants must, of necessity, attend such a meeting in order to permit the board to carry on its business, the meals of such employees, advisors, or consultants may also be paid. In determining whether or not the presence of such employees, advisors, or consultants is necessary, the boards are requested to restrict the attendance of such employees, advisors, or consultants to those absolutely necessary at such mealtime meetings.


State employees who travel on state business may be eligible for a lodging reimbursement.

(1) For stays at a conference hotel, the state will reimburse the actual cost plus tax and any mandatory fees charged by the hotel for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI 51A or FI 51B.

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to $70 per night for single occupancy plus tax and any mandatory fees charged by the hotel except as noted in the table below:

(b) Lunch is paid when the trip meets one of the following requirements:

(i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.

(ii) The employee leaves their home base before 10 a.m. and returns after 2 p.m.

(iii) The Department Director provides prior written approval based on circumstances.

(c) Dinner is paid when the employee leaves their home base and returns [after 6:00 p.m. or later]

(d) The allowance is not considered an absolute right of the employee and is authorized at the discretion of the Department Director or designee.

### TABLE 3

<table>
<thead>
<tr>
<th>Day</th>
<th>1st Quarter</th>
<th>2nd Quarter</th>
<th>3rd Quarter</th>
<th>4th Quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.m.</td>
<td>a.m.</td>
<td>a.m.</td>
<td>a.m.</td>
<td>a.m.</td>
</tr>
<tr>
<td>12:00-5:59</td>
<td>6:00-11:59</td>
<td>12:00-5:59</td>
<td>6:00-11:59</td>
<td></td>
</tr>
<tr>
<td>*Breakfast, L = Lunch, D = Dinner</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### TABLE 4

<table>
<thead>
<tr>
<th>Day</th>
<th>1st Quarter</th>
<th>2nd Quarter</th>
<th>3rd Quarter</th>
<th>4th Quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.m.</td>
<td>a.m.</td>
<td>a.m.</td>
<td>a.m.</td>
<td>a.m.</td>
</tr>
<tr>
<td>12:00-6:00</td>
<td>6:01-12:00</td>
<td>12:01-6:00</td>
<td>6:01-11:59</td>
<td></td>
</tr>
<tr>
<td>*Breakfast, L = Lunch, D = Dinner</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(7) An employee may be authorized by the Department Director or designee to receive a taxable meal allowance when the employee's destination is at least 100 miles one way from their home base and the employee does not stay overnight.

(a) Breakfast is paid when the employee leaves their home base before 6:00 a.m.
(3) State employees traveling less than 50 miles from their home base are not entitled to lodging reimbursement. Miles are calculated from either the departure home-base or from the destination to the traveler's home-base. The traveler may leave from one home-base and return to a different home-base. For example, if the traveler leaves from their residence, then the home-base for departure calculations is their residence. If the traveler returns to where they normally work (ie. Cannon Health Building), then the home-base for arrival calculations is the Cannon Health Building.

(a) In some cases, agencies must use judgement to determine a traveler's home-base. The following are some things to consider when determining a traveler's home-base:

(i) Is the destination less than 50 miles from the traveler's home or normal work location? If the destination is less than 50 miles from either the traveler's home or from their normal work location, then generally the employee should not be reimbursed for lodging.

(ii) Is there a valid business reason for the traveler to go to the office (or to some other location) before driving to the destination?

(iii) Is the traveler required to work at the destination the next day?

(iv) Is the traveler going directly home after the trip, or is there a valid business reason for the traveler to first go to the office (or to some other location)?

(v) Even if "it is not specifically against policy", would the lodging be considered necessary, reasonable and in the best interest of the State?

(4) When the State of Utah pays for a person from out-of-state to travel to Utah, the in-state lodging per diem rates will apply.

(5) For out-of-state travel stays at a non-conference hotel, the state will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel, not to exceed the federal lodging rate for the location. These reservations must be made through the State Travel Office.

(6) The state will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel for in-state or out-of-state travel stays where the department/traveler makes reservations through the State Travel Office.

If lodging is not available at the allowable per diem rate in the area the employee needs to stay, the State Travel Office will book a hotel with the best available rate. In this circumstance, the employee will be reimbursed at the actual rate booked.

If an employee chooses to stay at a hotel that costs more than the allowable per diem rate, the employee will only be reimbursed for the allowable per diem rate plus tax and any mandatory fees charged by the hotel. These instances will be audited 100% by the State Finance Post-Auditors.

(7) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double state employee occupancy, add $20, for triple state employee occupancy, add $40, for quadruple state employee occupancy, add $60.

(8) Exceptions will be allowed for unusual circumstances when approved in writing by the traveler's Department Director or designee prior to the trip.

(a) For out-of-state travel, the approval may be on the form F1 5.

(b) Attach the written approval to the Travel Reimbursement Request, form F1 51B or F1 51D.

(9) A proper receipt for lodging accommodations must accompany each request for reimbursement.

A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date(s) of occupancy, amount and date paid, [signature of agent]—number in the party, and (single, double, triple, or quadruple occupancy).

(10) When lodging is required, travelers should stay at the lodging facility nearest to the meeting/training/work location where state lodging per diem rates are accepted in order to minimize transportation costs.

(11) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.

(a) With proof of staying overnight away from home on approved state business, the traveler will be reimbursed the following:

(i) $25 per night with no receipts required or

<table>
<thead>
<tr>
<th>City</th>
<th>Lodging Per Diem Rate</th>
<th>Tax and Mandatory Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Garden City</td>
<td>$80.00 plus tax</td>
<td>and mandatory fees</td>
</tr>
<tr>
<td>Green River</td>
<td>$85.00 plus tax</td>
<td>and mandatory fees</td>
</tr>
<tr>
<td>Hanksville</td>
<td>$75.00 plus tax</td>
<td>and mandatory fees</td>
</tr>
<tr>
<td>Heber</td>
<td>$85.00 plus tax</td>
<td>and mandatory fees</td>
</tr>
<tr>
<td>Kanab</td>
<td>$85.00 plus tax</td>
<td>and mandatory fees</td>
</tr>
<tr>
<td>Layton</td>
<td>$85.00 plus tax</td>
<td>and mandatory fees</td>
</tr>
<tr>
<td>Logan</td>
<td>$85.00 plus tax</td>
<td>and mandatory fees</td>
</tr>
<tr>
<td>Mexican Hat</td>
<td>$90.00 plus tax</td>
<td>and mandatory fees</td>
</tr>
<tr>
<td>Moab</td>
<td>$100.00 plus tax</td>
<td>and mandatory fees</td>
</tr>
<tr>
<td>Monticello</td>
<td>$80.00 plus tax</td>
<td>and mandatory fees</td>
</tr>
<tr>
<td>Ogden</td>
<td>$85.00 plus tax</td>
<td>and mandatory fees</td>
</tr>
<tr>
<td>Park City/Midway</td>
<td>$100.00 plus tax</td>
<td>and mandatory fees</td>
</tr>
<tr>
<td>Price</td>
<td>$75.00 plus tax</td>
<td>and mandatory fees</td>
</tr>
<tr>
<td>Provo/Dren/Lehi/American Fork/Springville</td>
<td>$85.00 plus tax</td>
<td>and mandatory fees</td>
</tr>
<tr>
<td>Roosevelt/Ballard</td>
<td>$90.00 plus tax</td>
<td>and mandatory fees</td>
</tr>
<tr>
<td>Salt Lake City Metropolitan Area</td>
<td>$100.00 plus tax</td>
<td>and mandatory fees</td>
</tr>
<tr>
<td>(Draper to Centerville), Tooele</td>
<td>$85.00 plus tax</td>
<td>and mandatory fees</td>
</tr>
<tr>
<td>St. George/Washington/Springdale/Hurricane</td>
<td>$85.00 plus tax</td>
<td>and mandatory fees</td>
</tr>
<tr>
<td>Torrey</td>
<td>$85.00 plus tax</td>
<td>and mandatory fees</td>
</tr>
<tr>
<td>Tremonton</td>
<td>$90.00 plus tax</td>
<td>and mandatory fees</td>
</tr>
<tr>
<td>Vernal</td>
<td>$95.00 plus tax</td>
<td>and mandatory fees</td>
</tr>
<tr>
<td>All Other Utah Cities</td>
<td>$70.00 plus tax</td>
<td>and mandatory fees</td>
</tr>
</tbody>
</table>
(ii) Actual cost up to $40 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(12) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:
(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.
(b) After 30 days - $46 per day for lodging and meals. No receipt is required.

R25-7-9. Reimbursement for Incidental.

State employees who travel on state business may be eligible for a reimbursement for incidental expenses.

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips, transportation costs, maid service, and bellman. Gratuities/tips for various services such as taxi/shuttle, assistance with baggage, maid service, and bellman, may be reimbursed up to a combined maximum of $5.00 per day.
(a) Tips for doormen and meals are not reimbursable.
(b) No other gratuities will be reimbursed.
(c) Include an original receipt for each individual incidental item above $19.99.
(2) The state will reimburse incidental ground transportation and parking expenses.
(a) Travelers shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.
(b) Personal use of such transportation to restaurants is not reimbursable.
(c) The maximum that airport parking will be reimbursed is the economy lot parking rate at the airport they are flying out of. A receipt is required for amounts of $20 or more.
(3) Registration should be paid in advance on a state warrant, or with a state purchase card or with a state travel card.
(a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.
(b) If a traveler must pay the registration when they arrive, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with them.
(4) Telephone calls related to state business are reimbursed at the actual cost.
(a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A or FI 51B.
(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls.
(5) Allowances for personal telephone calls made while out of town on state business overnight may be based on the number of nights away from home. The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for personal telephone calls.
(a) Four nights or less - actual amount up to $2.50 per night.
(b) Five to eleven nights - actual amount up to $20.00
(c) Twelve nights to thirty nights - actual amount up to $30.00
(d) More than thirty days - start over
(6) Actual laundry expenses up to $18.00 per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night out.
(a) The traveler must provide receipts for the laundry expense.
(b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.
(7) An amount of $5 per day will be allowed for travelers away in excess of six consecutive nights beginning after the sixth night out.
(a) This amount covers miscellaneous incidentals not covered in this rule.
(b) This allowance is not available for travelers going to conferences.
(8) Travel on a Weekend during Trips of More Than 10 Nights' Duration - A department may provide for employees to return home on a weekend when a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

R25-7-10. Reimbursement for Transportation.

State employees who travel on state business may be eligible for a transportation reimbursement.

(1) Air transportation is limited to Air Coach or Excursion class. Priority seating charges will not be reimbursed unless preapproved by the department director or designee.
(a) All reservations (in-state and out-of-state) should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.
(b) Only one change fee per trip will be reimbursed.
(c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.
(2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.
(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the long term parking rate at the airport they are flying out of.
(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51B for amounts of $20 or more.
(c) Travelers may be reimbursed, up to the maximum reimbursements rate, for mileage to and from the airport to allow someone to drop them off and to pick them up.
(3) Travelers may use private vehicles with approval from the Department Director or designee.
(a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.
(b) Reimbursement for a private vehicle will be at the rate of [8$140] cents per mile or 53 cents per mile if a state vehicle is not available to the employee.
(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use
either a daily pool fleet vehicle or a private vehicle. If a daily pool
fleet vehicle is not reasonably available, the traveler may be
reimbursed at 53 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per
day, the agency should approve the traveler to rent a daily pool fleet
vehicle if one is reasonably available. Doing so will cost less than
if the traveler takes a private vehicle. If the agency approves the
traveler to take a private vehicle, the employee will be reimbursed
at the lower rate of 40 cents per mile.

(c) Agencies may establish a reimbursement rate that is
more restrictive than the rate established in this Section.

(d) Any exceptions to this mileage reimbursement rate
guidance must be approved in writing by the employees Executive
Director or designee.

(e) Mileage will be computed using Mapquest or other
generally accepted map/route planning website, or from the latest
official state road map and will be limited to the most economical,
usually traveled routes.

(f) If the traveler uses a private vehicle on official state
business and is reimbursed for mileage, parking charges may be
reimbursed as an incidental expense.

(g) An approved Private Vehicle Usage Report, form FI
40, should be included with the department's payroll documentation
reporting miles driven on state business during the payroll period.

(h) Departments may allow mileage reimbursement on an
approved Travel Reimbursement Request, form FI 51A or FI 51B, if
other costs associated with the trip are to be reimbursed at the same
time.

(4) A traveler may choose to drive instead of flying if
preapproved by the Department Director or designee.

(a) If the traveler drives a state-owned vehicle, the
traveler may be reimbursed for meals and lodging for a reasonable
amount of travel time; however, the total cost of the trip must not
exceed the equivalent cost of the airline trip. The traveler may also
be reimbursed for incidental expenses such as toll fees and parking
fees.

(b) If the traveler drives a privately-owned vehicle,
reimbursement will be at the rate of 40 cents per mile or the
airplane fare, whichever is less, unless otherwise approved by the
Department Director or designee.

(i) The lowest fare available within 30 days prior to
the departure date will be used when calculating the cost of travel for
comparison to private vehicle cost.

(ii) A comparison printout which is available through the
State Travel Office is required when the traveler is taking a private
vehicle.

(iii) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total
cost of the trip must not exceed the equivalent cost of an airline trip.

(iv) If the traveler uses a private vehicle on official state
business and is reimbursed for mileage, parking charges may be
reimbursed as an incidental expense.

(c) When submitting the reimbursement form, attach a
schedule comparing the cost of driving with the cost of flying. The
schedule should show that the total cost of the trip driving was less
than or equal to the total cost of the trip flying.

(d) If the travel time taken for driving during the
employee's normal work week is greater than that which would
have occurred had the employee flown, the excess time used will be
taken as annual leave and deducted on the Time and Attendance
System.

(5) Use of rental vehicles must be approved in writing in
advance by the Department Director or designee.

(a) An exception to advance approval of the use of rental
vehicles shall be fully explained in writing with the request for
reimbursement and approved by the Department Director or
designee.

(b) Detailed explanation is required if a rental vehicle is
requested for a traveler staying at a conference hotel.

(c) When making rental car arrangements through the
State Travel Office, reserve the vehicle you need. Upgrades in size
or model made when picking up the rental vehicle will not be
reimbursed.

(i) State employees should rent vehicles to be used for
state business in their own names, using the state contract so they
will have full coverage under the state's liability insurance.

(ii) Rental vehicle reservations not made through the
State Travel Office must be approved in advance by the Department
Director or designee.

(iii) The traveler will be reimbursed the actual rate
charged by the rental agency.

(iv) The traveler must have approval for a rental car in
order to be reimbursed for rental car parking.

(6) Travel by private airplane must be approved in
advance by the Department Director or designee.

(a) The pilot must certify to the Department Director or
designee that the pilot is certified to fly the plane being used for
state business.

(b) If the plane is owned by the pilot/employee, the pilot
must certify the existence of at least $500,000 of liability insurance
coverage.

(c) If the plane is a rental, the pilot must provide written
certification from the rental agency that the insurance covers the
traveler and the state as insured. The insurance must be adequate to
cover any physical damage to the plane and at least $500,000 for
liability coverage.

(d) Reimbursement will be made at 53 cents per mile.

(e) Mileage calculation is based on air mileage and is
limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior
to the trip by the Department Director or designee. Travel will be
reimbursed at 20 cents per mile.

(8) A car allowance may be allowed in lieu of mileage
reimbursement in certain cases. Prior written approval from the
Department Director, the Executive Director of the Department of
Administrative Services, and the Governor is required.

KEY: air travel, per diem allowances, state employees,
transportation

Date of Enactment or Last Substantive Amendment: [March
40, 2017]

Notice of Continuation: April 15, 2013

Authorizing, and Implemented or Interpreted Law: 63A-3-107;
63A-3-106
Administrative Services, Purchasing and General Services
R33-26
State Surplus Property

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41799
FILED: 06/12/2017

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule change is to bring the rule into compliance with laws set forth in statute regarding the disposal of surplus property.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule include correcting capitalization errors; correcting the formatting of statute and rule citations; the addition of the definitions of "state agency" and "state surplus property"; the addition of Section R33-26-200 which outlines the disposition of surplus property; the addition of an exception for directors and state officials to sell or gift surplus state-owned electronic devices via on-line auction if certain conditions are met; the addition of Subsection R33-26-202(3) which allows for the transfer of state surplus property from one state agency directly to another without Division of Purchasing approval, the removal of Sections R33-26-203, R33-26-701, and R33-26-801; and the addition of Section R33-26-900 which provides the website for the state surplus property rates and fees.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63A, Chapter 2

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. This rule simply outlines the internal procedures that state agencies must follow to dispose of surplus property in accordance with the laws set forth in statute.
♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. This rule simply outlines the internal procedures that state agencies must follow to dispose of surplus property in accordance with the laws set forth in statute.
♦ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. This rule simply outlines the internal procedures that state agencies must follow to dispose of surplus property in accordance with the laws set forth in statute.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local governments. This rule simply outlines the internal procedures that state agencies must follow to dispose of surplus property in accordance with the laws set forth in statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs or savings for affected persons. This rule simply outlines the internal procedures that state agencies must follow to dispose of surplus property in accordance with the laws set forth in statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Fay Tan by phone at 801-538-3524, or by Internet E-mail at ftan@utah.gov
♦ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@utah.gov
♦ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.
This rule sets forth policies and procedures which govern the acquisition and disposition of state-owned and federal surplus property items, and vehicles. It applies to all state and local public agencies and eligible non-profit educational and health institutions when dealing with federal surplus property. It also applies to all state agencies unless specifically exempted by law and to the general public when dealing with state-owned surplus property.

R33-26-102. Requirements.
Under the provisions of Section 63A-2-103, the Division of Purchasing and General Services shall manage and administer the State's surplus property program, including:
(1) The federal surplus property program as the Utah State Agency for Surplus Property and in compliance with 41 CFR 102-37 and Public Law 94-519 through a State Plan of Operation. The standards and procedures governing the contract between the state and the federal government are contained in the Plan of Operation.

(2) The disposition of state-owned surplus property items, including vehicles and non-vehicle surplus property.

(3) Information technology equipment.

R33-26-103. Definitions.
All definitions in Section 63A-2-101.5 shall apply to Rule R33-26. In addition the following definitions shall apply to Rule R33-26:

(1) Terms used in the Surplus Property Rules are defined in Section 63A-2-101.5.

(2) In addition:

(a) "All-terrain type I vehicle" means any motor vehicle 52 inches or less in width, having an unladen dry weight of 1,500 pounds or less, traveling on three or more low pressure tires, having a seat designed to be straddled by the operator, and designed for or capable of travel over unimproved terrain;

(b) "All-terrain type II vehicle" means any other motor vehicle, not defined in Subsection (2), not designed or used primarily for the transportation of persons or property, declared to be surplus property, to the care, custody, or possession of another person.

(3) "Aircraft" means any contrivance now known or in the future invented, used, or designed for navigation of or flight in the air.

(4) "Bundled sale" means the act of packaging or grouping multiple State-owned surplus property items together for the purpose of offering those items for sale in a single transaction in which the buyer receives all surplus property items bundled together and sold in the transaction.

(5) "Camper" means any structure designed, used, and maintained primarily to be mounted on or affixed to a motor vehicle that contains a floor and is designed to provide a mobile dwelling, sleeping place, commercial space, or facilities for human habitation or for camping.

(6) "Disposition" means the act of selling, disposing, or transferring state-owned vehicle and non-vehicle property, declared to be surplus property, to the care, custody, or possession of another person.

(7) "Division" means the Division of Purchasing and General Services within the Department of Administrative Services created under Section 63A-2-101.

(8) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(9) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion.

(10) "Motorcycle" means a motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

(11) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways.

(12) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle, all-terrain type II vehicle, or motorcycle.

(13) As used in this section "Personal handheld electronic device":

(a) means an electronic device that is designed for personal handheld use and permits the user to store or access information, the primary value of which is specific to the user of the device; and,

(b) includes a mobile phone, pocket personal computer, personal digital assistant, wireless, or similar device.

(14) "Personal Watercraft" means a motorboat that is:

(a) less than 16 feet in length;

(b) propelled by a water jet pump; and

(c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

(15) "Pickup truck" means a two-axle motor vehicle with motive power manufactured, remanufactured, or materially altered to provide an open cargo area.

(b) "Pickup truck" includes motor vehicles with the open cargo area covered with a camper, camper shell, tarp, removable tarp, or similar structure.

(16) "Reconstructed vehicle" means every vehicle type required to be registered in this state that is materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

(17) "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is either self-propelled or pulled by another vehicle.

(b) "Recreational vehicle" includes:

(i) a travel trailer;

(ii) a camping trailer;

(iii) a motor home;

(iv) a fifth wheel trailer; and

(v) a van.

(18) "Road tractor" means every motor vehicle designed and used for drawing other vehicles and constructed so it does not carry and load either independently or any part of the weight of a vehicle or load this is drawn.

(19) "Sailboat" means any vessel having one or more sails and propelled by wind.

(20) "Semitrailer" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that some part of its weight and its load rests or is carried by another vehicle.

(b) "special mobile equipment" includes:

(i) farm tractors;

(ii) on or off-road motorized construction or maintenance equipment including backhoes, bulldozers, compactors, graders, loaders, road rollers, tractors, and trenchers;
(iii) ditch-digging apparatus; and
(iv) forklifts, warehouse equipment, golf carts, electric carts, etc.

(22) "State agency" means any executive branch department, division, or other agency of the state.

(23) "State-owned surplus property item":
(a) means state-owned property as defined in Section 63A-2-101.5 and Section R33-26-103 whether acquired by purchase, seizure, donation, or otherwise;
(i) that is no longer being used by the state or no longer usable by the state;
(ii) that is out of date;
(iii) that is damaged and cannot be repaired or cannot be repaired at a cost that is less than the property's value;
(iv) whose useful life span has expired; or
(v) that the state agency possessing the property determines is not required to meet the needs or responsibilities of the state agency;
(b) includes:
(i) a motor vehicle as defined in Section R33-26-103;
(ii) equipment;
(iii) furniture;
(iv) information technology equipment; and
(v) supplies; and
(c) does not include:
(i) real property;
(ii) an asset of the School and Institutional Trust Lands Administration, established in Section 53C-1-201;
(iii) a firearm or ammunition; or
(iv) an office or household item made of aluminum, paper, plastic, cardboard, or other recyclable material, without any meaningful value except for recycling purposes.

(24) "Trailer" means a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(25) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable vehicle without motive power, designed as a temporary dwelling for travel, recreational, or vacation use that does not require a special highway movement permit when drawn by a self-propelled motor vehicle.

(26) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle.

(27) "Vessel" means every type of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

R33-2600. Disposition of State-Owned Surplus Property Items

1. The State surplus property program shall be administered by the Department of Administrative Services, Division of Purchasing and General Services.

2. Disposition of State-owned surplus property items shall be through the following methods:
(a) Online auction;
(b) Live auction;
(c) Pick up, sale, and disposal;
(d) Disposal;
(e) Destruction;
(f) Direct sale to the public;
(g) Donation to a public school or state administered program; or
(h) Another method approved by the director of the divisions.

3. State agencies shall complete Form SP-1 and electronically transmit it to the State Surplus Property agency.

4. Completion of Form SP-1 meets the requirements set forth in Subsection 63A-2-401(7) for a state agency to declare State property as surplus.

5. The following information must be included on Form SP-1:
(A) a minimum of two digital photographs for each State-owned surplus property item being listed for sale;
(B) a brief description of the State-owned surplus property item detailing its condition;
(C) an estimate of the State-owned surplus property item's value;
(D) the location of the State-owned surplus property item; and
(E) the contact information of the person assigned by the state agency to assist the public with the transaction.

6. Online auction shall be the primary method used for the disposition of non-vehicle State-owned surplus property items.

7. Online auctions shall be administered by the State Surplus Property agency.

8. Each state agency will be responsible for:
(i) Storing State-owned surplus property items on site until the online auction has been completed and each State-owned surplus property item is:
(A) picked up by the person to whom the item has been sold via online auction;
(B) disposed of or donated by the state agency;
(C) picked up by the vendor under contract with the division; or
(D) picked up by a local vendor under contract with the state agency;
(ii) Assigning an employee of the agency to assist the public with the online auction including:
(A) answering questions about the State-owned surplus property item;
(B) providing directions;
(C) scheduling the pickup;
(D) other miscellaneous tasks; and
(iii) Developing internal policies regarding employees;
(A) assisting the public with lifting and transporting State-owned surplus property items;
(B) transporting State-owned surplus property items with a minimal value of less than $100 to charities for donation;
(C) receiving State-owned surplus property items with a minimal value of less than $100 as a donation by the state agency;
(e) A state agency may seek an exception from the requirement to dispose of State-owned surplus property items through online auction in accordance with Subsection 63A-2-401(3).
(i) State agencies that are granted an exception must:
(A) complete Form SP-1 and transmit it to the State Surplus Property agency; and
(B) coordinate with the State Surplus Property agency to schedule a date and time for State-owned surplus property items to be delivered.
(ii) State agencies may contract with the State Surplus Property agency to have items identified in Subsection (9) picked up and delivered to the State Surplus Property agency in accordance with the authorized fee schedule.
(iii) State agencies may contract with a vendor to have items identified in subsection (4)(c)(i) picked up and delivered to the State Surplus Property agency.
(3) The State Surplus Property agency shall administer the disposition of State-owned surplus vehicles.
(a) State-owned surplus vehicles may be sold at the agency location or delivered to the State Surplus Property agency for disposition.
(b) State-owned surplus electronic data devices shall be disposed of in accordance with Rule R33-26-202.
(7)(a) State-owned surplus property items with a minimal value may be disposed of as waste by a state agency in accordance with Subsection 63A-2-411.
(b) State-owned surplus property items that do not appreciate in value that had an initial purchase price of less than $100 or deemed to be valued at less than $100 by the State Surplus Property agency;
(i) may be disposed of as waste by a state agency by the means described in Subsection 63A-2-411(3); or
(ii) may be packaged together and sold as a bundled sale.
(8) The State Surplus Property agency is not authorized to accept or dispose of hazardous waste or any item containing hazardous waste. State agencies must dispose of hazardous waste and items containing hazardous waste in accordance with applicable laws.

(1)  Federal [§]surplus [¶]property items are [is—]not available for sale to the general public. Donation of federal surplus property shall be administered in accordance with the procedures identified in the State Plan of Operation for the Federal Property Assistance Program.

(2)  Public auctions of federal surplus property are authorized under certain circumstances and conditions. The division shall coordinate such auctions when deemed necessary or appropriate. Federal surplus property auctions are primarily conducted online, but are regulated and accomplished by the U.S. General Services Administration.

R33-26-205.  Related Party Transactions.  

(1)  The division has a duty to the public to ensure that State-owned surplus property is disposed of in accordance with [Section] Title 63A-[—]Chapter 2. A conflict of interest may exist or appear to exist when a related party attempts to purchase a State-owned surplus property item.

(2)  A related party is defined as someone who may fit into any of the following categories pertaining to the State-owned surplus property item in question:  

(a) has purchasing authority;  
(b) has maintenance authority;  
(c) has disposition or signature authority;  
(d) has authority regarding the disposal price;  
(e) has access to restricted information; and  
(f) [has] may be perceived to be a related party using other criteria which may prohibit independence.

R33-26-206.  Priorities.  

(1)  Public agencies are given priority for the purchase of State-owned surplus property items.

(2)  Property that is determined by the Division to be unique, in short supply or in high demand by public agencies may be held for a period of up to 30 days before being offered for sale to the general public by [§]Surplus [¶]Property.

(3)  For this [¶]rule, the entities listed below, in priority order, are considered to be public agencies:  

(a) state [¶]agencies;  
(b) state [¶]universities, [¶]colleges, and [¶]community [¶]colleges;  
(c) other tax supported educational agencies or political subdivisions in the State of Utah including cities, towns, counties and local law enforcement agencies;  
(d) other tax-¶supported educational entities; then  
(e) non-profit health and educational institutions.

(4)  State-owned [¶]personal [¶]surplus property items that [¶]are not purchased by or transferred to public agencies may be offered for public sale.
R33-26-301. Accounting and Reimbursement Procedures.
(1) The division will record and maintain records of all transactions related to the acquisition and sale of all state and federal surplus property.

(2) The division may maintain a federal working capital reserve not to exceed one year’s operating expenses. In the event the division accumulates funds in excess of the allowable working capital reserve, they will reduce the Retained Earnings balance accordingly. The only exception is where the division is accumulating excess funds in anticipation of the purchase of new facilities or capital items. Prior to the accumulation of excess funds, the division must obtain the written approval of the Executive Director of the Department of Administrative Services.

R33-26-302. Reimbursement.
(1) Reimbursement to state agencies from the sale of their vehicles and non-vehicle items will be made through the Division of Finance. Payment received from public purchasers may be in the form of cash and/or certified funds, authorized bank financial cards, and personal checks. Personal checks may not be accepted for amounts exceeding $100. Two-party checks shall not be accepted;

(b) payment received from governmental entities, school districts, special districts, and higher education institutions shall be in the form of agency or subdivision check or purchasing card;

c) payment made by governmental entities, school districts, special districts, and higher education institutions shall be at the time of purchase and prior to removal of the property purchased; or

d) The division director or designee may make exceptions to the payment provisions of this rule for good cause. A good cause exception requires a weighing of:

(i) the cost to the state;

(ii) the potential liability to the state; and

(iii) the overall best interest of the state.

(3) The division shall initiate formal collection procedures in the event that a check from the general public, state subdivisions, or other agencies is returned to the division for “insufficient funds.”

(a) In the event that a check is returned to the division for “insufficient funds,” the division may:

(i) prohibit the debtor from making any future purchases from the division until the debt is paid in full; and

(ii) have the division accountant send a certified letter to the debtor stating that the debtor has 15 days to pay the full amount owed with cash or certified funds, including any and all additional fees associated with the collection process, such as returned check fees; and if the balance is not paid within the 15 day period, the matter will be referred to the Office of State Debt Collection for formal collection proceedings.

(b) Debts for which payments have not been received in full within the 15 day period referred to above shall be assigned to the Office of State Debt Collection in accordance with statute.

(1) State-owned excess vehicles may be purchased at any time by the general public, subject to any holding period that may be assigned by the division and subject to the division’s operating days and hours.

(2) Federal surplus property auctions to the general public may be accomplished on occasions and subject to the limitations as indicated previously.

(3) The frequency of public auctions, for either State-owned vehicles or federal surplus property will be regulated by current law as applicable, the volume of items held in inventory by the division, and the profitability of conducting auctions versus other approaches to disposing of surplus property.

(4) State-owned vehicles available for sale may not have any ancillary or component parts or equipment removed, destroyed, or detached, from the vehicle prior to sale without the approval of the division.

(5) State agencies are prohibited from removing ancillary or component parts or equipment from vehicles intended for surplus unless:

(a) the state agency intends on using the ancillary or component parts or equipment on other agency vehicles;

(b) the state agency in possession of the vehicle intends to transfer the ancillary or component parts or equipment to another state agency; or

(c) the state agency has obtained prior approval from the division to remove ancillary or component parts or equipment from the vehicle intended for surplus.

As required by the Utah Administrative Procedures Act, this Rule provides the procedures for adjudicating disputes brought before the division under the authority granted by Section 63A-2-401 and [Section]Title 63G, Chapter 4, et seq.

R33-26-602. Proceedings to Be Informal.
All matters over which the division has jurisdiction including bid validity determination and sales issues, which are subject to Title 63G, Chapter 4, will be informal in nature for purposes of adjudication. The Director of the Division of Purchasing and General Services or his designee will be the presiding officer.

(1) No response need be filed to the notice of agency action or request for agency action.

(2) The division may hold a hearing at the discretion of the director of the Division of Purchasing and General Services or his designee unless a hearing is required by statute. A request for hearing must be made within ten days after receipt of the notice of agency action or request for agency action.

(3) Only the parties named in the notice of agency action or request for agency action will be permitted to testify, present evidence and comment on the issues.

(4) A hearing will be held only after timely notice of the hearing has been given.

(5) No discovery, either compulsory or voluntary, will be permitted except that all parties to the action shall have access to information and materials not restricted by law.

(6) No person may intervene in an agency action unless federal statute or rule requires the agency to permit intervention.

(7) Any hearing held under this rule is open to all parties.

(8) Within thirty days after the close of any hearing, the director of the Division of Purchasing and General Services or his designee shall issue a written decision stating the decision, the reasons for the decision, time limits for filing an appeal with the director of the superior agency, notice of right of judicial review, and the time limits for filing an appeal to the appropriate district court.

(9) The decision rendered by the Director of the Division of Purchasing and General Services or his designee shall be based on the facts in the division file and if a hearing is held, the facts based on evidence presented at the hearing.

(10) The agency shall notify the parties of the agency order by promptly mailing a copy thereof to each at the address indicated in the file.

(11) Whether a hearing is held or not, an order issued under the provisions of this rule shall be the final order and then may be appealed to the appropriate district court.

R33-26-701. Disposition of State Surplus Property.

(a) Completion of Form SP-1 meets the requirements set forth in Utah Code 63A-2-401(7) for a state agency to declare State surplus property.

(b) The Division shall administer the disposition of State surplus property through the following methods:

(1) Online auction;

(2) Live auction;

(3) Pick up, sale, and disposal;

(4) Disposal;

(5) Destruction;

(6) Direct sale to the public; or

(7) Another method approved by the Director of the Division.

(c) State agencies shall complete an SP-1 Form and electronically transmit it to State Surplus Property.

(d) Completion of Form SP-1 meets the requirements set forth in Utah Code 63A-2-401(7) for a state agency to declare State surplus property.

(e) The SP-1 Form may be accessed at http://purchasing.utah.gov/stateagencylinks.html.

(f) Information required on the SP-1 Form includes:

(1) a minimum of two digital photographs for each State surplus property item being listed for sale;

(2) a brief description of the State surplus property item detailing its condition;

(3) an estimate of the State surplus property's value;

(4) the location of the State surplus property; an

(5) the contact information of the person assigned by the state agency to assist the public with the transaction.

(6) Online auction shall be the primary method used for the disposition of non-vehicle State surplus property.

(a) Online auctions shall be administered by State Surplus Property.

(b) Each state agency will be responsible for:

(i) Storing State surplus property on site until the online auction has been completed and the State surplus property is picked up by the person to whom the item has been sold to via online auction;

(ii) disposed of or donated by the state agency;

(c) picked up by the vendor under contract with State Surplus Property;

(ii) picked up by a local vendor under contract with the state agency;

(iii) Assigning an employee of the agency to assist the public with the online auction including:

(1) answering questions about the State surplus property item;

(2) providing directions;

(3) scheduling the pickup;

(D) other miscellaneous tasks; an

(iii) Developing internal policies regarding employees.

(A) assisting the public with lifting and transporting State surplus property items;

(B) transporting State surplus property items with a minimal value of less than $100 to charities for donation;

(C) receiving State surplus property items with a minimal value of less than $100 as a donation by the state agency;

(1) A state agency may seek an exception from the requirement to dispose of surplus property through online auction in accordance with Utah Code 63A-2-401(2).

(i) Surplus vehicles may be sold at the agency location or by the vendor under contract with State Surplus Property;

(ii) Surplus vehicles may be sold at the agency location or by the vendor under contract with State Surplus Property; or

(iii) the state agency to assist the public with the transaction.

(A) complete an SP-1 Form and transmit it to State Surplus Property; and

(B) coordinate with State Surplus Property to schedule a date and time for State surplus property items to be picked.

(ii) The Division shall administer the disposition of State surplus property through the following methods:

(iii) A state agency may contract with a local vendor using the Small Purchase set forth in Utah Code 63G 6a 108 and Administrative Rule R33-4-104 to dispose of State surplus property items with a minimal value of less than $100 that cannot be disposed of by a state agency in accordance with Utah Code 63A-2-401(2).

(i) Surplus vehicles may be sold at the agency location or delivered to State Surplus Property for disposition.

(A) For agencies along the Wasatch Front, State Surplus Property will contract with a vendor to pick up State surplus property items with a minimal value of less than $100 that cannot be disposed of by a state agency as waste in the trash, donated to a charity, or donated to an employee of the state agency.

(B) For agencies with offices outside the Wasatch Front, the agency may contract with a vendor using the Small Purchase set forth in Utah Code 63G 6a 108 and Administrative Rule R33-4-104 to dispose of State surplus property items with a minimal value of less than $100 that cannot be disposed of by a state agency as waste in the trash, donated to a charity, or donated to an employee of the state agency.
R33-26-801. Donation, Disposal, or Destruction of State Surplus Property.

(1)(a) State surplus property with a minimal value of less than $100 may be disposed of as waste by a state agency in accordance with Utah Code 63A-2-411.

(b) State surplus property items that do not appreciate in value, with an initial purchase price of less than $100 or deemed to be valued at less than $100 by the State Surplus Property manager: (i) may be disposed of as waste by a state agency by the means described in Utah Code 63A-2-411(3); or (ii) State surplus Property items with a minimal value may be packaged together and sold as a bundled sale.

R33-26-900. Charges and Fees Assessed for State Surplus Property Agency Services

(1) In accordance with Section 63A-2-405, the State Surplus Property agency will charge rates and fees, as approved by the Rate Setting Committee as set forth in Sections 63J-1-410 and 504, for services associated with the disposition of surplus property items.

(2) The current approved rate and fee schedule is available at: surplus.utah.gov.

KEY: government purchasing, procurement rules, state surplus property, general procurement provisions

Date of Enactment or Last Substantive Amendment: December 23, 2015

Authorizing, and Implemented or Interpreted Law: 63A-2

Education, Administration

R277-101

Utah State Board of Education Procedures

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41768

FILED: 06/09/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-101 is amended to remove text that does not specifically pertain to public participation in Utah State Board of Education (Board) meetings. That text is being placed in a new rule. Technical and conforming changes are also provided.

SUMMARY OF THE RULE OR CHANGE: Text that does not specifically pertain to public participation in Board meetings is removed; text is reorganized and renumbered; and various other technical changes are made to the text.

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Removing and reorganizing text and making technical and conforming changes to the rule will likely not result in a cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: The amendments to this rule will likely not result in a cost or savings to local government. This rule provides procedures for public participation in Board meetings and does affect local government.
♦ SMALL BUSINESSES: The amendments to this rule will likely not result in a cost or savings to small businesses. This rule and the amendments provide procedures for public participation in Board meetings and do not affect small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to this rule will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. This rule and the amendments provide procedures for public participation in Board meetings and do not affect persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Removing and reorganizing text and making technical and conforming changes to the rule will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

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

EDUCATION ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the 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 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401
NOTICES OF PROPOSED RULES

R277. Education, Administration.
R277-101. Public Participation in Utah State Board of Education [Procedures] [Meetings].
R277-101-[42]. Definitions.

[A:][1] This rule is authorized [under][by]:
(a) Utah Constitution, Article X, Section 3, which vests general control and supervision [over][of] public education in the Board;
(b) Section 52-4-1 Title 52, Chapter 4, Open and Public Meetings Act, which directs that the deliberations and actions of the Board be [taken][conducted openly], and that its deliberations be conducted openly; and [by]
(c) Section 53A-1-401(23), which 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 describe procedures to be followed by the Board in its conduct of the public's business in order to:

(1)[a] hear from those who desire to be heard on public education matters in the state;
(2)[b] effectively and efficiently utilize the time of the Board;
(3) enable staff to provide timely and essential information; and
(4)[c] balance desire for public information with other demands on the Board's time.

R277-101-[42]. Definitions.

A. "Board" means the Utah State Board of Education.
B. "Board leadership" means the Leadership Committee as defined in the Board bylaws.
C. "Chair" means;
   (1) the duly elected Chairperson of the Board;
   (2) a Vice-chair when conducting a meeting of the Board;
   (3) the Chair of a Board standing committee.

D. "Conflict of interest" means a business, family, monetary or relationship concern that may cause a reasonable person to be unduly influenced or that creates the appearance of undue influence.

E. "Health, safety, and welfare of students" means such concerns as adequate and safe buildings and facilities and transportation vehicles, required immunizations and health screenings, required criminal background checks and reviews on potential teachers and employees, required curriculum that allows for complete transferability of credit and other similar standards and protections.

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

G. "Official action" taken by local education agency (LEA) boards means action taken in appropriately advertised board meetings, where votes and minutes are recorded and available for public review.

H. "State or federal law or regulations" means federal law and regulations including Department of Agriculture regulations that govern the Child Nutrition Program as it operates in Utah public schools; the Individuals with Disability Education Act (IDEA), including federal and state implementing regulations and state administrative rules.

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


[A:][1] Citizens The general public may attend meetings of the Board, unless a meeting is closed in accordance with Section 52-4-204. [The Board welcomes public participation during Board meetings.]

[B:][2] Citizens The general public may speak to the Board regarding any issue when acknowledged and recognized by the Board Chair during scheduled public comment.

[C:][3] (a) to issues not on the agenda during the time designated for public comment.

(i) The chair may give [priority][shall be given to] those who desire to address the Board prior to the meeting, including a brief description of the issue to be addressed.

(ii) No action shall be taken during the public comment portion of a meeting.

(iii) The chair may request groups to designate a spokesperson.

(iv) The Board shall include in its meeting agenda the amount of time set aside for public comment and the restrictions on individual speakers or group spokespersons.

(b) The Chair may request that public comment[s] be provided in writing.

(C:)[4] All presentations to the Board or one of its committees shall exemplify courteous behavior and appropriate language.

[D:][5] The Chair may invite [additional comment[s] to the Board or a committee[s] may only be made as recognized and invited by the Board Chair during a meeting in the Chair's discretion.

(1) In accordance with Subsection 53-4-202(6)(b), at the discretion of the Chair, the Board may discuss a topic raised by the public in an open meeting even if the item was not included in the public meeting notice.

(2) At the discretion of the Chair, a member of the public may request to comment in the committee meeting by raise of hand.


A. The Board has discretion to reconsider any decision it has made.
A. Criteria for waiver of Board Rules:
(1) The Board shall consider waiver requests consistent with its constitutional responsibility for general control and supervision of the public education system.
(2) Prior to waiver, the Board shall consider whether a local board’s or local charter governing board’s request could be accomplished through means other than waiver of Board rules.
(3) The Board shall waive rules only following a thorough review of available data and shall make data-driven decisions.
(4) The Board shall not waive rules:
(a) that are required by and adopt criteria from federal or state law or regulations;
(b) that negatively affect the health, safety or welfare of public education students;
(c) if the waiver could reasonably result in discrimination or harassment of public school students or employees;
(d) that benefit one element or segment of the public education system to the detriment of another.
(5) Waivers shall always include an effective time period for the waiver, public review and accountability provisions and a sunset date.
(6) Prior to consideration by the Board, waivers requested by charter schools shall be presented to and considered by the State Charter School Board. Information and documentation of this action shall be available to the Board.

B. Procedures for waiver of Board rules:
(1) A local board of education or a charter school governing board may request a waiver from Board rule(s) in writing consistent with USOE timelines and on forms available from the USOE by submitting to the Board a written request showing a vote by the local board requesting the waiver in an open board meeting.
(2) Complete waiver requests shall be reviewed first by a Board Committee during a regularly scheduled Board meeting.
(3) The Board Committee designated by Board leadership shall review the request, solicit additional information or testimony, if helpful, and make a recommendation for consideration by the full Board of Education.
(4) Board leadership or a Board Committee shall make a reasonable determination of the time or Committee meetings necessary for careful review of request(s) for waiver of Board rules. Board leadership may consolidate consideration of duplicate or similar requests.
(5) At a minimum, the following shall be required from LEAs seeking a waiver of Board rules:
(a) student achievement data that support the requested waiver;
(b) data demonstrating the cost effectiveness, without sacrificing student achievement, of the waiver request;
(c) a draft proposed agreement that outlines USOE and local board responsibilities, data gathering and reporting timelines if a waiver is granted by the Board.
(6) Upon direction by the Board, an LEA shall make a presentation to an assigned Board Committee.
(7) Board leadership shall notify the local board of a proposed timeline for the Board to consider the request for waiver and provide a written decision, including an agreement between the Board and the local governing board, to the local board.

C. Public process and documents:
(1) Materials presented to the Board by the local board shall be public documents.
(2) Materials and draft agreements between the Board and the local board shall be protected draft documents.
(3) Final agreements between the Board and local governing boards shall be public documents and available for review by the public upon request consistent with the provisions of Title 63G, Chapter 2.
(4) Any breach of confidentiality while the discussion of agreements is in progress may compromise the fairness of the Board decision and may delay the discussion or Board decision or both.

KEY: school boards, open government
Date of Enactment or Last Substantive Amendment: [April 22, 2014][2017]
Notice of Continuation: August 1, 2012
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 52-4-1; 53A-1-401(3)
NOTICE OF PROPOSED RULE

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-103 is repealed because it is largely repetitive of provisions Title 63G, Chapter 2, Government Records Access and Management Act. Consequently, Rule R277-103 is repealed in its entirety.

SUMMARY OF THE RULE OR CHANGE: Rule R277-103 provides procedures for appropriate public access to government records, which is already laid out in Title 63G, Chapter 2, Government Records Access and Management Act. Consequently, Rule R277-103 is repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Repealing Rule R277-103 will likely not result in a cost or savings to the state budget. The language in this rule is largely repetitive of provisions in state law.
♦ LOCAL GOVERNMENTS: Repealing Rule R277-103 will likely not result in a cost or savings to local government. The language in this rule is largely repetitive of provisions in state law.
♦ SMALL BUSINESSES: Repealing Rule R277-103 will likely not result in a cost or savings to the small businesses. The language in this rule is largely repetitive of provisions in state law.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Repealing Rule R277-103 will likely not result in a cost or savings to the persons other than small businesses, businesses, or local government entities. The language in this rule is largely repetitive of provisions in state law.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Repealing Rule R277-103 will likely not result in any compliance costs for affected persons. The language in this rule is largely repetitive of provisions in state law.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that repealing this rule will not result in a fiscal impact to businesses.
R277-103-5. Fees.
   A. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the USOE by contacting the designated Records Officer located at 250 East 500 South, Salt Lake City, Utah 84111.
   B. Payment of past fees or future estimated fees expected to exceed $50.00 or both may be required before the USOE Records Officer begins to process a request.
   C. There shall be no charge made by the Board or the USOE for:
      (1) inspection of records;
      (2) a reasonable request that requires the segregation of records; or
      (3) an inspection of the requested records to determine the requester's right to access.
   D. Waiver of Fees
      (1) Fees for duplication and compilation of a record may be waived under the circumstances described in Section 63G-2-203(4) or other circumstances as determined by the USOE on a case-by-case basis, including cumulative costs of less than $2.00, for use by LEAs or other entities under the general control of the Board, or an affidavit from the requester claiming impecuniosity.
      (2) Requests for waivers shall be made to the designated USOE Records Officer.

R277-103-6. The USOE as Custodian of District Records.
   A. When the USOE acts as the custodian of LEA records and does not regularly use or access that LEA's data or information, the USOE may refer requests for that information to the LEA.
   B. If the USOE acts as a custodian of records, information or data for LEAs, the USOE shall request from those LEAs the following:
      (1) Designation of what data may be provided to whom upon request;
      (2) Notice of classification(s) if the data are classified; and
      (3) The name and title of an LEA records officer or contact person to whom the USOE shall direct requests for access to the information or records.

R277-103-7. Other Requests.
   A. For Research Purposes
      (1) Access to private or controlled records for research purposes is allowed by Section 63G-2-202(8);
      (2) Such requests shall be made to the designated Records Officer.
   B. To Amend a Record
      (1) An individual may contest the accuracy or completeness of a document pertaining to him owned by the USOE pursuant to Section 63G-2-602.
      (2) The request to amend shall be made in writing to the designated Records Officer.
      (3) Appeals of requests to amend a record shall be handled as informal hearings under the Utah Administrative Procedures Act, Section 63G-4.

KEY: student government records
Date of Enactment or Last Substantive Amendment: September 21, 2012

Notice of Continuation: August 1, 2012
Authorizing, and Implemented or Interpreted Law: 63G-2-101 through 310; 63G-2-204; 63G-4; 53A-1-401(3)
savings to persons other than small businesses, businesses, or local government entities. The standards and procedures in this rule are provided for in a new rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Repealing Rule R277-111 will likely not result in any compliance costs for affected persons. The standards and procedures in this rule are provided for in a new rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that repealing this rule will not result in a fiscal impact to businesses.

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

EDUCATION ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the 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 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

R277. Education, Administration.
R277-111. Sharing of Curriculum Materials by Public School Educators.
R277-111-1. Definitions.
A. “Board” means the Utah State Board of Education.
B. “Creative Commons License” means copyright licenses that grant certain rights such as the right to distribute the copyrighted work without changes, at no charge. Works licensed under a Creative Commons License is protected by copyright-applicable law. Creative Commons Licenses are non-exclusive and non-revocable.
C. “LEA” means a local education agency, including local school boards, public school districts, charter schools and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.
D. “LEA materials” means materials purchased or developed by an LEA using LEA funds or resources, including materials, resources or activities which the LEA requested employees to create, develop or compile during the employee’s contract time.
E. “Material(s)” means all copyrightable works, including writings, lectures, musical or dramatic compositions, sound recordings, films, videotapes and other pictorial or technological reproductions, computer programs, listings, charts, manuals, codes, instructions and software.
F. “Non-commercial use” means use or exchange without payment or compensation of any kind.
G. “Personally developed materials” means materials developed by an educator. These materials may be developed on the educator’s contract time using school resources, on the educator’s personal time using personal resources, or as an individual employment assignment, or in conjunction with other colleagues.
H. “Teacher curriculum materials” means lesson plans, educator research materials, activities, teaching strategies or other printed or electronic materials developed by the public educator.

A. This rule is authorized by Utah Constitution Article X, Section 2 which vests general control and supervision of Public Education in the Board, Section 53A-1-401(3) which directs the Board to adopt rules in accordance with its responsibilities, and by Section 53A-1-402(1)(e) which directs the Board to encourage school productivity and cost effectiveness measures.
B. The purpose of this rule is to provide information and assurance to public school educators about sharing materials created or developed by educators primarily for use in their own classes or assignments. The intent of this rule is to allow or encourage educators to use valuable time and resources to improve instruction and instructional practices with assistance from appropriate materials developed by other educators.

A. Utah educators may share materials for non-commercial use that educators have developed primarily for use in their own classes, courses or assignments.
B. Utah educators may only share materials that they developed personally and may not unilaterally share materials that were purchased or developed by or on behalf of their public employer or the State.
C. Utah educators may only share materials that are consistent with R277-515 Utah Educator Professional Standards. For example, educators may not share materials that advocate illegal activities or that are inconsistent with their legal and role model responsibilities as public employees and licensed educators.
D. Utah educators may share materials under a Creative Commons License and shall be personally responsible for understanding and satisfying the requirements of a Creative Commons License.
E. The presumption of this rule is that materials may be shared. The presumption is that Utah educators need not seek permission from their employers to share personally developed materials.
F. Public educators may not sell teacher curriculum materials developed in whole or in part with public education funds or developed within the employee’s scope of employment to Utah educators.

R277-111-4. LEA Rights.
A. Utah LEAs may develop and make available a policy that directs employees to seek review and approval before employees share materials that were developed on contract time.
developed partially or jointly with LEA funding, as part of an LEA assignment or if materials reference or imply LEA use or endorsement.

B. Utah LEAs may prohibit their employees from sharing materials that were purchased with LEA funds or which are licensed specifically for LEA use.

KEY: curriculum materials, sharing
Date of Enactment or Last Substantive Amendment: March 10, 2015
Notice of Continuation: January 15, 2015
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1-402(1)(c)

Education, Administration
R277-115
Material Developed with State Public Education Funds

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 41771
FILED: 06/09/2017

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-115 is repealed because the standards and procedures in this rule and Rule R277-111, which is also being repealed, are combined into one new Rule R277-120. (Editor's Note: The proposed repeal of Rule R277-111 is under Filing No. 41770 and the proposed new Rule R277-120 is under Filing No. 41772 in this issue, July 1, 2017, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R277-115 provides that education materials developed by LEAs or a public education employee using state public education funds are available to Utah educators, that educators licensed by the Board of Education are not personally enriched, consistent with the Utah Public Employees Ethics Act, by developing education materials as part of their public education employment, and that the board receives appropriate and accurate acknowledgment for materials produced or provided or both by the board for LEAs. This rule is being added to the new Rule R277-120, and therefore, Rule R277-115 is being repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Repealing Rule R277-115 will likely not result in a cost or savings to the state budget. The standards and procedures in this rule are provided for in a new rule.
♦ LOCAL GOVERNMENTS: Repealing Rule R277-115 will likely not result in a cost or savings to local government. The standards and procedures in this rule are provided for in a new rule.
♦ SMALL BUSINESSES: Repealing Rule R277-115 will likely not result in a cost or savings to small businesses. The standards and procedures in this rule are provided for in a new rule.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Repealing Rule R277-115 will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. The standards and procedures in this rule are provided for in a new rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Repealing Rule R277-115 will likely not result in any compliance costs for affected persons. The standards and procedures in this rule are provided for in a new rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that repealing this rule will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the 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 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

R277. Education, Administration.
[R277-115. Material Developed with State Public Education Funds.
R277-115-1. Definitions.
A. "Board" means the Utah State board of Education.
B. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.
C. "Material" means all copyrightable works, including writings, lectures, musical or dramatic compositions, sound
recording, films, videotapes, and other pictorial reproductions, computer programs, listings, flow charts, manuals, codes, instructions, and software.

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

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

R277-115-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 2 of the Utah Constitution which vests general control and supervision of public education in the Board and by Section 53A-1-101(3) which allows the Board to adopt rules in accordance with its responsibilities.

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

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

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

1. Requests for permission to reprint or reproduce materials shall be submitted to the Board in writing or electronically and shall describe:
   a. the specific material to be reproduced or reprinted;
   b. the number of copies requested;
   c. the purpose and intended recipient of the materials;
   d. any proposed cost to recipients.

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

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

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

B. An individual, entity, or organization may not expressly assert or imply Board authorization, including use of the Board seal, of the use of materials reprinted or reproduced with Board funds without express authorization by the Board or its designee.

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

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

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

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

KEY: copyright, materials

Date of Enactment or Last Substantive Amendment: September 21, 2012

Notice of Continuation: August 1, 2012

Authorizing, and Implemented or Interpreted Law: Art X Sec 3, 53A-1-101(3)

Education, Administration

R277-120

Licensing of Material Developed with Public Education Funds

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 41772

FILED: 06/09/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-120 is created to incorporate the standards and procedures related to the licensing of materials developed by the Utah State Board of Education (Board) and local education agencies (LEAs) with public education funds from Rule R277-111 and Rule R277-115, which are being repealed, into one rule. This new rule is also formatted in accordance with the Rulewriting Manual for Utah. (Editor's Note: The proposed repeal of Rule R277-111 is under Filing No. 41770 and the proposed repeal of Rule R277-115 is under Filing No. 41771 in this issue, July 1, 2017, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This new rule provides standards and procedures related to the licensing and sharing of public education materials funded by the Board, public education materials funded by an LEA, and classroom materials developed by Utah educators.

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

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: Combining the standards and procedures from two rules scheduled to be repealed into this one new rule will likely not result in a cost or savings to the state budget.

♦ LOCAL GOVERNMENTS: Combining the standards and procedures from two rules scheduled to be repealed into this
one new rule will likely not result in a cost or savings to local government.

♦ SMALL BUSINESSES: Combining the standards and procedures from two rules scheduled to be repealed into this one new rule will likely not result in a cost or savings to small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Combining the standards and procedures from two rules scheduled to be repealed into this one new rule will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Combining the standards and procedures from two rules scheduled to be repealed into this one new rule will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the 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 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

R277. Education, Administration.
R277-120. Licensing of Material Developed with Public Education Funds.
R277-120-1. Authority and Purpose.

(1) This rule is authorized by:
(a) Article X, Section 3 of the Utah Constitution, 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) Subsection 53A-1-402(1)(e), which directs the Board to encourage school productivity and cost effectiveness measures.

(2) The purpose of this rule is to:
(a) establish requirements for licensing of courseware and materials produced with public education funds; and
(b) promote a policy that education materials produced with public funds be openly, publicly, and freely accessible for use by others.


(1)(a) "CC-BY license" means a copyright license developed by Creative Commons, which allows other users to:
(i) copy and redistribute the material in any medium or format; and
(ii) remix, transform, and build upon the material.
(b) Under a CC-BY license, a licensee may share the materials in any manner, including commercially.
(c) Under a CC-BY license, a licensee shall:
(i) give appropriate credit to the licensor;
(ii) provide a link to the license; and
(iii) indicate if the licensee made changes to the licensor's work.

(2) "Public education materials" means courseware and materials developed with public education funds and includes:
(a) syllabi;
(b) instructional materials;
(c) modules;
(d) textbooks, including teacher's editions;
(e) student guides;
(f) supplemental materials;
(g) formative and summative assessment supports;
(h) laboratory activities;
(i) simulations;
(j) musical or dramatic compositions;
(k) audio, video or photographic material;
(l) manuals;
(m) codes; and
(n) software.

(3) "Utah Education Network" or "UEN" means an online education materials resource maintained by the Utah Education and Telehealth Network offering services to educators and students throughout the state of Utah.

R277-120-3. Public Education Materials Funded by the Board.

(1) The Superintendent shall share public education materials developed with funds controlled by the Board under a CC-BY license.

(2) The Superintendent shall share materials developed in accordance with Subsection (1) through UEN, where appropriate, or through other appropriate means of making public education materials available to educators and the public.

(3)(a) An individual or entity that shares or adapts public education materials identified in Subsection (1) shall:
(i) provide attribution to the Board;
(ii) provide a link to the license; and
(iii) indicate if any changes were made to the original materials.

(b) An individual or entity may make attribution in any reasonable manner, but not in any way that implies the Board...
endorses any adaptation of the materials without express authorization of the Board.

(4) The Superintendent may request a copy of shared or adapted public education materials be provided to the Board.

(5) If an employee of the Board develops public education materials as part of the employee's employment, the public education materials shall be the property of the Board, subject to licensing in accordance with this R277-120-3.

R277-120-4. Public Education Materials Funded by an LEA.

(1) An LEA shall develop and maintain a policy regarding public education materials developed with the LEA's funds.

(2) A policy developed in accordance with Subsection (1) shall identify:

(a) whether the LEA will share public education materials with a CC-BY license or another license approved by the LEA's governing board;
(b) whether use of LEA developed public education materials will require attribution to the LEA;
(c) whether the LEA will charge third parties for use of the materials;
(d) whether the LEA reserves the right to review and approve materials developed by employees on contract time; and
(e) whether the LEA restricts employees from sharing materials purchased with LEA funds or specifically licensed for LEA use.

(3) An LEA may not charge an educator in a Utah public school for use of materials developed with LEA funds.

R277-120-5. Classroom Materials Developed by Utah Educators.

(1)(a) A public education employee may not sell public education materials developed in whole or in part with funds from the Board or an LEA.

(b) If a public education employee sells public education materials subject to Subsection (1)(a) for personal gain, the employee may be subject to the provisions of Section 67-16-4.

(2) An LEA may review and approve materials developed by educators on contract time consistent with a policy adopted in accordance with Subsection R277-120-4(d).

(3)(a) A Utah licensed educator need not seek permission from the educator's LEA to share classroom materials developed using the educator's personal time and resources.

(b) An educator may share materials developed in accordance with Subsection (3)(a) through a CC-BY license.

(4)(a) A Utah licensed educator may only share materials that are consistent with the Utah Professional Educator Standards contained in R277-515.

(b) An educator may not share materials that advocate illegal activities or materials that are inconsistent with the educator's legal and role model responsibilities.

(5) The Superintendent may offer professional development programs that offer support, guidance, and instruction to educators who wish to create, use, or continuously improve public education materials shared in accordance with this R277-120.
NOTICES OF PROPOSED RULES

COMPLIANCE COSTS FOR AFFECTED PERSONS: Implementation of this new Rule R277-121 will likely not result in any compliance costs for affected persons. Provisions regarding waiver of Board rules are currently in Rule R277-101.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the 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 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

R277. Education, Administration.
R277-121. Board Waiver of Administrative Rules.
R277-121-1. 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-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 establish procedures for an LEA to request a waiver from a Board rule.

(1)(a) An LEA board may request a waiver from a Board rule by filing a written request with the Superintendent.
(b) A written request under Subsection (1)(a) shall include:
(i) verification that the LEA board voted to request the waiver in an open meeting;
(ii) student achievement data that supports the requested waiver;
(iii) data demonstrating the cost effectiveness of the waiver request;
(iv) a proposed agreement with the Board that includes:
(A) a proposed effective date;
(B) provisions for public review and accountability;
(C) data gathering and reporting timelines;
(D) a sunset date; and
(v) in the case of a charter school, a recommendation from the board of the school's authorizer.
(2) An LEA board may not request a waiver from a Board rule:
(a) that is required by or adopts criteria from a federal statute, federal regulation, or state law;
(b) that would negatively affect the health, safety, or welfare of public education students;
(c) that could reasonably result in discrimination or harassment of public school students or employees;
(d) that would benefit one element of the public education system to the detriment of another; or
(e) when the concerns giving rise to an LEA board's request could be addressed through means other than waiver of Board rules.

(1) The Board Executive Committee may assign a waiver request made under this Rule R277-121 to a Board standing committee.
(2) The standing committee assigned in accordance with Subsection (1):
(a) may solicit additional information or testimony;
(b) shall review the request in an open meeting; and
(c) shall make a recommendation for consideration by the full Board.
(3) The Board Executive Committee may consolidate consideration of duplicate or similar requests.
(4) The Board shall consider available data in evaluating an LEA waiver request and shall make data driven decisions.

(1) An LEA that receives a waiver from Board rule in accordance with this R277-121 for more than one year shall annually report to a Board committee:
(a) student achievement data that supports continuation of the requested waiver; and
(b) data demonstrating the cost effectiveness of the waiver, if applicable.

KEY: Utah State Board of Education, waivers, administrative rules
Date of Enactment or Last Substantive Amendment: 2017
Authorizing, and Implemented or Interpreted Law: Art X Sec 3: 53A-1-401

Education, Administration
R277-408
Grants for Online Testing
NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 41774
FILED: 06/09/2017

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-408 is repealed because the state funding for grants for online testing has been eliminated.

SUMMARY OF THE RULE OR CHANGE: Rule R277-408 provides for grants to LEAs to implement uniform online testing required under U-PASS testing requirements, including meeting technology standards established by the Board of Education aligned with Utah's core standards, and provide local matching funds. State funding for grants for online testing has been eliminated. Consequently, Rule R277-408 is repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Repealing Rule R277-408 will likely not result in a cost or savings to the state budget. The rule is no longer necessary because the grants for online testing have been phased out due to the elimination of funding for the grants.
♦ LOCAL GOVERNMENTS: Repealing Rule R277-408 will likely not result in a cost or savings to local government. The rule is no longer necessary because the grants for online testing have been phased out due to the elimination of funding for the grants.
♦ SMALL BUSINESSES: Repealing Rule R277-408 will likely not result in a cost or savings to small businesses. The rule is no longer necessary because the grants for online testing have been phased out due to the elimination of funding for the grants.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Repealing Rule R277-408 will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. The rule is no longer necessary because the grants for online testing have been phased out due to the elimination of funding for the grants.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Repealing Rule R277-408 will likely not result in any compliance costs for affected persons. The rule is no longer necessary because the grants for online testing have been phased out due to the elimination of funding for the grants.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that repealing this rule will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT: EDUCATION ADMINISTRATION 250 E 500 S SALT LAKE CITY, UT 84111-3272 or at the 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 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

R277. Education, Administration.
[R277-408. Grants for Online Testing.]

R277-408-1. Definitions.
A. "Board" means the Utah State Board of Education.
B. "LEA" means a local education agency, including local school boards/public school districts, and charter schools.
C. "U-PASS testing requirements" as defined in Section 53A-1-602, include Criterion-Referenced tests (CRT) or Adaptive tests, Board-designated 10th grade test, and Direct Writing Assessment (DWA).
D. "USOE" means the Utah State Office of Education.
E. "Utah's core standards" means a statement of what students enrolled in public schools are expected to know and be able to do at specific grade levels or following completion of identified courses.

R277-408-2. Authority and Purpose.
A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-708(4) which directs the Board to make rules establishing procedures for grant applications and awards that satisfy the minimum requirements of Section 53A-1-708(4), and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.
B. The purpose of the rule is to provide for grants to LEAs to implement uniform online testing required under U-PASS testing requirements, including meeting technology standards established by the Board aligned with Utah's core standards, and provide local matching funds.

R277-408-3. Applications for Funding.
A. The USOE shall provide applications for LEAs to apply for available online testing grant funds before May 15 annually.
B. LEAs may submit applications for funds for online delivery of required U-PASS tests.

C. Grant applications shall provide the following:
   (1) names of participating schools within the LEA;
   (2) U-PASS assessments that shall be provided within and by the LEA;
   (3) U-PASS assessments that shall be provided online;
   (4) a budget for use of grant funds;
   (5) an assurance from the applicant that online testing shall be implemented at 100 percent of students and assessments as required under Section 53A-1-708(4);
   (6) an assurance that the LEA shall meet the technology standards for online adaptive testing, as provided in R277-408-4;
   (7) an assurance that personally identifiable student data shall only be released to appropriate entities consistent with the law and this rule;
   (8) participation in the online readiness tool as per USOE direction; and
   (9) the amount and source of the matching funds that shall be used by the LEA to satisfy the requirements of Section 53A-1-708(4)(f).

D. Applications shall be submitted for funding to the USOE before June 15 annually.

R277-408-4. Online Adaptive Testing Technology Standards.
   A. The USOE shall provide online adaptive testing technology standards to LEAs before January 15, 2013.
   B. Technology standards shall include:
      (1) minimum hardware requirements;
      (2) minimum bandwidth requirements; and
      (3) minimum operating system and software requirements.

R277-408-5. Appropriate Use of Funds.
   Online grant funds may be used for the following:
   A. computer equipment and peripherals, including electronic data capture devices designed for electronic test administration and scoring;
   B. software;
   C. networking equipment;
   D. upgrades of existing equipment or software;
   E. upgrades of existing physical plant facilities; and
   F. personnel to provide technical support, coordination, management, and teacher professional development (combined expenditure for personnel shall not exceed 10 percent of the grant funds allocated to an LEA).

R277-408-6. Distribution of Funds.
   A. The USOE shall notify successful grant applicants before July 1, 2012.
   B. The USOE shall notify successful grant applicants of the base and per pupil funds that LEAs shall receive, based on required and complete information submitted in grant applications, before July 15, 2012.
   C. If LEAs that received notice of funding choose not to participate in the grant award or otherwise fail to meet eligibility requirements for funds under Section 53A-1-708 or this rule, the funds designated for those LEAs shall be distributed to other eligible LEAs after August 15, 2012.
R277-410. Accreditation of Schools.

A. This rule is authorized by:
   (a) Utah Constitution Article X, Section 3, which vests 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-1-402, which directs the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:
   (1) Specify accreditation procedures and responsibility for public schools for which accreditation is required or sought voluntarily and for nonpublic schools which voluntarily request AdvancED Northwest accreditation;
   (2) Require qualifying secondary schools to be accredited.

C. A Utah public elementary or middle school that desires accreditation procedures and responsibility for public schools for which accreditation is required or sought voluntarily.

D. An AdvancED Northwest accredited school shall be a member of AdvancED Northwest and be accredited by AdvancED Northwest.

E. "Junior high school" for purposes of this rule means grades 7 through 9.

F. "Middle school" for the purpose of this rule means grades no lower than grade 5 and no higher than grade 8 in any combination.

G. "Northwest" means the Northwest Accreditation Commission, the regional accrediting association of which Utah is a member.

H. "Secondary school" for the purpose of this rule means a school that includes grades 9-12 that offers credits toward high school graduation or diplomas or both in whatever kind of school the grade levels exist.

I. "State Council" means the State Accreditation Council, which is composed of 15-20 public school administrators, school district personnel, private and special purpose school representatives, and USOE personnel. The members are selected to provide statewide representation and volunteer their time and service.

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

R277-410.3. Accreditation of Public Schools.

A. The Superintendent has responsibility to facilitate accreditation by the Board for Utah public schools. The Board is not responsible for the accreditation of nonpublic schools, including private, parochial, or other independent schools.

B. A Utah public secondary school, as defined in R277-410-1(4), shall be a member of AdvancED Northwest and be accredited by AdvancED Northwest.

C. A Utah public elementary or middle school that desires accreditation shall be a member of AdvancED Northwest and meet the requirements of R277-410-5 and R277-410-6. AdvancED Northwest accreditation is optional for Utah elementary and middle schools.

D. An AdvancED Northwest accredited school shall complete and file reports in accordance with AdvancED Northwest protocols.

E. If a school includes grade levels for which accreditation is both mandatory and optional, the school shall be accredited in its entirety.

1. A qualifying secondary school shall obtain accreditation from a regional accrediting body.

2. If a qualifying secondary school does not obtain accreditation before the beginning of the school's second year of operation, the credit awarded by the qualifying secondary school is considered earned from a non-accredited source as described in Section R277-705-3.

   (a) for the school's first year of operation; and
   (b) until the school becomes accredited.

3. In addition to standards set by an accrediting body, the Superintendent shall establish Utah-specific assurances demonstrating compliance with state law and Board rule.

   (a) The Superintendent shall ensure that qualified secondary schools meet the Utah-specific assurances described in Subsection (3)(a).

   (4) The Superintendent may require on-site visits as part of the accreditation process.
R277-410-4. Accreditation Status; Reports.
   A. The Board accepts the AdvancED Northwest Standards for Quality Schools as the basis for its accreditation standards for school accreditation.
   B. A Utah public school seeking accreditation shall meet additional specific Utah assurances in addition to required AdvancED Northwest standards.
   C. A school shall complete reports as required by AdvancED Northwest and submit the report to the appropriate recipients:
      D. A school shall have a complete school evaluation and site visit at least once every five years to maintain its accreditation.
      E. The Board or Superintendent may require on-site visits as often as necessary when the Superintendent receives notice of accreditation problems, as determined by the Superintendent.
      F. The school's accreditation status is recommended by the State Council following a review of the report of the school's External Review. Final approval of the status is determined by the AdvancED Commission and approved by the Board.

R277-410-5. Accreditation Procedures.
   A. The evaluation of secondary schools for the purpose of accreditation is a cooperative activity in which the school, the school district, the Superintendent, and AdvancED Northwest share responsibilities. A school's internal review, development, and implementation of a school improvement plan are crucial steps toward accreditation.
   B. A school seeking AdvancED Northwest accreditation for the first time shall submit a membership application to AdvancED. The accepted application shall be forwarded to the AdvancED Managing Office Director.
      (1) If a school's application for membership is accepted by AdvancED, the Utah AdvancED Managing Office shall schedule an on-site Readiness Review. Upon successful completion of the Readiness Review, the school may become a candidate for accreditation. Candidate schools are not accredited until such status is officially granted.
      (2) A school may remain in candidacy for no more than two years prior to hosting an External Review Team accreditation visit. The External Review Team shall be staffed with at least two qualified educators verifying a school's compliance with accreditation standards. Following approval by both the Utah AdvancED Council and the AdvancED Commission, the school shall receive accreditation. A school may request an External Review accreditation visit prior to year two if the school has sufficient student and financial data.
   C. AdvancED Northwest accredited schools shall be subject to:
      (1) compliance with AdvancED Northwest membership requirements;
      (2) a satisfactory review by the AdvancED State Council, AdvancED Northwest Commission, and Board approval;
      (3) a site visit at least every five years by an external review team to review the internal review materials, visit classes, and talk with staff and students as follows:
         (a) The external review team shall present its finding in the form of a written report in a timely manner. The report shall be provided to the school, school district superintendent, or local charter board chair, and other appropriate parties;
         (b) AdvancED staff shall review the external review team report, and consult with the Utah AdvancED Council. The AdvancED Commission shall grant accreditation status if appropriate.
   D. Following review and acceptance, accreditation external review team reports are public information and are available upon request.

   A. Elementary schools desiring accreditation shall be members of AdvancED Northwest and meet the standards required for such accreditation as outlined in this rule.
   B. The accreditation of Utah elementary schools is optional; interested elementary schools may apply to AdvancED Northwest for accreditation.
   C. Accreditation shall take place under the direction of AdvancED Northwest.

R277-410-7. Junior High and Middle School Accreditation.
   A. Junior high and middle schools desiring accreditation shall be members of AdvancED Northwest and meet the standards required for such accreditation as outlined in this rule.
   B. The accreditation of Utah middle schools is optional; interested middle schools may apply to AdvancED Northwest for accreditation.
   C. Public junior high and middle schools that include grade 9 shall be members of AdvancED Northwest and be visited and assigned status by AdvancED Northwest.
   D. The AdvancED Northwest accreditation standards provided in this rule are applicable to a junior high or middle school in the school's entirety if the school includes grade 9 consistent with R277-410-6C.

   A. Board accreditation standards include AdvancED Standards for Quality Schools and Utah specific requirements. Each standard requires the school to respond to a series of indicator statements and provide evidence of compliance as directed.
   B. Utah specific assurances include essential information sought from schools to demonstrate alignment with Utah law and Board rules. Utah specific assurances are available from the USOE Teaching and Learning Section.

R277-410-9[b].4. Transfer or Acceptance of Credit.
   [A.] [1] A Utah public school shall accept transfer credits from an accredited qualifying secondary school consistent with Section 53A-13-108.5 and Section R277-705-3.
   [B.] [2] A Utah public school may accept transfer credits from other credit sources consistent with Section R277-705-3.

KEY: accreditation, public schools, nonpublic schools
Date of Enactment or Last Substantive Amendment: [August 26, 2015] 2017
Notice of Continuation: July 1, 2015
NOTICES OF PROPOSED RULES  DAR File No. 41775

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

Education, Administration  R277-460
Distribution of Substance Abuse Prevention Account

NOTICE OF PROPOSED RULE  (Amendment)
DAR FILE NO.:  41776
FILED:  06/09/2017

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE:  Rule R277-460 is amended to provide changes in funding a program administrator and staff and to update the rule in accordance with the Rulemaking Manual for Utah.

SUMMARY OF THE RULE OR CHANGE:  The amendments to Rule R277-460 give the Superintendent the authority to increase administration program support from .5 FTE to a full FTE due to the increased need in program support. The amendments also provide technical and conforming changes in accordance with the Rulewriting Manual for Utah.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:  Art X, Sec 3 and Section 53A-1-401 and Section 53A-13-102

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET:  The amendments to this rule will likely not result in a cost or savings to the state budget. Funds are available in the Substance Abuse Prevention Account to cover additional costs.
♦ LOCAL GOVERNMENTS:  The amendments to this rule will likely not result in a cost or savings to local government. Funds are available in the Substance Abuse Prevention Account to cover additional costs.
♦ SMALL BUSINESSES:  The amendments to this rule will likely not result in a cost or savings to small businesses. This program applies to public education program administration and should not affect small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to this rule will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. Funds are available in the Substance Abuse Prevention Account to cover additional costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS:  The amendments to this rule will likely not result in any compliance costs for affected persons. Funds are available in the Substance Abuse Prevention Account to cover additional costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:  After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the 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 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON:  08/07/2017

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

R277.  Education, Administration.  R277-460.  Distribution of Substance Abuse Prevention Account.  R277-460-[2].  Authority and Purpose.  [A-][1]  This rule is authorized by:
(a) Utah Constitution[2] Article X, Section 3, which vests general control and [authority] supervision over public education in the Board[3];
(b) Section 53A-13-102, which directs the Board to adopt rules providing for instruction on the harmful effects of controlled substances[4];
(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; and
(d) Section 51-9-405, which provides for funds from the Substance Abuse Prevention Account to be allocated to the [USOE][Board] for:
(i) substance abuse prevention and education;
(ii) substance abuse prevention training for teachers and administrators; and
(iii) [school district, charter school or consortia][LEA] programs to supplement, not supplant, existing local prevention efforts in cooperation with local substance abuse authorities.
[B-][2]  The purpose of this rule is to provide for the distribution of the [USOE][Board's] share of the money from the Substance Abuse Prevention Account.
R277-460-1. Definitions.

A. "Board" means the Utah State Board of Education.
B. "Educational materials" means visual and auditory media, curricula, textbooks, and other disposable or non-disposable items that enhance student understanding of the subject matter.
C. "Evaluation" means a review by a person or group, which assesses procedures, results, and products specific to a program.
D. "Local [S]ubstance [A]buse [A]uthority" means the person or group designated by the Legislature as the county authority to receive public funds for substance abuse prevention and treatment.
E. "Substance abuse [P]revention education activities and intervention" means proactive educational activities designed to eliminate any illegal use of controlled substances.
F. "Superintendent" means the State Superintendent of Public Instruction.
G. "USOE" means the Utah State Office of Education.
H. "Utah Substance Abuse Prevention Guiding Principles" means criteria established by the Utah Division of Substance Abuse and Mental Health to be used in selecting or developing substance abuse prevention materials.


A. (1) Before making the distributions described in Subsections (2) and (3), the USOE Superintendent shall retain sufficient substance abuse prevention funds to pay for the salary, benefits, and indirect costs of a [S-FTS] [P]rogram [A]dministrator at a salary level to be determined by the [Board] Superintendent and support costs for the program administrator.
B. (2) The remaining funds shall be allocated as follows:
   (a) An amount not to exceed fifteen percent shall remain at the USOE to purchase educational materials to support and supplement existing [Utah's] [S]ubstance [A]buse [P]revention [Program, Prevention Dimensions] efforts;
   (b) An amount not to exceed fifteen percent shall remain at the USOE to encourage and support statewide substance abuse prevention training for school districts[ ] and charter school teachers and administrators[ ]; and
   (c) An amount not to exceed fifteen percent shall remain at the USOE to promote [Utah's] [S]ubstance [A]buse [P]revention [Program and encourage its] in the classroom[ use by Utah educators].
C. (1) A minimum of fifty-five percent of the substance abuse prevention funds remaining after the allocation described in Subsection (1) shall be distributed to [school districts, charter schools, or consortia] LEAs for use by the [school district, LEAs or individual schools within the LEA], charter schools, or consortia in a cooperative substance abuse prevention effort based on application.


A. (1) Applications shall be provided by the USOE. The Superintendent shall develop an application for LEAs that are interested in applying for substance abuse prevention funds available as described in this R277-460.
B. (2) [School districts, charter schools or consortia] An LEA shall submit the LEA's application[s] to the specialist designated by the [USOE] Superintendent.
C. The USOE specialist shall make funding recommendations to the USOE Finance Committee as soon as reasonably possible after the application deadline.
D. (3) (a) Awards per school districts, charter schools or consortia Substances prevention funds shall be distributed to LEAs based on funds available[ and specific] from the Substance Abuse Prevention Account.
   (b) The Superintendent shall describe the available funding amount[s] shall be provided in the [USOE] Board application described in Subsection (1).
E. Only applications for funding that propose projects or programs consistent with the Utah Substance Abuse Prevention Guiding Principles shall be considered for funding.
(4) (a) An LEA's application for substance abuse prevention funds shall [address] include the following:
   (i) the applicant's intention to collaborate with the local substance abuse authority and community groups within the school district, including shared plans and strategies for substance abuse prevention education activities and intervention;
   (ii) the applicant's plan for professional development on substance abuse and teachers' use of Prevention Dimensions materials within their classrooms;
   (iii) the use of funds to implement applicant's plan;
   (iv) teacher reports of classroom implementation and plans for classroom monitoring visits;
   (v) applicant's enhancement of [Prevention Dimensions] substance abuse curriculum with additional substance abuse activities and strategies; and
   (vi) applicant's implementation of [Prevention Dimensions] substance abuse curriculum with school-based behavioral/health coordinated school health initiatives.
F. Projects receiving funding shall be notified of funding approval by the USOE Finance Committee.

R277-460-5. Limitations on Funds.

A. (1) Funds shall be used by the USOE, school districts, charter schools and consortia. The Superintendent and LEAs shall use substance abuse prevention funds exclusively for purposes set forth in Section 51-9-405.
B. (2) Transfer of funds between line items or the extension of project completion dates may be made only with prior written approval of the Superintendent[USOE].
C. (3) (a) Funds received by school districts, charter schools, or consortiums An LEA [shall] may not be used for use funds received under this R277-460 to supplant:
   (i) funds [either] currently available [school district or charter school funds][ to the LEA]; or
   (ii) funds available from other state or local sources.

R277-460-6. Evaluation and Reports.

A. (1) An applicant that accepts a USOE receives [S]ubstance [A]buse [P]revention funds [award] shall provide the [USOE] Superintendent with a year-end [evaluation] report on or before July 1 of the fiscal year in which the award was made.
The year-end report described in Subsection (1) shall include:

- an expenditure report;
- a narrative description of activities funded; and
- copies of all products and materials developed with USOE Substance Abuse Prevention funds; an action research or data project report.

The USOE Superintendent may require additional evaluation or audit procedures from an award recipient to demonstrate the use of funds consistent with the law and Board rules.

The Superintendent shall annually report the following information to the Board's Finance Committee:

- the number of LEAs receiving substance abuse prevention funds;
- a summary of the LEAs' use of program funds; and
- a description of how the Superintendent is using the funds described in Subsections R277-460-3(1) and (2).

Waivers:

The Superintendent may grant a written request for a waiver of a requirement or deadline which a school district, charter school or consortia finds unduly restrictive.

Key:

- public schools, substance abuse prevention

Date of Enactment or Last Substantive Amendment: [October 11, 2011]

Notice of Continuation: May 15, 2013

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-13-102; 51-9-405

Education, Administration

R277-467

Distribution of Funds Appropriated for Library Media Materials and Electronic Resources

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 41777
FILED: 06/09/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-467 is repealed because the provisions of the rule are repetitive of the statutory provisions.

SUMMARY OF THE RULE OR CHANGE: Rule R277-467 distributes an on-going appropriation, subject to budget constraints, to LEAs. The appropriation is designated for school library media materials and electronic resources.
NOTICES OF PROPOSED RULES

R277. Education, Administration.

R277-467. Distribution of Funds Appropriated for Library-Media Materials and Electronic Resources.

R277-467-1. Definitions.

A. “Board” means the Utah State Board of Education.

B. “Electronic resources” means databases, CDs, DVDs, software, online materials, or other items in electronic format which may be included in the school library media collection and made available for use.

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

D. “Library media materials” means trade books, including electronic versions, that support the school curriculum or are provided for recreational reading interests. This definition does not include textbooks or materials used solely for classroom instruction or classroom libraries.

E. “USOE” means the Utah State Office of Education.

R277-467-2. Authority and Purpose.

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

B. The purpose of this rule is to distribute an on-going appropriation, subject to budget constraints, to LEAs. The appropriation is designated for school library media materials and electronic resources.

R277-467-3. Distribution of Funds.

A. Each Utah LEA shall receive an allocation from the annual appropriation as follows:

(1) 25 percent shall be divided equally among all LEAs; and

(2) 75 percent shall be divided among public schools based on each public school’s average daily membership as compared to the total average daily membership of all public schools.

B. An LEA may not use money appropriated in this allocation to supplant other monies used to purchase library media materials or electronic resources.

C. LEAs shall spend these fund allocations only for library media materials and electronic resources that shall be part of the school library collection and available for general use and checkout by students and staff or both.


The USOE may review LEAs’ use of funds to determine if funds were expended consistently with the purpose of this rule and the appropriation.

KEY: libraries, educational media

Date of Enactment or Last Substantive Amendment: August 8, 2012

Education, Administration

R277-479

Charter School Special Education Student Funding Formula

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41778

FILED: 06/09/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-479 is amended to update the rule in accordance with the Rulewriting Manual for Utah.

SUMMARY OF THE RULE OR CHANGE: Rule R277-479 is amended to provide technical and conforming changes in accordance with the Rulewriting Manual for Utah.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-15-301 and Subsection 53A-1-402(1)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: Providing technical and conforming changes to the rule will likely not result in a cost or savings to the state budget.

♦ LOCAL GOVERNMENTS: Providing technical and conforming changes to the rule will likely not result in a cost or savings to local government. This rule provides procedures for public participation in Board meetings and does affect local government.

♦ SMALL BUSINESSES: Providing technical and conforming changes to the rule will likely not result in a cost or savings to small businesses. This rule and the amendments provide procedures for public participation in Board meetings and do not affect small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Providing technical and conforming changes to the rule will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Providing technical and conforming changes to the rule will likely not result in any compliance costs for affected persons.
R277. Education, Administration.

(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 Constitution and state law;

(c) Subsection 53A-1-402(1), which directs the Board to adopt rules regarding services for persons with disabilities;

(d) Section 53A-15-301, which directs the Board to set standards for state funds appropriated for students with disabilities;

(2) The purpose of this rule is to specify standards and procedures for funding of charter school [special education] students [funding] with disabilities on an IEP.

R277-479-[12]. Definitions.

(a) "Base" [for purposes of this rule.] means prior year special education add-on WPU.

(b) "Board" means the Utah State Board of Education.

(c) "Charter school[s]" means a school[s] authorized [as charter schools] by [chartering entities] a charter school authorizer under:

(a) Section[s] 53A-1a-515.

(b) Section 53A-1a-521[; and this rule or by the Board under] or

(c) Section 53A-1a-505.

(d) "Chartering entities" means entities that authorize charter schools under Section 53A-1a-501.3[;] "Charter school authorizer" or "authorizer" has the same meaning as that term is defined in Subsection 53A-1a-501.3(4).

(4) "Estimated enrollment" means a charter school's projected student enrollment in the school's first year of operation as approved by the [USOE] Superintendent.

(5) "Foundation[;]" for purposes of this rule, [means the average of self-contained and resource special education students[; self-contained and resource] average daily membership (ADM) over the previous five years.

(6) "Negative growth adjustment" means prior year special education add-on WPU minus weighted negative growth.

(7) "New charter school[s]" [for the purpose of this rule] means a charter school with less than five years of operation.

(8) "Positive growth adjustment" means prior year special education add-on WPU plus weighted growth.

(9) "Prevalence rate" means the percentage of students with disabilities within the total student enrollment.

(10) "Previous five years" [for the purpose of this rule] means the five year span between the seventh and second prior fiscal year.

(11) Significant expansion means a substantial increase in the number of students attending a charter school due to a significant event, such as the addition of new grade levels or additions of sites, that is unlikely to occur on a regular basis.

(12) "Special education" means specially designed instruction and related services to meet the unique needs of a student with a disability under this rule.

(13) "State Charter School Board", or "SCSB" means the board designated in the charter school authorizer created in accordance with Section 53A-1a-501.5.

(14) "Student with a disability" means a student, evaluated in accordance with Utah State Board of Education Special Education Rules, and determined to be eligible for special education and related services.

(15) "Total enrollment[;]" for purposes of this rule means the total number of all students enrolled in all campuses of a school (including all multiple sites) as of the October 1 UTREx update.


(a) "Foundation" means the Utah State Office of Education.

(b) "UТREx" means the Utah Electronic Transcript and Record Exchange.

(c) "UTREx" means a system that allows individual detailed student records to be exchanged electronically among public education LEAs and the [USOE] Superintendent[;]

(d) [UTREx] 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.

(2)(a) [New] For new charter schools, the Superintendent shall calculate the foundation based on the average special education ADM and total ADM from the third and second prior fiscal years.

(b) In the first operational year, a new charter school shall receive special education funding based on estimated enrollment.

(b)(c) Unless the new charter school’s approved purpose is specific to the needs of students with disabilities, either because the charter school is new or because the same number of students with disabilities, the estimate of students with disabilities for a new charter school shall be 10 percent of the estimated enrollment.

(3) The foundation is the minimum amount a charter school may receive for special education-add on funding.

B. Growth adjustments

1. Positive Growth Adjustment

(a) The Superintendent shall apply a positive growth adjustment to a charter school's foundation for weighted growth.

(b) Weighted growth is determined by comparing special education ADM and total ADM from the third and second prior fiscal years.

(c) The rate of growth in special education ADM is limited to may not exceed the rate of growth in total ADM.

(d) The Superintendent shall multiply positive weighted growth by a factor of 1.5 and add to for weighted growing.

(e) The Superintendent may not impose a funding cap on the additional growth adjustment.

(f) If there is no growth, either because the charter school is new or because the same number of students are enrolled, the Superintendent may not apply a positive growth adjustment.

2. Negative Growth Adjustment

(a) [New] The Superintendent shall apply a negative growth adjustment to a charter school's foundation for decline in special education ADM.

(b) If the charter school experiences a decline in special education ADM of students with disabilities, a negative growth adjustment shall be applied to the charter school's foundation.

(c) The Superintendent shall subtract the result calculated under Subsection (5)(b) from the charter school's foundation.

(d) When there is no decline in the charter school's enrollment of students with disabilities, either because the charter school is new or because the same number of students are enrolled, the Superintendent may not apply a negative growth adjustment to the charter school's foundation.

(e) If the negative growth adjustment brings the charter school's foundation below the foundation, the charter school shall receive the foundation.

F. Significant expansion adjustment

(a) If an authorizer approves a significant expansion for a charter school, [identified by the school’s chartering entity as having significant expansion receive] during the first and second years of expansion, the Superintendent shall apply an additional funding adjustment after the entire add-on WPU formula is calculated in the first and second years of expansion.

(b) After [that period], the Superintendent accounting for expansion information provided in this R277-479-3 shall account for the expansion.

2. Growth adjustments

(a) The Superintendent shall calculate a significant expansion adjustment for a new charter school, which is added to the charter school's add-on WPU.

(b) The Superintendent shall base the estimate under Subsection (6)(c) on the estimated ADM and total ADM from the third and second prior fiscal years.

(c) The Superintendent shall allocate the resulting positive growth adjustment to a charter school's add-on WPU.

(d) The Superintendent shall multiply the projection by the prevalence rate of students with disabilities who will enroll as part of the expansion, as determined by the USOE.

(e) The Superintendent may not impose a significant expansion adjustment on the charter school's add-on WPU.

(f) The Superintendent shall apply a significant expansion adjustment after the charter school's add-on WPU is calculated.

(g) The Superintendent may not apply a significant expansion adjustment on the charter school's add-on WPU.

(h) The Superintendent shall allocate the resulting significant expansion adjustment WPU as an expansion supplement to the charter school's add-on WPU.
SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-484 provide new and revised definitions, remove unnecessary language, restructure the rule, and provide technical and conforming changes in accordance with the Rulewriting Manual for Utah.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-1-413

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: Changes to the rule are primarily restructuring and technical which will likely not result in a cost or savings to the state budget.

♦ LOCAL GOVERNMENTS: Changes to the rule are primarily restructuring and technical which will likely not result in a cost or savings to local government.

♦ SMALL BUSINESSES: Changes to the rule are primarily restructuring and technical which will likely not result in a cost or savings to small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Changes to the rule are primarily restructuring and technical which will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Changes to the rule are primarily restructuring and technical which will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

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

EDUCATION ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the 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 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

R277. Education, Administration.
R277-484. Data Standards.
R277-484-[11]. Authority and Purpose.
[A.] (1) This rule is authorized by:
(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;
and by
(b) Section 53A-1-401(4), which allows the Board to adopt rules in accordance with its responsibilities to make rules to execute the Board’s duties and responsibilities under the Utah Constitution and state law; and specifically allows the Board to interrupt disbursements of state aid to any LEA which fails to comply with rules.
(c) Subsection 53A-1-401(8)(a), which allows the Board to take corrective action against an education entity that fails to comply with Board rules; and
(d) Subsection 53A-1-413(8), which requires the Board to ensure LEA inclusion of data in an LEA’s Student Information System.
[B.] (2) The Board, through its chief executive officer, the State Superintendent of Public Instruction, is required to perform certain data collection related duties essential to the operation of statewide educational accountability and financial systems as mandated in state and federal law.
[C.] (3) The purpose of this rule is to support the operation of required educational accountability and financial systems by ensuring timely submission of data by LEAs.

[A.] (1) "Annual Financial Report" means an account of LEA revenue and expenditures by source and fund sufficient to meet the reporting requirements specified in Subsections 53A-1-301(3)(d) and (e).
[B.] (2) "Annual Program Report" means an account of LEA revenue and expenditures by source and program sufficient to meet the reporting requirements specified in Subsections 53A-1-301(3)(d) and (e).
[C.] "Board" means the Utah State Board of Education.
[D.] (3) "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "CACTUS" [means the database maintained on all licensed Utah educators. The database includes information such as:
(1) personal directory information;
(2) educational background;
(3) endorsements;
(4) employment history;
(5) professional development information;
(6) completion of employee background checks; and
(7) a record of disciplinary action taken against the educator."
[E.] (4) "Data Warehouse" means the database of demographic information, course taking, and test results maintained by the USOE on all students enrolled in Utah schools.
(5) "EDEN" means the Education Data Exchange Network, the mechanism by which state education agencies are mandated to submit data to the U.S. Department of Education.

(6) "ESEA" means the federal Elementary and Secondary Education Act, also known as the No Child Left Behind Act.

(7) "LEA" means local education agency, including local school boards, public school districts, charter schools, and includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(8) "MSP" means Minimum School Program, the state supported K-12 public school funding program.

(9) "MST" means Mountain Standard Time.

(10) "Schools interoperability framework" or "[e]SIF[i]" means an open global standard for seamless, real time data transfer and usage for Utah public schools.

(11) "Student achievement backpack" has the same meaning as that term is defined in Subsection 53A-1-413(1)(d).

(12) "Utah Student Record Store" has the same meaning as that term is defined in Subsection 53A-1-413(1)(e).

(13) "Year" means both the school year and the fiscal year for [LEAs in] a Utah LEA, which runs from July 1 through June 30.

R277-484-3. Deadlines for Data Submission.

For the purpose of submission of student level data, each Utah LEA shall participate in UTREx.

1. An LEA shall submit student level data to the Board through UTREx.
2. An LEA[s] shall by 5:00 p.m., Mountain Standard Time on the date specified in Table 1 submit [data to the USOE as directed by the USOE through the following] reports [by 5:00 p.m., MST on the date and ] in the format specified by the [USOE] Superintendent[.]
3. If a deadline in Table 1 falls on a weekend or state holiday in a given year, an LEA shall submit the report on the next business day following the date specified in Table 1.

<table>
<thead>
<tr>
<th>Table 1</th>
<th>Reporting Deadlines</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report</td>
<td>Deadline</td>
</tr>
<tr>
<td>Adult Education - Final Report</td>
<td>July 15</td>
</tr>
<tr>
<td>Prior Year</td>
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<tr>
<td>Adult Education - Final Audit Report</td>
<td>September 15</td>
</tr>
<tr>
<td>Annual Assurance Letter - R 277-108</td>
<td>October 1</td>
</tr>
<tr>
<td>Annual Financial Report - Prior Year</td>
<td>October 1</td>
</tr>
<tr>
<td>Annual Program Report - Prior Year</td>
<td>October 1</td>
</tr>
</tbody>
</table>

Bus Driver Credentials Report - December 15
Current Year - July 15
CACTUS - Final Update - Current Year - June 29
CACTUS - Midyear Update - Current Year - November 15
Charter School Projections - September 15
Classified Personnel Report - Prior Year - July 15
Community Development and Renewal Agency Representative List - February 28
Driver Education Report - Prior Year - July 15
Emergency Preparedness Compliance Statement - Prior Year - July 1
Emergency Response Plan - Prior Year - July 1
Enrollment and Transfer Student Documentation Audit - Current Year - November 1
ESEA Choice and Supplemental Services Report - Prior Year - July 15
Financial Audit Report - Prior Year - November 30
Fire Drill Compliance Statement - Prior Year - July 1
Free and Reduced Price Lunch October 31
Enrollment Survey - Current Year - November 15
Home Schooled Student Report - Prior Year - July 15
Immunization Status Report - (to Utah Department of Health) - Final - June 15
Immunization Status Report - Current Year - November 1
LEA Budget - Next Fiscal Year - July 15
LEA Budget - Next Fiscal Year - Planned Truth in Taxation Process - August 15
Membership Audit Report - Prior Year - September 15
Negotiations Report - Current Year - November 1
Other Emergency (Earthquake and School Violence) Drill Compliance Statement - Prior Year - July 1
Pupil Transportation - Schedule A1 (Miles, Minutes, Students Report) - Prior Year Projected - November 1
Pupil Transportation Schedule B (Miscellaneous Expenditure Report) - Prior Year - November 1
Pupil Transportation Statistics - Prior Year - November 1
Year End Report - Prior Year - July 15
Redevelopment Agency Taxing Entity Committee Representative List - February 28
UTREx - Complete December 1 Update - Current Year - December 10
UTREx - Complete October 1 Update - Current Year - October 10
UTREx - Revised December 1 Update - Current Year - Significant Errors Identified by the Superintendent or LEA - December 15
UTREx - Revised October 1 Update - Current Year - Significant Errors Identified by the Superintendent or LEA - October 15
UTREx - Final Comprehensive Update - Prior Year - July 7

A. February 28 - Community Development and Renewal Agency and/or Redevelopment Agency Taxing Entity Committee Representative List.
B. June 15

1. Immunization Status Report (to Utah Department of Health) - final;
2. Safe School Incident Report - for current year.
C. June 29 - CACTUS - final update for current year;
D. July 1

1. Fire Drill Compliance Statement - for prior year;
2. Other Emergency (Earthquake and School Violence) Drill Compliance Statement - for prior year.
R277-484-4. Adjustments to Deadlines.

A. Deadlines in R277-484 that fall on a weekend or state holiday in a given year shall be moved to the first workday after the date specified for that year.

B. An LEA may seek an extension of a deadline to ensure continuation of funding and provide more accurate and complete information to allocation formulas by submitting a written request to the USOE Superintendent no later than . The request shall be received by the USOE Director of School Finance at least 24 hours before the specified deadline in Section 3.

C. In processing the request for the extension, the USOE Director of School Finance shall:

1. Take [3] If an LEA requests an extension under Subsection (1), the Superintendent may do any of the following after taking into consideration the pattern of LEA compliance with reporting deadlines and the urgency of the need for the data to be submitted:

   a. Approve the request and allow the MSP fund transfer process to continue; or

   b. Recommend denial of the request and forward it to the USOE Associate Superintendent for Business and Operations for a final decision on whether or not to delay the request and stop the MSP fund transfer process; or

   c. Recommend corrective action to the Board in accordance with Rule R277-114.

D. If, after receiving an extension, an LEA fails to submit the report by the designated date, the MSP fund transfer process shall be stopped and the procedure described in Section 3 shall apply.

E. An extension shall apply only to the specific reports and dates for which an extension was requested.

[Exceptions - Deadlines] The Superintendent may not extend deadlines for the following reports:

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R277-484-5. Official Data Source and Required LEA Compatibility.

[A.][1] The USOE Superintendent shall load operational data collections into the Data Warehouse as of the submission deadlines specified.

[B.][2] The Data Warehouse shall be the sole official source of data for annual:

[(1)a] school performance reports required under Section 53A-3-602.5;

[(2)] determination of [adequate yearly progress as required under the Utah Comprehensive Accountability System (UCAS)] state and federal accountability reports; and

[(3)] submission of data files to the U.S. Department of Education via EDEN.

[C.] (a) An LEA[s] shall use an [USOE approved] SIS approved by the Superintendent to ensure compatibility with [USOE] Board data collection systems.

[(b)] The USOE Superintendent shall maintain[s] a list of approved student information systems.

[(c)] Prior to the USOE Superintendent granting approval for an LEA to initiate or replace a student information system that was not previously approved, the LEA shall comply with the following:

[(a)] The LEA shall send written request for approval to USOE’s Director of Information Technology. The Superintendent no later than November 15 of the year prior to the year the LEA proposes to use the SIS for production software;

[(b)] The LEA shall submit documentation to the USOE Superintendent that the new or modified student information system is School Interoperability Framework (SIF) certified;

[(c)] The LEA shall submit documentation to the USOE Superintendent that an SIF agent can meet the UTREx specifications profile for Vertical Reporting Framework (VRF) and eTranscripts;

[(d)] The LEA shall ensure that a new student information system can generate valid data collection by submitting an actual file to the USOE Superintendent for review;

[(e)] The LEA shall ensure that the new student information system can generate the Statewide Student Identifier (SSID) request file by submitting an actual file to the USOE Superintendent for review.

[(2)] The USOE Superintendent shall review documentation and grant or deny an LEA’s requests submission under Subsection (4) within 30 calendar days.

[(3)] LEA requests and approval shall be completed by January 15 of the school year prior to the year the LEA proposes to use the software for production data.

[(4)] An [approved replacement system[s]] shall run in parallel [for a period of at least three months] to a state-approved system for a period of at least three months and be able to generate duplicate reports to previously generated information.

[(5)] No later than October 1, 2013, all public education LEA[s] shall begin submitting an LEA shall submit daily updates to the USOE Board Clearinghouse using all School Interoperability Framework (SIF) objects defined in the UTREx Clearinghouse specification. Noncompliance with this requirement may result in interruption of MSP funds consistent with R277-484-8.

[(6)] An LEA shall electronically submit [A] all public high school transcripts requested by a public education post-secondary school[am] be electronically submitted to those public education post-secondary schools if the post-secondary school[s] is capable of receiving transcripts through the electronic transcript service designated by the USOE. This process is mandatory for all public high schools as of October 1, 2013.

[(7)] The USOE Superintendent may only adjust values [only be adjusted] downward when an audit report review team agrees that an adjustment is warranted by the evidence of an audit.

[(8)] The Superintendent may only adjust values [only be adjusted] downward when an audit report [s] is reviewed and accepted.

R277-484-6. Use of Data for Allocation of Funds.

The USOE School Finance Section shall publish by June 30 annually on its website a description of how data shall be used to allocate funds to LEAs in each MSP program in the following fiscal year.

R277-484-7. Adjustments to Summary Statistics Based on Compliance Audits.

[A.][1] For the purpose of allocating MSP funds and projecting enrollment, the Superintendent may modify LEA level aggregate membership and fall enrollment counts [may be modified] by the USOE on the basis of the values in the Membership and Enrollment audit reports, respectively, when an [USOE] audit report review team agrees that an adjustment is warranted by the evidence of an audit.

[(1)] The Superintendent may only adjust values [only be adjusted] downward when an audit report [s] is reviewed and accepted.

[(2)] The Superintendent may only adjust values [only be adjusted] downward when an audit report [s] is reviewed and accepted.


[A.][1] If an LEA fails to submit a report by its deadline as specified in Section 3, Table 1, consistent with procedures outlined in R277-114, the USOE shall stop the MSP fund transfer process on the day after the deadline. The Superintendent may recommend corrective action, including stopping the LEA’s MSP funds transfer process, unless the LEA has obtained an extension of the deadline in accordance with the procedure described in Section R277-484-4, to the following extent:

[(1)] 10% of the total monthly MSP transfer amount in the first month, 25% in the second month, and 50% in the third and subsequent months for any report other than June 15 Immunization Status report.

[(2)] The Superintendent may recommend [E] loss of up to 1.0 WPU from Kindergarten or Grades 1–12 programs, depending on the grade level and aggregate membership of the student, in the current year Mid Year Update for each student whose prior year immunization status was not accounted for in accordance with Utah Code 53A-11-301 as of June 15.
B. If the USOE has stopped the MSP fund transfer process for an LEA, the USOE shall:
(1) upon receipt of a late report from that LEA, restart the transfer process within the month (if the report is submitted by 10:00 a.m. on or before the tenth working day of the month) or in the following month (if the report is submitted after 10:00 a.m. on or after the tenth working day of the month); and
(2) appropriately inform the Board at its next regularly scheduled meeting.
(3) inform the chair of the governing board if LEA staff are not responsive in correcting ongoing problems with data.

KEY: data standards, reports, deadlines

Date of Enactment or Last Substantive Amendment: August 7, 2013
Notice of Continuation: December 31, 2012

AUTHORIZING, AND IMPLEMENTED OR INTERPRETED LAW: Art X Sec 3; 53A-1-401(3); 53A-1-401(8)(a); 53A-1-413(8); 53A-1-301(3)(d) and (e)
enrollment due to factors beyond its control, establish guidelines for funding under Section 53A-17a-139.

[A:1] "ADM" means average daily membership derived from end-of-year data.
[B:1] "Board" means the Utah State Board of Education.
[C:2] "Carryforward balance" means the unobligated amount of MSP (Uniform School Fund monies) basic program education funds from the previous fiscal year.
[D:2] "Critical Languages Program" means the state supported Critical Languages Program as defined in Title 53A[-], Chapter 17a.
[E:2] "Historical Mean ADM" means the mean of the two highest ADMs in the three years preceding the prior year.
[F:4] "Local Effort" means the prior year sum of tax rates imposed by the local school board.
[G:5] "Lost ADM" means the difference between prior year ADM and Historical Mean ADM.
[H:6] "Mid-year update" means the annual Minimum School Program, as defined in Title 53A[-], Chapter 17a.
[I:8] "Weighted Pupil Unit" or "WPU" means the unit of measure of factors that is computed in accordance with the MSP for the purpose of determining the costs of a program on a uniform basis for each district.

[A:1] A school district [shall be eligible for] may receive funding under this rule if the district's lost ADM is at least four percent less than the district's historical mean ADM.
[B:2] A school district that seeks funding under this rule shall file a petition with the Superintendent no later than September 15 that demonstrates that a loss of enrollment occurred due to unpredictable factors beyond the district's control.
[C:3] The Superintendent shall refer a petition filed in accordance with Subsection (2) to the Finance Committee to review and make a recommendation to the Board.
[D:4] A charter school is not eligible for receiving funds under this rule.

R277-485-4. Funding.
[A:1] The Superintendent shall allocate funding to an eligible district under Subsection R277-485-3(1) [shall be the current] using the unencumbered MSP carryforward balance.
[B:2] The Superintendent may only award funds to a district under [this rule] shall provide funds to school districts only if all other authorized uses of the carryforward balance have been carried out.
[C:3] The total amount of funds made available for distribution shall be equal to the lesser of:
   (1) the sum of lost ADM in eligible districts multiplied by 25 percent of the current year value of the WPU; or
   (2) 25 percent of the current unencumbered MSP carryforward balance.
[D:4] The Superintendent shall distribute available funds [shall be distributed] in proportion to lost ADM (90 percent) and prior year local effort (10 percent) among eligible districts.

[D:5] The Superintendent may not fund an eligible district [if there are not any current year unencumbered MSP funds]; eligible districts shall not be funded.

(6) The Superintendent shall distribute funds annually in one lump sum with the mid-year update of the current year MSP.

[1] Funds shall be distributed annually in one lump sum with the mid-year update of the current year MSP.

KEY: students, enrollment
Date of Enactment or Last Substantive Amendment: [May 8, 2014] 2017
Notice of Continuation: April 8, 2013
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401; 53A-17a-139

Education, Administration

R277-488
Critical Languages Program

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41781
FILED: 06/09/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-488 is amended to update the rule in accordance with the Rulewriting Manual for Utah.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-488 provide technical and conforming changes in accordance with the Rulewriting Manual for Utah, and provide some changes in terminology.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X Sec 3; Section 53A-1-401 and Section 53A-15-104 and Section 53A-15-105

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Changes to the rule are primarily restructuring and technical which will likely not result in a cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: Changes to the rule are primarily restructuring and technical which will likely not result in a cost or savings to local government.
♦ SMALL BUSINESSES: Changes to the rule are primarily restructuring and technical which will likely not result in a cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Changes to the rule are primarily restructuring and technical which will likely not result in a cost or savings to persons.
other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Changes to the rule are primarily restructuring and technical which will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT: EDUCATION ADMINISTRATION 250 E 500 S SALT LAKE CITY, UT 84111-3272 or at the 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 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

R277. Education, Administration.
R277-488. Critical Languages and Dual Language Immersion Program.
R277-488-1. Authority and Purpose. (a) This rule is authorized by: (1) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board; (2) Section 53A-15-104 which directs the State Superintendent of Public Instruction and the Board to track, monitor, and may expand the Critical Languages Program and dual immersion programs subject to student interest and available funding; and (b) Section 53A-15-104, which requires the Board to establish a Critical Languages Program.
(c) Section 53A-15-105, which requires the Board to establish a Dual Language Immersion Program; and (d) Section 53A-1-401(38), which permits 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.

R277-488-2. Definitions. (A) "ACTFL OPI" means the American Council of Teachers of Foreign Language Oral Proficiency Interview which is an oral test, offered at most Utah colleges and universities. (B) "Board" means the Utah State Board of Education. (C) "Credentialed international teacher" means a teacher sponsored under a separate Memorandum of Understanding between the USOE and China, Spain, Mexico, France or Taiwan. The Memoranda of Understanding are hereby incorporated by reference. Sponsored teachers shall satisfy all conditions of the Memorandums of Understanding prior to working with Utah students.
(D) (1) "Critical languages" means those languages described under Section 53A-15-104(1). (2) "Critical Languages Program" means the program described under Section 53A-15-104. (E) (1) "Dual language immersion" or "DLI" means a distinctive dual language education program in which native English speakers and active speakers of another language are integrated for academic content.
(F) (1) "One-way" Immersion is a program in which a student population consists of English language speakers with limited to no proficiency in the foreign immersion language. In such a model, less than 30 percent of the students have a native language other than English. (2) "Two-way" immersion is a program in which a student population consists of a majority of English language speakers and a minority of language speakers other than English with dominance in their first language and home language support for this language. A 1:1 ratio is ideally maintained for these two language groups, but a minimum of one-third of each language group (such as 2:1 ratio) is required.
(G) (1) "Secondary school" means grades 7-12 in whatever schools the grade levels exist.

(A) (1) A school district that desires to offer critical languages through traditional instruction or a visiting guest teacher program, shall submit an application, provided by the USOE and available each April 1, to the USOE Superintendent no later than May 1.
(B) (2) An LEA [The] application shall be on a form provided by the Superintendent annually by April 1, which shall designate:

[A-1](1) The Superintendent shall disburse DLI program funds[shall provide funds] by July 1 of each fiscal year [the Legislature continues to provide funding for the program] subject to state appropriation.

(2) The Dual Language Immersion Program shall support the following foreign languages approved by the Superintendent:

   (1) Chinese;
   (2) French;
   (3) Portuguese; and
   (4) Spanish.

B. An elementary school that desires to participate in the Dual Language Immersion Program shall submit an application, provided by the USOE and available annually by April 14 to the USOE by May 14.

(3) An elementary school that desires to participate in the Dual Language Immersion Program shall submit an application, provided by the USOE and available annually by April 14 to the USOE by May 14.

(4) An LEA shall submit an application described in Subsection (3) no later than May 14 annually to be considered for primary and secondary school DLI program funding in the subsequent school year.

C. The application shall provide for an immersion model that uses 50 percent of instruction in English and 50 percent of instruction in another language.

(5) An application for DLI program funds shall include:

   (a) 50 percent of instruction in English and 50 percent of instruction in another language;
   (b) an instructional model [one-way or two-way] identified in R277-488-2(4)(b); and
   (c) a language approved by the Superintendent.

(2) The Superintendent shall notify an LEA that:

   (a) does not currently teach the requested language;

   (b) demonstrates adequate local funding and infrastructure to begin a program or expand existing programs;

   (c) demonstrates community interest and students committed and prepared to participate in a new or expanded program, including prepared instructors for the program;

   (d) has adequate interest, resources, and infrastructure, but does not presently have a DLI program under R277-488; and

   (e) has a demonstrated community need for improved or expanded foreign language instruction in a specific school or community.

(3) The Superintendent shall give priority in awarding language programs to include all languages identified in Section 53A-15-105.

R277-488-5. USOE—Responsibilities and Dual Language Immersion Funds.

[A-1](1) Secondary and elementary schools shall be selected for funding for both programs by the DLI program based on an evaluation of applications by a USOE designated committee which shall include state education experts and the Superintendent.

C. The Superintendent shall make an award [shall be made] to an individual elementary or secondary school[s] and allocate [shall be allocated] to [school district or charter school[s][the school's LEA] to be fully distributed to [designated][the school[s] based on the annual legislative funding allocation.

D. Each secondary school selected for funding shall receive a base allocation per critical language offered at the school designated in Section 53A-15-10(4)(b).

E. Each elementary school selected for funding shall receive a base allocation per dual language immersion offered at the elementary school, designated in Section 53A-15-10(4)(c).

F. The Superintendent shall notify a new school[s] eligible for funding of a funds award for the subsequent fiscal year [shall be notified by the USOE] by June 1 annually and shall receive funds in the subsequent fiscal year.
R277-488-6. Evaluation and Reports.

[A.](1) Each school selected for funding shall [be required to] submit an annual evaluation report to the [USOE] Superintendent.

[D.](2) The [USOE] Superintendent may request additional data from a secondary or elementary school(s) that receives funding.

KEY: critical languages, dual language immersion

Date of Enactment or Last Substantive Amendment: [August 8, 2017]

Notice of Continuation: June 15, 2012


Education, Administration
R277-489
Early Intervention Program

NOTICE OF PROPOSED RULE (Amendment)
DAR FILE NO.: 41782
FILED: 06/09/2017

RULr ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-489 is amended to update provisions in the rule regarding the application process; entry and exit assessments; use of assessment data; and update the rule in accordance with the Rulemaking Manual for Utah.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-489 provide provisions to clarify the Early Intervention Program application process; provide for required use of a uniform kindergarten entry and exit assessments; provide provisions for the use of entry and exit assessment data; and provide technical and conforming changes to the rule in accordance with the Rulemaking Manual for Utah.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Changes to the rule will likely not result in a cost or savings to the state budget. Funding was provided for in the 2017 General Session for a uniform kindergarten assessment for local education agencies (LEAs) participating in certain programs.
♦ LOCAL GOVERNMENTS: Changes to the rule will likely not result in a cost or savings to local government. Schools, based on the assessments, may be eligible to receive early intervention program funding.
♦ SMALL BUSINESSES: Changes to the rule will likely not result in a cost or savings to small businesses. The early intervention program applies to public education and does not affect businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Changes to the rule will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. Funding was provided for in the 2017 General Session for a state-mandated uniform kindergarten assessment for LEAs participating in certain programs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There could be compliance costs in the form of withholding of funds for LEAs participating in the program that fail to provide complete, accurate, and timely reporting as required by this rule. Any costs would be very speculative and, it is anticipated that LEAs will comply with the requirements of this rule.

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 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

AUTHORIZED BY: Angela Stallings, Deputy Superintendent, Policy and Communication
(c) Section 53A-17a-167, which directs the Board to distribute funds appropriated for the [English] [Intervention [P]rogram [consistent with state law], and k-3 reading software program to LEAs that apply for the funds.

(b) a description of the delivery methods that may be used to serve eligible students, such as:
   (i) full-day kindergarten;
   (ii) two half-days;
   (iii) extra hours;
   (iv) a summer program; or
   (v) other means;
   (c) a description of the evidence-based early intervention model used by the LEA;
   (d) a description of how the program focuses on age-appropriate literacy and numeracy skills;
   (e) a description of how the program targets at-risk students;
   (f) a description of the assessment procedures and tools to be used by participating schools within the LEA; and
   (g) other information as requested by the Superintendent and approved by the Board.

2 The Board shall distribute funds to eligible charter schools based on a formula identifying the percentage of students in public schools and the percentage of students with the greatest need for an enhanced kindergarten program consistent with Subsection 53A-17a-167(4)(a).

4 The Superintendent shall distribute funds to eligible school districts by determining the number of students eligible to receive free lunch in the prior school year for each school district and prorating the remaining funds based on the number of students eligible to receive free lunch in each school district.

5 All funds shall be distributed consistent with USOE established timelines. The Superintendent shall establish timelines for distribution of early intervention program funds.

6 The Superintendent shall require all funded programs to:
   (a) conduct entry and exit assessments; [from all funded programs and]
   (b) submit data as required by Section R277-489-5 [year-end data]; and
   (c) submit an annual report.

7 An LEA may not require a student to participate in an early intervention program.

8 (7) The USOE shall require year-end data and a report from funded programs.

9 The Board shall select one or more technology providers through an RFP to provide adaptive learning technology and assessments for reading for students in kindergarten through grade 3.

10 The USOE shall accept applications from LEAs for grants to be used to purchase Board-selected adaptive learning technology and assessments for reading for students in kindergarten through grade 3.

11 (2) A school district or charter school that received a license for an adaptive learning technology in a previous school year shall be given priority to receive an equivalent license in subsequent years.

12 The USOE shall require pre and post assessments from all participating LEAs.

13 (1) The USOE shall require an annual report from all participating LEAs that assess the impact of the adaptive learning technology and assessments or adaptive computer program for
literacy instruction used by the LEA, including final testing data and student learning gain scores.

(5) The Board shall report final testing data and student learning scores regarding adaptive learning technology and assessments or adaptive computer program for literacy instruction on or before November 1, 2012 and every year thereafter to the Education Interim Committee and the Governor.


[A.] (1) LEA applications for Early Intervention Programs shall include:

(i) names of schools for which Program funds shall be used;

(ii) a description of the delivery method or methods that shall be used to serve eligible students (such as full day, kindergarten, two half days, extra hours, summer program, or other means);

(iii) a description of the evidence-based early intervention model used by the LEA;

(iv) a description of how the program shall focus on age-appropriate literacy and numeracy skills;

(v) a description of how the program shall be targeted to at-risk students;

(vi) a description of the assessment procedures and tools that shall be used by participating schools within the LEA; and

(vii) other information as requested by the USOE.

(1) The Superintendent shall select one or more technology providers through an RFP to provide adaptive learning technology and assessments for reading for students in kindergarten through first grade.

[B.] (2) An LEA[s] may apply for a [grant[s] for Board selected adaptive learning technology and assessments for reading for students in kindergarten through grade 3.

(a) An LEA that receive a license for adaptive learning technology in a previous school year shall be given a priority to receive an equivalent license in subsequent years.

(b) An LEA receiving funding for adaptive learning technology shall:

(i) conduct entry and exit assessments of participating students; and

(ii) submit an annual report that assess the impact of the adaptive learning technology and assessments or adaptive computer programs for literacy instruction used by the LEA, including final testing data and student learning gain scores.

(3) The Superintendent shall report final testing data and student learning scores regarding adaptive learning technology and assessments or adaptive computer programs for literacy instruction by November 1 annually to the Education Interim Committee and the Governor.

[C.] (1) LEA adaptive learning technology and assessment grants recipients shall use a pre-test before using the technology tools and software with early intervention kindergarten students and shall administer a post-test at the end of the year.

(2) LEAs shall prepare and submit a report to the USOE detailing final testing data including student learning gains regarding the adaptive computer program for literacy instruction.

D. An LEA may not require a student to participate in an early intervention program.

R277-489-5. **Assessment, Accountability and Reporting.**

[A.] (1) An LEA[s] shall use a [self-selected state-mandated uniform kindergarten entry pre-assessment], approved by the Superintendent, with all kindergarten students.

(b) The USOE may provide a model kindergarten assessment from a list of appropriate assessments.

(3) An LEA shall conduct an entry assessment within an administration window that is three weeks prior to the first day of school and within the first three weeks of kindergarten starting.

(4) An LEA shall submit entry assessment data to the Data Gateway by September 30 annually.

(b) The USOE may provide a model kindergarten assessment.

[B.] (5) An LEA shall complete [post] a state-mandated exit assessment[s] shall be completed by LEAs, approved by the Superintendent, during the last four weeks prior to the ending of the school year and report[ed] the results to the [Board] Superintendent as soon as reasonably possible by June 15 annually.

(4) Post assessment results for all kindergarten students shall provide evidence of student learning matched to the program's pre-assessments used for program placement.

[B.] (5) The Superintendent may recommend action to the Board, including withholding of funds, in accordance with Rule R277-114 for an LEA that fails to provide complete, accurate, and timely reporting as required by this rule.

(6) A charter school, which does not receive early intervention program funds or K-3 reading software funds, is not subject to the assessment and reporting requirements of this Section R277-489-5.

R277-489-6. **Use of Entry and Exit Assessment Data.**

[1) The Superintendent or an LEA may use entry and exit assessment data obtained in accordance with Section R277-489-5 to:

(a) provide insights into current levels of academic and social emotional performance upon entry and exit of kindergarten;

(b) identify students in need of early intervention instruction and promote differentiated instruction for all students;

(c) understand the effectiveness of programs, such as extended-day kindergarten and pre-school;

[2) This rule is effective on July 1, 2017.
(d) provide opportunities for data-informed decision making and cost-benefit analysis of early learning initiatives;
(e) identify effective instructional practices or strategies for improving student achievement outcomes in a targeted manner; and
(f) understand the influence and impact of full-day kindergarten on at-risk students in both the short- and long-term.

(2) An LEA may not use entry and exit assessment data obtained in accordance with Section R277-489-5 to:
(a) justify early enrollment of a student who is not currently eligible to enroll in kindergarten, such as a student with a birthday falling after September 1;
(b) evaluate an educator's teaching performance; or
(c) determine whether a student should be retained or promoted between grades.

KEY: early intervention
Date of Enactment or Last Substantive Amendment: [August 7, 2013 – 2017]
Notice of Continuation: June 15, 2012
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401; 53A-17a-167

Education, Administration
R277-493
Kindergarten Supplemental Enrichment Program

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 41783
FILED: 06/09/2017

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new Rule R277-493 is created to provide standards and procedures for a grant program to support certain kindergarten supplemental enrichment programs as required by Title 53A, Chapter 15, Part 20, Kindergarten Supplemental Enrichment Program (H.B. 168 from the 2017 General Session).

SUMMARY OF THE RULE OR CHANGE: Rule R277-493 defines terms and provides provisions for program administration.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-15-2003

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Implementation of this new rule will likely not result in a cost or savings to the state budget.

Funding for the program was provided for in the 2017 General Session under H.B. 168 for administration of the program.

♦ LOCAL GOVERNMENTS: This new rule will likely not result in a cost or savings to local government. Funding for the program was provided for in the 2017 General Session under H.B. 168 for administration of the program.

♦ SMALL BUSINESSES: This new rule will likely not result in a cost or savings to small businesses. The Kindergarten Supplemental Enrichment Program applies to public education and does not affect businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This new rule will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. Funding for the program was provided for in the 2017 General Session under H.B. 168 for administration of the program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There could be compliance costs in the form of withholding of funds for local education agencies (LEAs) participating in the program that fail to provide complete, accurate, and timely reporting as required by this rule. Any costs would be very speculative, and it is anticipated that LEAs will comply with the requirements of this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the 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 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

R277-493-1. Authority and Purpose.

(1) This rule is authorized by:
(a) Article X, Section 3 of the Utah Constitution, 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) Subsection 53A-15-2003(6), which directs the Board to adopt rules to implement the kindergarten supplemental enrichment program.

(2) The purpose of this rule is to make rules to establish reporting procedures and administer Title 53A, Chapter 15, Part 20, Kindergarten Supplemental Enrichment Program.


(1) (a) “Eligible school” has the same meaning as defined in Subsection 53A-15-2002(2).
(b) “Eligible school” does not include a school that receives funds under Section 53A-17a-167.
(2) “Kindergarten supplemental enrichment program” has the same meaning as defined in Subsection 53A-15-2002(4).


(1) An LEA with an eligible school may apply for kindergarten supplemental enrichment program by filing a grant application following a form approved by the Superintendent no later than May 15 annually.

(2) An application filed in accordance with Subsection (1) shall include:
(a) evidence of an eligible school's overall need for a kindergarten supplemental enrichment program based on the results of the eligible school's current kindergarten entry assessments and programming;
(b) a description of how the eligible school will use the Board approved uniform entry assessment to determine which students target for the kindergarten supplemental enrichment program;
(c) a description of how the eligible school's program will coordinate with the Superintendent and LEA personnel to meet the annual reporting requirements of this rule;
(d) a description of how the eligible school will use funds to meet the requirements of Subsection 53A-15-2003(3);
(e) if an eligible school is applying based on their percentage of students experiencing intergenerational poverty, a description of the learning strategies the school will employ to design and implement a program that is developed with the unique needs of students experiencing intergenerational poverty in mind, and
(f) other information as requested by the Superintendent.

(3) If an eligible school has previously received funding through the kindergarten supplemental enrichment program, an application under Subsection (1) shall also include data from Board entry and exit exams to establish success in changing student outcomes in comparison to similarly situated peers who weren't able to receive the benefit of the kindergarten supplemental enrichment program.

(4) The Superintendent shall recommend distribution of funds by the Board in accordance with Subsection 53A-15-2003(1).

(5) An eligible school that receives kindergarten supplemental enrichment program funds shall comply with the assessment and reporting requirements of Section R277-489-5.

(6) The Superintendent shall require an eligible school that receives funds in accordance with this rule to demonstrate compliance with federal supplanting requirements.

KEY: kindergarten, supplements, enrichments

Date of Enactment or Last Substantive Amendment: 2017

Education, Administration

R277-514

Deaf Education in Public Schools

NOTICE OF PROPOSED RULE

(2017) DAR FILE NO.: 41784 FILED: 06/09/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new Rule R277-514 is created to provide provisions for the requirements for deaf education licensing.

SUMMARY OF THE RULE OR CHANGE: Rule R277-514 defines terms; provides provisions for a deaf education license area of concentration; and provides for Utah State Board of Education approval of an institution of higher education's deaf education preparation program.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This new Rule R277-514 provides provisions for deaf education licensing which will likely not result in a cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: This new Rule R277-514 provides provisions for deaf education licensing which will likely not result in a cost or savings to local government.
♦ SMALL BUSINESSES: This new Rule R277-514 provides provisions for deaf education licensing which will likely not result in a cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This new Rule R277-514 provides provisions for deaf education licensing which will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.
COMPLIANCE COSTS FOR AFFECTED PERSONS: This new Rule R277-514 provides provisions for deaf education licensing which will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses.

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

EDUCATION ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the 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 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

R277. Education, Administration.
R277-514. Deaf Education in Public Schools.
R277-514-1. 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) Subsection 53A-1-402(1)(a), which requires the Board to establish the qualification and certification of educators.
(2) The purpose of this rule is to specify the requirements for Deaf Education licensing.

R277-514-2. Deaf Education (Birth to Age 22) License Area of Concentration.
(1) A deaf education (birth to age 22) license area of concentration permits an educator to teach a class composed of deaf and hard of hearing students from birth to age 22 if the educator holds the appropriate endorsement as described in R277-520-4.
(2) The Board may approve an application for a Deaf Education license area of concentration if the applicant:
   (a)(i) completes a deaf education teacher preparation program approved by the Board as described in Section R277-514-3; or
   (ii) holds a valid deaf education license issued by a state other than Utah under the National Association of State Directors of Teacher Education and Certification Interstate Agreement;
   (b) passes a deaf education competency exam approved by the Board;
   (c) has met the requirements of at least one of the following endorsements:
      (i) Listening and Spoken Language endorsement, which indicates that the endorsement holder's preparation focused on teaching deaf and hard of hearing students with listening and spoken language strategies; or
      (ii) ASL/English-bilingual/bicultural endorsement, which indicates that the endorsement holder's preparation focused on strategies that promote the development of American Sign Language and English literacy across the curriculum; and
   (d) if the applicant intends to teach in grades six through twelve, has met the requirements of at least one content specific area endorsement.

R277-514-3. Deaf Education Program.
The Board may approve an institution of higher education's deaf education teacher preparation program if the program includes course work specifically designed to train candidates to:
(1) understand the legal and ethical issues surrounding deaf education;
(2) comply with:
   (a) the Individuals with Disabilities Education Act of 2004, Pub. L. No. 108-446; and
   (b) Board rule;
(3) address specific linguistic and cultural needs of deaf and hard of hearing students throughout the curriculum;
(4) demonstrate techniques for incorporating language into all aspects of the curriculum;
(5) demonstrate pedagogical skills unique to teaching reading, writing, math and other content areas to deaf and hard of hearing students;
(6) demonstrate basic fluency in the use of American Sign Language;
(7) understand audiological and physiological components of audition;
(8) understand techniques for teaching speech to deaf and hard of hearing students;
(9) understand the socio-cultural and psychological implications of hearing loss; and
(10) assess and address the educational needs and educational progress of deaf and hard of hearing students.

KEY: licensing, deaf education
Date of Enactment or Last Substantive Amendment: 2017
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401; 53A-1-402
After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

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

EDUCATION ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the 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 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

R277. Education, Administration.
R277-520. Appropriate Licensing and Assignment of Teachers.
R277-520-[1]. Authority and Purpose.

[A-][1] This rule is authorized by:
(a) Utah Constitution[2] Article X, Section 3, which vests general control and supervision of public education in the Board[3];
(b) Section 53A-1-401[4], which allows the Board to adopt rules in accordance with its responsibilities[5] to make rules to execute the Board’s duties and responsibilities under the Utah Constitution and state law[6]; and
(c) Subsection 53A-6-104(2)(a), which authorizes the Board to rank, endorse, or classify licenses. [This rule is also necessary in response to ESEA NCLB.]

[B-][2] The purpose of this rule is to provide criteria for:
(a) local school boards to employ educators in appropriate assignments[7];
(b) the Board to provide state funding to local school boards for appropriately qualified and assigned staff[8]; and
(c) the Board and local school boards to satisfy the requirements of ESEA in order for local school boards to receive federal funds.

R277-520-[1]. Definitions.
(a) “Board” means the Utah State Board of Education.
(b) “Content specialist” means a licensed educator who provides instruction or specialized support for students and teachers in a school setting.
(c) “Core academic subjects or areas” under the Elementary and Secondary Education Act (ESEA), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11) means;
   (a) English[9];
   (b) reading or language arts[10];
(c) mathematics; 
(d) science; 
(e) foreign language; 
(f) civics and government; 
(g) economics; 
(h) arts; 
(i) history; 
(j) geography.

(4) "Demonstrated competency" means that a teacher shall demonstrate current expertise to teach a specific class or course through the use of lines of evidence which may include:
(a) completed USOE approved course work; 
(b) content test(s); or 
(c) years of successful experience including evidence of student performance.

(4) "Eminence" means distinguished ability in rank, in attainment of superior knowledge and skill in comparison with the generally accepted standards and achievements in the area in which the authorization is sought as provided in R277-520-5.

E. "LEA" or "local education agency" means a school district, charter school or, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

F. "License endorsement" means a designation given to an individual for one year, such as an out-of-state candidate for the Deaf and the Blind.

G. "Letter of authorization" means a designation approved by the USOE Board of Education issued to an educator who:
(a) holds a current Utah Level 2 license; and
(b) receives:
(i) National Board Certification; 
(ii) a doctorate in:
(A) education; or
(B) a field related to a content area in a unit of the public education system or an accredited private school from an accredited institution, or holds a Speech-Language Pathology or Auditory-Verbal Therapy endorsement granted by the American Speech-Language Hearing Association (ASHA) certification.

H. "Level 1 license" means:
(a) a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program; or 
(b) pursuant to an agreement under the NASDTEC Interstate Agreement, to candidates who have also met all ancillary requirements established by law or rule.

I. "Level 2 license" means a Utah professional educator license issued after:
(1) satisfaction of all requirements for a Level 1 license; 
(2) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public LEA or accredited private school; 
(3) at least three years of successful education experience in a Utah public LEA or accredited private school or one year of successful education experience in a Utah public LEA or accredited private school and at least three years of successful education experience in a public LEA or accredited private school outside of Utah; and 
(4) satisfaction of additional requirements established by law or rule.

J. "Level 2 license" means a Utah professional educator license issued to an educator who:
(a) completes: 
(i) at least three years of successful education experience in a Utah public LEA or accredited private school; or 
(ii) at least three years of successful education experience in a Utah public LEA or accredited private school; and 
(b) at least three years of successful education experience in a public LEA or accredited private school outside of Utah; and 
(c) completes: 
(i) at least three years of successful education experience in a Utah public LEA or accredited private school; or 
(ii) (A) one year of successful education experience in a Utah public LEA or accredited private school; and 
(B) at least three years of successful education experience in a public LEA or accredited private school outside of Utah; and 
(d) completes additional requirements established by law or rule.

K. "Level 3 license" means a Utah professional educator license issued to an educator who:
(a) holds a current Utah Level 2 license; and 
(b) receives: 
(i) a Level of Authorization Certification; 
(ii) an endorsement:
(A) in:
(a) Early Childhood (K-3),
(b) Elementary (K-6),
(c) Secondary (6-12),
(d) Administrative/Supervisory (K-12),
(e) Career and Technical Education,
(f) School Counselor,
(g) School Psychologist,
(h) School Social Worker;
(i) Special Education (K-12),
(j) Preschool Special Education (Birth-4),
(k) Communication Disorders,
(l) Speech-Language Pathologist, and
(m) Speech-Language Technician.

License areas of concentration may also bear endorsements relating to subjects or specific assignments.

The endorsement shall be listed on the Professional Educator License indicating the specific qualification(s) of the holder.
NOTICES OF PROPOSED RULES

[A-71] All teachers in public schools shall hold a Utah educator license along with appropriate areas of concentration and endorsements.
[B-72] An LEA[s] shall receive assistance from the USOE Superintendent to the extent of resources available to have all teachers fully licensed.
[C-73] An LEA[s] is expected to hire teachers who are licensed or in the process of becoming fully licensed and endorsed.

(4) Failure to ensure that an educator has appropriate licensure may result in the USOE Board withholding all LEA funds related to salary supplements under Section 53A-17a-153 and R277-110 and educator quality under Subsection 53A-17a-107(2) and R277-486 until teachers are appropriately licensed pursuant to the Board's authority under Section 53A-1-401(6).

R277-520-4. Appropriate Licenses with Areas of Concentration and Endorsements.
[A-71] An educator assigned to teach a class in kindergarten through grade 3 shall hold:
[a] a current Utah Educator License with;
[b] an elementary (k-6) license area of concentration;
[c] for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education (birth-age 22) license area of concentration.

[B-72] An educator assigned to teach a class in grade 4 through grade 8 in an elementary setting shall hold a current Utah Educator License with:
[a] an elementary (k-6) or an elementary (1-8) license area of concentration;
[b] for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education (birth-age 22) license area of concentration.
[C-73] An elementary content specialist in Fine Arts or Physical Education shall hold a current Utah Educator License with an elementary or secondary license area of concentration with the appropriate K-12 content endorsement.
[D-74] An elementary content specialist in reading or English as a Second Language shall hold a current Utah Educator License with an elementary or secondary license area of concentration with the appropriate subject/content endorsement.
[E-75] An educator assigned to teach a class in grade 6 through grade 8, including middle-level, intermediate, and junior high schools, shall hold a current Utah Educator License with:
[a] an elementary (1-8) or a secondary (6-12) license area of concentration with the appropriate subject/content endorsement for all assigned courses;
[b] for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education (birth-age 22) license area of concentration with the appropriate subject/content endorsement for all assigned courses.

(F-76) An educator assigned to teach a class in grade 9 through grade 12 shall hold a current Utah Educator License with:
[a] a secondary (6-12) or a career and technical education license area of concentration with the appropriate subject/content endorsement for all assigned courses;
[b] for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education (birth-age 22) license area of concentration with the appropriate subject/content endorsement for all assigned courses.

[G-77] An educator assigned to serve preschool-aged students with disabilities shall hold a current Utah Educator License with a special education (k-12) license area of concentration.

[H-78] An educator assigned to serve preschool special education (birth-age 5) license area of concentration.

(I-79) An educator assigned to serve deaf and hard of hearing students shall hold:
[a] a current Utah Educator License with a special education (k-12) license area of concentration and deaf and hard of hearing endorsement; or
[b] a deaf education (birth-age 22) license area of concentration.

[J-80] An educator assigned to provide student support services as defined in Rule R277-506 shall hold a current Utah Educator License with the appropriate support service license area of concentration.

[K-81] An educator assigned as a school-based or LEA-based specialist shall hold a current Utah Educator License with the appropriate license area of concentration and endorsement as defined by the LEA.

[L-82] An educator assigned in an administrative position requiring an educator license, as defined by the district, shall hold a current Utah Educator License and an administrative/supervisory (k-12) license area of concentration.

[M-83] A superintendent of a school district may be licensed with a letter of authorization granted by the Board consistent with Section 53A-3-301.

[N-84] An educator assigned in an administrative position in a charter schools is exempt from this requirement consistent with Section 53A-1a-511.

R277-520-5. E minimence.
[A-81] The purpose of an eminence authorization is to allow individuals with exceptional training or expertise, consistent
with Subsection R277-520-4(4), to teach or work in the public schools on a limited basis.  

(2) Documentation of the exceptional training, skill[,] or expertise may be required by the [USOE] Superintendent prior to the approval of the eminence authorization.  

[3] Teachers with an eminence authorization may teach no more than 37[-percent]% of the regular instructional load except as provided in R277-520-5(4).  

[4] In identified circumstances, teachers with an eminence authorization may teach more than 37[-percent]% of the regular instructional load.  

(5) The Board may approve [A] an eminence authorization [may be approved by the Board] if:  

(i) the LEA shall submit the following documented information to the [USOE] Superintendent annually:  

(a) the description;  

(b) the recruitment efforts;  

(c) the qualifications of all applicants; and  

(d) the LEA's rationale for hiring the individual[s];  

(3) the [USOE] Superintendent shall review the information within 15 days of receipt[4];  

(c) the [USOE] Superintendent shall notify the individual and the LEA if the [USOE] Superintendent approves the documented information[4];  

(d) the LEA shall submit a request for a Letter of Authorization to the Board for the individual through normal administrative procedures; or  

(ii) the qualifications of all applicants; and  

(iii) the LEA's rationale for hiring the individual.  

(b) the [USOE] Superintendent shall review the information within 15 days of receipt[4];  

(c) the [USOE] Superintendent shall notify the individual and the LEA if the [USOE] Superintendent approves the documented information[4];  

(d) the LEA shall submit a request for a Letter of Authorization to the Board for the individual through normal administrative procedures.  

[7] An LEA[s] shall require an individual teaching with an eminence authorization to have a criminal background check consistent with Section 53A-3-410[4] prior to employment by the LEA.  

[8] The LEA that employs the teacher with an eminence authorization shall determine the amount and type of professional development required of the teacher.  


(10) An eminence authorization[s] may apply to:  

(a) an individual[s] without a teaching license[s]; or  

(b) an unusual and infrequent teacher situation[s] where a license-holder is needed to teach in a subject area for which the license-holder is not endorsed, but in which the license-holder may be eminently qualified.  

R277-520-6. Routes to Appropriate Endorsements for Teachers.  

[1] An educator may add an endorsement to an existing license area of concentration by completing the endorsement requirements established by the [USOE] Board.  


[4] An [4]educator[s] shall be properly endorsed consistent with Section R277-520-3 or have a [USOE] Board-approved SAEP[4]. Otherwise, the Board may withhold professional staff cost program funds pursuant to the Board's authority under Section 53A-1-401(3).  

R277-520-7. Board-Approved Endorsement Program (SAEP).  

[1] An educator assigned to teach in a subject for which the educator does not hold the appropriate endorsement and who has successfully completed at least nine[-2] semester credit hours of the endorsement requirements shall be placed on an SAEP as determined by the [USOE] Superintendent.  


[3] An SAEP may be granted for one two-year period and may be extended by the [USOE] Superintendent for up to two additional years if the individual has made progress toward completing the SAEP.  

[4] An individual currently participating in an SAEP is considered to hold the endorsement for the purposes of meeting the requirements of Section R277-520-4.  


[1] Educators qualified under any provision of this rule shall also satisfy the criminal background requirement of Section 53A-3-410 prior to unsupervised access to students.  

[2] If an LEA[s] does not appropriately employ and assign teachers consistent with this rule R277-520, the LEA may have state appropriated professional staff cost program funds withheld pursuant to R277-486, Professional Staff Cost Formula, pursuant to the Board's authority under Section 53A-1-401(3).  

KEY: educators, licenses, assignments  

Date of Enactment or Last Substantive Amendment: [July 8, 2015]

Notice of Continuation: May 15, 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(6); 53A-6-104(2)(a)
NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41786
FILED: 06/09/2017

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-531 is amended to remove a required provision in the public educator evaluation framework and provide for Board monitoring for a specific percentage of school districts.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-531 remove a component of the public educator evaluation framework that provides for the evaluation of provisional educators; and provide for the Utah State Board of Education to annually monitor 25% of school districts' evaluation systems.

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: Removing an evaluation requirement and specifying a percentage for school district monitoring purposes will likely not result in a cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: Removing an evaluation requirement and specifying a percentage for school district monitoring purposes will likely not result in a cost or savings to local government.
♦ SMALL BUSINESSES: This rule and the amendments to this rule apply to public education and will likely not result in a cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Removing an evaluation requirement and specifying a percentage for school district monitoring purposes will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Removing an evaluation requirement and specifying a percentage for school district monitoring purposes will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

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 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

AUTHORIZED BY: Angela Stallings, Deputy Superintendent, Policy and Communication
(1) "Educator" means an individual licensed under Section 53A-6-103 and who meets the requirements of Rule R277-502.
(2) "Educator Evaluation Program" means a school district's process, policies, and procedures for evaluating an educator's performance according to the educator's various assignments.
(3) "Formative evaluation" means an evaluation that provides an educator with information and assessments on how to improve the educator's performance.
(4) "Instructional quality data" means data acquired through observation of an educator's instructional practices.
(5) "Joint educator evaluation committee" means the local committee described under Section 53A-8a-403 that develops and assesses a school district evaluation program.
(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.
(7) "Summative evaluation" means an evaluation that 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.
(9) "Utah Effective Educator Standards" means:
(a) the Effective Teaching Standards established in Section R277-530-5;
(b) the Educational Leadership Standards established in Section R277-530-6; and
(c) the Educational School Counselor Standards established in Section R277-530-7.
(10) "Valid and reliable measurement tool" means an instrument that has proved consistent over time and uses non-subjective criteria that require minimal interpretation.

(1) The Board provides the public education evaluation framework described in this section, which includes general evaluation system areas and additional discretionary components required in a school district's educator evaluation system.
(2) A school district shall:
(a) have a joint educator evaluation committee;
(b) base the school district's educator evaluation system on the Utah Effective Educator Standards in Rule R277-530;
(c) establish and articulate performance expectations individually for all licensed school district educators;
(d) use valid and reliable measurement tools including, at a minimum:
(i) observations of instructional quality;
(ii) evidence of student growth;
(iii) parent and student input; and
(iv) other indicators as determined by the school district;
(e) provide an annual rating of educator performance using uniform statewide terminology and definitions, and include summative and formative components;
(f) direct the revision or alignment of all related school district policies, as necessary, to be consistent with the school district Educator Evaluation System;
(g) use valid, reliable, and research-based measurements that shall:
(i) employ a variety of measurement tools;
(ii) measure student growth for educators;
(iii) provide evaluation for non-instructional licensed educators and administrators; and
(h) provide both formative and summative evaluation data.
(3) A school district may consider data gathered from tools to inform decisions about employment and professional learning.
(4) A school district shall discuss and protect the confidentiality of educator data in the evaluation process.
(5)(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; and
(b) A school district evaluation system shall provide for timely discussion with evaluated educators to include professional growth plans as required in Rule R277-500 and evaluation conferences.
(6) A school district evaluation system shall provide support for instructional improvement, including:
(a) assessing the professional learning needs of educators; and
(b) 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.
(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.
(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.
(10) A school district evaluation system shall provide for the evaluation of all provisional educators, as defined by the school district under Section 53A-5a-405, at least twice yearly.
(c) other measures as determined by the school district, including data required from student or parent input.

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

(13) 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).

(14) A school district may include additional components in its evaluation system.

(15) 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.

(16) A school district shall report educator effectiveness data to the Superintendent annually, on or before June 30.


The Superintendent, under supervision of the Board, shall:

(1) develop a model educator evaluation system that includes performance expectations consistent with this rule;

(2) evaluate and recommend tools and measures for use by school districts as they develop and initiate their local educator evaluation systems; and

(3) annually monitor [a]25% of the school district's evaluation systems.

R277-531-5. Compensation.

(1) A school district shall implement an employee compensation system, no later than the 2018-19 school year, that is aligned to the school district's educator evaluation system.

(2) An educator's annual advancement on an adopted salary schedule shall be based primarily upon an evaluation system that differentiates among four levels of performance as described in Section 53A-8a-405 and R277-533, unless the educator:

(a) is a provisional educator; or

(b) is in the first year of an assignment, including a new subject, grade level, or school.

KEY: educators, evaluations, requirements
Date of Enactment or Last Substantive Amendment: [January 40, 2017]
Notice of Continuation: August 15, 2016
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(a)(i); 53A-1-401

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41787
FILED: 06/09/2017

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-533 is amended as a result of the passage of H.B. 231 from the 2017 General Session.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-533 eliminate certain prescriptive requirements from the rule to give school districts more flexibility over their educator evaluation systems.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Title 53A, Chapter 8a, Part 4

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Removing prescriptive requirements from the rule to provide more flexibility to school districts will likely not result in a cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: Removing prescriptive requirements from the rule to provide more flexibility to school districts will likely not result in a cost or savings to local government.
♦ SMALL BUSINESSES: This rule and the amendments to this rule apply to public education and will likely not result in a cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Removing prescriptive requirements from the rule to provide more flexibility to school districts will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Removing prescriptive requirements from the rule to provide more flexibility to school districts will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the 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 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

R277.  Education, Administration.
R277-533-1.  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) Title 53A, Chapter 8a, Part 4, Educator Evaluations, which requires the Board to make rules to establish a framework for the evaluation of educators and set policies and procedures related to educator evaluations; 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) specify the requirements for district Educator Evaluation Systems Policies;
(b) describe the required components of district Educator Evaluation Systems; and
(c) establish requirements for how the Annual Summative Educator Evaluation Rating is reported.


(1) "Administrator" has the same meaning as that term is defined in Section 53A-8a-102.

(2) "Certified rater" means an educator who has been trained in evaluating educator performance and has demonstrated competency in using an educator evaluation tool to rate educator effectiveness according to established standards.

(3) "Evaluator" has the same meaning as that term is defined in Section 53A-8a-402.

(4) "School district" includes the Utah Schools for the Deaf and the Blind.


(1) A local school board shall adopt a district educator evaluation system in consultation with a joint committee established by the local school board as described in Section 53A-8a-403.

(2) A district educator evaluation system shall:
(a) include the components required in Section 53A-8a-405;
(b) include the following four differentiated levels of performance:
(i) highly effective;
(ii) effective;
(iii) emerging/minimally effective; and
(iv) not effective;
(c) use multiple lines of evidence in evaluation, including:
(i) professional performance, as described in Section R277-533-4;
(ii) student academic growth, as described in Section R277-533-5;
(iii) stakeholder input, as described in Section R277-533-5; and
(iv) other indicators of professional improvement as required by the school district;
(d) require regular conferences between an educator and an evaluator;
(e) provide a process for an educator to contribute additional information to inform the educator's evaluation at several intervals throughout the process;
(f) measure an educator's professional performance when the educator is working in a professional capacity with students, parents, colleagues, or community members;
(g) provide a process for an educator to:
(i) analyze stakeholder input;
(ii) analyze data related to performance; and
(iii) develop appropriate responses to the information;
(h) provide a procedure to include an educator's response to stakeholder data in the rating calculation;
(i) provide a process for an evaluator to give an educator specific, measurable, actionable, and written direction regarding an educator's needed improvement and recommended course of action;
(j) provide a process for an educator to request a review of the implementation of the educator's evaluation, as described in:
(i) Section 53A-8a-406(2); and
(ii) Section R277-533-8;
(k) include multiple observations as described in Section R277-533-4; and
(l) provide a description of the methods for gathering, using, and protecting educator data.

(3) To form the school district's system, a local school board may adopt:
(a) the Utah Model Educator Evaluator System established by the Board;
(b) an adapted system; or
(c) a school district-developed system, consistent with Rules R277-530, R277-531, and this rule.


(a) professional performance;
(b) student academic growth;
(c) stakeholder input; and
(d) other indicators of professional improvement.

(2) A district educator evaluation system shall:
(a) include the components required in Section 53A-8a-405;
(b) include the following four differentiated levels of performance:
(i) highly effective;
(ii) effective;
(iii) emerging/minimally effective; and
(iv) not effective;
(c) use multiple lines of evidence in evaluation, including:
(i) professional performance, as described in Section R277-533-4;
(ii) student academic growth, as described in Section R277-533-5;
(iii) stakeholder input, as described in Section R277-533-5; and
(iv) other indicators of professional improvement as required by the school district;
(4) An educator is responsible for:
(a) improving the educator's performance, using resources offered by the school district; and
(b) demonstrating acceptable levels of improvement in any designated area of deficiency.

(1) A school district's system shall include observations.
(2) The school district shall use observation tools that:
(a) are aligned with the Utah Effective Educator Standards described in Rule R277-530 at the indicator level; and
(b) include multiple supervisor observations at appropriate intervals.
(3) A school district's evaluation system shall:
(a) include an orientation for all educators conducted by the principal or designee as required in Section 53A-8a-404;
(b) include multiple observation items;
(c) a final rating for each observation item described in Subsection (4)(b); and
(d) include an opportunity for an educator to contribute additional information to inform their rating at several intervals throughout the process.
(4) To ensure a valid evaluation system, a school district shall establish a school district rater reliability process that:
(a) creates standardized ratings established by a committee of expert raters to be used for rater professional development and certification;
(b) provides professional development opportunities to all raters and raters of licensed educators to:
(i) improve a rater or evaluator's abilities; and
(ii) give the rater or evaluator an opportunity to demonstrate the rater's abilities to rate an educator in accordance with the Utah Effective Educator Standards described in Rule R277-530;
(5) A school district shall establish a school district rater reliability plan that:
(a) require school district to compare a rater's decisions to standardized ratings established by a committee of expert raters;
(b) require a school district to measure a rater's skills and reassess the rater's skills at appropriate intervals to maintain system quality;
(c) designates qualified raters as certified;
(d) assures that an educator is rated by a certified rater;
(e) requires a school district to offer a rater opportunities to improve the rater's skills through instruction and practice; and
(f) maintaining high standards of rater accuracy.

R277-533-5. Student Academic Growth and Stakeholder Input.
(1) A school district shall ensure that a student academic growth measurement includes the following three required components:
(a) learning goals measuring long-term outcomes linked to the appropriate specific content knowledge and skills from the Utah Core Standards;
(b) assessments; and
(c) targets for incremental monitoring of student academic growth.
(2)(a) A school district's system shall include stakeholder input for educators, principals, and administrators, including annual input from students and parents.
(b) In addition to the stakeholder input described in Subsection (1)(b), stakeholder input for principals and other administrators shall include input from teachers and support professionals.
(3)(a) A school district's system shall:
(a) allow an educator to have an opportunity to respond to stakeholder input; and
(b) consider an educator's response described in Subsection (2)(a) as part of the educator's final rating.

(1) A school district shall base an educator's component ratings on:
(a) actual observations of the educator's performance; and
(b) educator, evaluator, student academic growth, or other stakeholder data gathered, calculated, or observed that is aligned with standards and rubrics.
(2) A school district shall report summative scores annually for all educators using the following approved terminology for rating:
(d) highly effective 3;
(c) effective 2;
(b) minimal/emerging effective 1; and
(a) not effective 0.

R277-533-7. Minimal or Emerging Effective Category.
If an evaluator rates an educator's performance within the minimal or emerging effective category, the rater shall:
(1) designate an educator as emerging effective if:
(a) the educator:
(i) holds a Level 1 educator license; or
(ii) is being served by the school district's Entry Years Enhancement (EYE) program described in Rule R277-522; or
(b) the educator:
(i) received a new or different teaching or leadership assignment within the last school year; or
(ii) is developing in that area; or
(2) designate an educator as minimally effective if the educator:
(a) holds a Level 2 educator license; and
(b) is teaching or leading in a familiar assignment.

(1) An educator who is not satisfied with a summative evaluation may request a review in writing of the summative evaluation within 15 calendar days after receiving the written summative evaluation.
(2) A school district shall conduct a review of an educator's summative evaluation:
(a) as described in this section; and
(b) the requirements of Section 53A-8a-406.
(3) A review described in Subsection (2) shall be conducted:
(a) by a certified rater:
(i) with experience evaluating educators; and
(ii) not employed by the school district; and
(b) in accordance with the Utah Effective Educator Standards described in Rule R277-530.

(4) A certified rater described in Subsection (3) shall:
(a) review:
(i) the school district's educator evaluation policies and procedures;
(ii) the evaluation process conducted for the educator;
(iii) the evaluation data from the professional performance, student growth, and stakeholder input components; and
(iv) an educator's written response, if submitted as described in Subsection 53A-8a-406(1)(b); and
(b) report the certified rater's findings, in writing, to the school district's superintendent for action.

(5) The school district shall determine if the initial educator evaluation was issued in accordance with:
(a) the school district's educator evaluation policies;
(b) the requirements of the performance standards;
(c) Title 53A, Chapter 8a, Public Education Human Resource Management Act;
(d) Rule R277-531; and
(c) this rule.

A school district shall report information described in Section 53A-8a-410 to the [Board]Superintendent annually on or before June 30 [the information necessary for the Board to make the report]to be included in the Superintendent's annual report as required by Section 53A-8a-410.

KEY: educators, evaluations
Date of Enactment or Last Substantive Amendment: [January 10, 12017]
Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-1-401

Education, Administration
R277-609-4
LEA Responsibilities to Develop Plans

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41788
FILED: 06/09/2017

RULE ANALYSIS

SUMMARY OF THE RULE OR CHANGE: The amendments to Section R277-609-4 revise the provision that allows physical restraint to be used in schools.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-11-1603 and Section 53A-15-603 and Section 53A-15-901 and Subsection 53A-1-402(1)(b)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Revising the provision that allows physical restraint to be used in schools consistent with state law will likely not result in a cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: Revising the provision that allows physical restraint to be used in schools consistent with state law will likely not result in a cost or savings to local government.
♦ SMALL BUSINESSES: Revising the provision that allows physical restraint to be used in schools consistent with state law will likely not result in a cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Revising the provision that allows physical restraint to be used in schools consistent with state law will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Revising the provision that allows physical restraint to be used in schools consistent with state law will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the 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 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

R277-609-4. LEA Responsibility to Develop Plans.

(1) An LEA or school shall develop and implement a board approved comprehensive LEA plan or policy for student and classroom management, and school discipline.

(2) An LEA shall include administration, instruction and support staff, students, parents, community council, and other community members in policy development, training, and prevention implementation so as to create a community sense of participation, ownership, support, and responsibility.

(3) A plan described in Subsection (1) shall include:
   (a) the definitions of Section 53A-11-910;
   (b) written standards for student behavior expectations, including school and classroom management;
   (c) effective instructional practices for teaching student expectations, including:
      (i) self-discipline;
      (ii) citizenship;
      (iii) civic skills; and
      (iv) social skills;
   (d) systematic methods for reinforcement of expected behaviors;
   (e) uniform methods for correction of student behavior;
   (f) uniform methods for at least annual school level data-based evaluations of efficiency and effectiveness;
   (g) an ongoing staff development program related to development of:
      (i) student behavior expectations;
      (ii) effective instructional practices for teaching and reinforcing behavior expectations;
      (iii) effective intervention strategies; and
      (iv) effective strategies for evaluation of the efficiency and effectiveness of interventions;
   (h) procedures for ongoing training of appropriate school personnel in:
      (i) crisis intervention training;
      (ii) emergency safety intervention professional development; and
      (iii) LEA policies related to emergency safety interventions consistent with evidence-based practice;
   (i) policies and procedures relating to the use and abuse of alcohol and controlled substances by students;
   (j) policies and procedures, consistent with requirements of Rule R277-613, related to:
      (i) bullying;
      (ii) cyber-bullying;
      (iii) harassment;
      (iv) hazing; and
      (v) retaliation;
   (k) policies and procedures for the use of emergency safety interventions for all students consistent with evidence-based practices including prohibition of:
      (i) physical restraint, subject to the requirements of Section R277-609-5, except when a student presents a danger of serious physical harm to self or others, or
      (ii) prone, or face-down, physical restraint;
      (iii) supine, or face-up, physical restraint;
      (iv) physical restraint that obstructs the airway of a student or adversely affects a student's primary mode of communication;
      (v) mechanical restraint, except:
         (A) protective or stabilizing restraints;
         (B) restraints required by law, including seatbelts or any other safety equipment when used to secure students during transportation; and
      (C) any device used by a law enforcement officer in carrying out law enforcement duties;
      (vi) chemical restraint, except as:
         (A) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority under State law, for the standard treatment of a student's medical or psychiatric condition; and
         (B) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under state law;
   (vii) seclusionary time out, subject to the requirements of Section R277-609-5, except when a student presents an immediate danger of serious physical harm to self or others; and
   (viii) for a student with a disability, emergency safety interventions written into a student's IEP, as a planned intervention, unless:
      (A) school personnel, the family, and the IEP team agree less restrictive means which meet circumstances described in Section R277-608-5 have been attempted;
      (B) a FBA has been conducted; and
      (C) a positive behavior intervention plan based on data analysis has been written into the plan and implemented.
   (l) direction for dealing with bullying and disruptive students;
   (m) direction for schools to determine the range of behaviors and establish the continuum of administrative procedures that may be used by school personnel to address the behavior of habitually disruptive students;
   (n) identification, by position, of an individual designated to issue notices of disruptive and bullying student behavior;
   (o) identification of individuals who shall receive notices of disruptive and bullying student behavior;
   (p) a requirement to provide for documentation of disruptive student behavior prior to referral of disruptive students to juvenile court;
   (q) strategies to provide for necessary adult supervision;
   (r) a requirement that policies be clearly written and consistently enforced;
   (s) notice to employees that violation of this rule may result in employee discipline or action;
   (t) gang prevention and intervention policies in accordance with Subsection 53A-15-603(1); and
   (u) provisions that account for an individual LEA's or school's unique needs or circumstances, including:
      (i) the role of law enforcement; and
      (ii) emergency medical services; and
      (iii) a provision for publication of notice to parents and school employees of policies by reasonable means.

NOTICES OF PROPOSED RULES
(4) A plan described in Subsection (1) may include:
(a) the provisions of Subsection 53A-15-603(2); and
(b) a plan for training administrators and school resource officers in accordance with Section 53A-11-1603.

KEY: disciplinary actions, disruptive students, emergency safety interventions

Date of Enactment or Last Substantive Amendment: [December 8, 2016] 2017
Notice of Continuation: October 14, 2016

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Education, Administration

R277-618

Educator Peer Assistance and Review Pilot Program (PAR Program)

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 41789
FILED: 06/09/2017

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-618 is repealed because the state law associated with this program has been repealed and the funding associated with this program has been discontinued.

SUMMARY OF THE RULE OR CHANGE: This rule provides criteria and procedures for participation in the PAR Program as required by Section 53A-8a-802. The state law associated with this program has been repealed, and the funding associated with this program has been discontinued. Consequently, Rule R277-618 is being repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-10-201

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Repealing Rule R277-618 will likely not result in a cost or savings to the state budget. The state law and funding for this program are no longer in place.
♦ LOCAL GOVERNMENTS: Repealing Rule R277-618 will likely not result in a cost or savings to local government. The state law and funding for this program are no longer in place.
♦ SMALL BUSINESSES: Repealing Rule R277-618 will likely not result in a cost or savings to small businesses. The state law and funding for this program are no longer in place.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Repealing Rule R277-618 will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. The state law and funding for this program are no longer in place.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Repealing Rule R277-618 will likely not result in any compliance costs for affected persons. The state law and funding for this program are no longer in place.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that repealing this rule will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the 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 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

R277. Education, Administration.

R277-618. Educator Peer Assistance and Review Pilot Program (PAR Program).

R277-618-1. Definitions.

A. “Board” means the Utah State Board of Education.
B. “Consortium” means more than one school district or a regional service center, consistent with Section 53A-3-429, composed of school districts.
C. “PAR joint panel” means the governing panel of a district’s Peer Assistance and Review Pilot Program composed of an equal number of teacher representatives and district administrators or their designees.
D. “School district” means a school district/ local board of education or a consortium of school districts, such as a Regional Service Center, authorized to participate in the PAR Program under Section 53A-8a-802.
E. Other definitions provided in Section 53A-8a-801.

R277-618-2. Authority and Purpose.

A. This rule is authorization by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-8a 802(3) which directs the...
Board to solicit proposals and award grants, establish criteria under Section 53A-8a-802 and specify procedures, criteria and reporting requirements under Section 53A-8a-802(8), and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide criteria and procedures for participation in the PAR Program as required by Section 53A-8a-802.

   A. Board Applications and Timelines
      (1) The Board shall solicit proposals and provide an application consistent with the purpose and criteria of Section 53A-8a-802 by June 15 annually.
      (2) The Board shall award grants to school districts or consortia on a competitive basis before July 1 annually.
      (3) In addition to R277-617-3A(2), the Board may give preference to school district/consortium applications that:
         (a) provide for matching local funds or resources;
         (b) agree to develop a teacher mentoring and remediation program that meets the standards set by Section 53A-8a-803;
         (c) has limited district personnel to operate a teacher assistance and mentoring program without grant assistance;
         (d) demonstrate the intent and potential resources to sustain the program over time based on pilot findings.
   B. The Board shall notify applicants that the funds come from a one-time appropriation, that subject to funds available, the Legislature intends to appropriate funds for a five-year period to the Board for the PAR Program. The funds will not lapse annually.

   A. School districts shall submit applications as directed by the Board.
   B. School district/consortium applications shall provide a budget for the use of funds consistent with Section 53A-8a-802.
   C. School districts shall use program funds consistent with Section 53A-8a-802 and 813.
   D. School districts shall implement programs with minimum components outlined under Section 53A-8a-803 and this rule.
   E. School district plans shall include a PAR joint panel selected consistent with Section 53A-8a-804.

R277-618-5. Reporting;
   A. School districts that receive program funds shall provide data and reports to the Utah State Office of Education as requested.
   B. The Board shall report to the Education Interim Committee as required under Section 53A-8a-802(7).

KEY: peer assistance, grants
Date of Enactment or Last Substantive Amendment: August 8, 2012
Authorizing and Implemented or Interpreted Law: Art X, Sec 3; 53A-10-202; 53A-10-202(4)(c); 53A-10-202(8); 53A-1-401(3)
repealing this rule will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSpected, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the 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 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

R277. Education, Administration.
R277-720-1. Definitions.
   A. "Board" means the Utah State Board of Education.
   B. "USOE" means the Utah State Office of Education.

   A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-1-401(2) which allows the Board to adopt rules in accordance with its responsibilities, by Section 53A-1-402(1)(b) which directs the Board to make rules and minimum standards regarding access to programs, and by Section 53A-1-402(1) which authorizes the Board to administer funds made available through programs of the federal government.
   B. The purpose of this rule is to specify the standards and procedures for child nutrition programs administered by the Board.

   A. The Board adopts the following laws and regulations found at the Utah State Office of Education Child Nutrition Section and law libraries and hereby incorporates them by reference:
      (1) the Richard B. Russell National School Lunch Act, 42 US 1751, et seq.;
      (2) the Child Nutrition Act of 1966, 42 US 1771, et seq.; and
      (3) the Emergency Food Assistance Act, 7 US 7501, et seq.
   B. The Board shall act in accordance with the following publications available from the USOE Child Nutrition Section:
      (1) Administrative Manual, NSLP/NSBP/SMP, 2010;
      (2) Administrative Manual, CACFP (FDCH), 2012;
      (3) Administrative Manual, Centers, 2012;
      (4) Code of Federal Regulations, Chapter 7;
      (5) state plans and agreements which are required and submitted under applicable federal law; and
      (6) guidance and instructions issued by USDA regarding laws and regulations identified in R277-720-3.

R277-720-4. Programs.
   The Board administers the following federal child nutrition programs:
      A. National School Lunch Program;
      B. School Breakfast Program;
      C. Special Milk Program;
      D. Child and Adult Care Food Program;
      E. Summer Food Service Program for Children;
      F. Food Distribution Program; and
      G. At Risk After School Snack Program.

KEY: school lunch program, nutrition
Date of Enactment or Last Substantive Amendment: May 8, 2012
Notice of Continuation: August 14, 2012
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1-402(1)(b); 53A-1-402(3)
R277-733. Adult Education Programs.
R277-733-2. Authority and Purpose.
   (1) This rule is authorized by:
   (a) Utah Constitution Article X, Section 3 which vests general control and supervision of public schools over school system to education in the Board;
   (b) Section 53A-15-401 which vests general control and supervision over adult education in the Board;
   (c) Subsection 53A-1-402(1), which allows the Board to adopt minimum standards for programs;
   (d) Section 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities to execute the Board's duties and responsibilities under the Utah Constitution and state law;
   (e) Section 53A-1-403.5(1), which vests the Board with responsibility to provide education to persons in the custody of Utah Department of Corrections.

   (1) "Adult" means an individual 18 years of age or over.
   (2) "Adult education" means organized educational programs below the collegiate/postsecondary level, other than regular full-time K-12 secondary education programs;
      (a) provided by LEAs or nonprofit organizations;
      (b) affording opportunities for individuals having demonstrated both presence and intent to reside within the state of Utah;
      (c) provided for who are out-of-school youth (16 years of age and older) or adults who have or have not graduated from high school;
      (d) provided to improve their literacy levels and to further their high school level education.
   (3)(a) "Adult Basic Education" or "[4]ABE[4]" means a program of instruction at or below the 9-12 academic grade level which prepares for adults for advanced education and training who lack competency in reading, writing, speaking, problem solving or computation at a level that substantially impairs their ability to find or retain adequate employment that will allow them to become employable, contributing members of society and preparing them for advanced education and training;
      (b) [The instruction in ABE is designed to help adults by:
         (1) increasing their independence;
improving their ability to benefit from occupational training; increasing opportunities for more productive and profitable employment; and making them better able to meet adult responsibilities.

"Adult Education and Family Literacy Act" or "AEFLA" means Title II of the Workforce Investment Act (WIA) of 1998. "Innovation Opportunity Act of 2014," which provides the principle source of federal support for adult basic and literacy education programs for adults who lack basic skills, an Adult Education Secondary Diploma or its equivalency, or proficiency in English;

(a) academic instruction and education services below the post-secondary level that increase an adult education student's ability to read, write, and speak in English, and perform mathematics or other activities necessary for the attainment of a secondary diploma or its recognized equivalent; and

(b) transition to post-secondary education, training, and employment.

"Adult High School Completion" or "AHSC" means a program of academic instruction at the 9.0 grade level or above in Board-approved subjects for eligible adult education students who are seeking an Adult Education Secondary Diploma from an adult education program.

"Board" means the Utah State Board of Education.

"Community-Based Organization (CBO)" means a nonprofit organization:

(1) eligible for and accepting federal AEFLA funds; and

(2) for the sole purpose of providing adult education services to qualified adult education learners.

(3) All rules and laws that apply to LEAs shall also apply to CBOs that receive adult education funding.

(4) CBOs:

(a) apply to the USOE;

(b) receive adult education funding through a competitive process; and

(c) receive USOE funding on a reimbursement basis only.

"Consumable items" means student workbooks, student packets, computer disks, pencils, papers, notebooks, and other personal items for which a student retains ownership during the course of study.

(6) "College and Career Readiness Plan" or "C3RP" means a plan developed by a student in consultation with adult education program counselors, teachers, and administrators that:

(a) is initiated at the time of entrance into an adult education program;

(b) identifies a student's skills and objectives;

(c) identifies a career pathway strategy to guide a student's course selection; and

(d) links a student to post-secondary education, training, or employment using a program-defined adult education transition process.

"Desk monitoring" means the monthly review of UTopia data to ensure program integrity.

"Eligible adult education student" means an individual who provides documentation that his primary and permanent residency is in Utah, and:

(1) is 17 years of age or older, and whose high school class has graduated;

(2) is under 18 years of age and is married;

(3) has been emancipated or adjudicated as an adult;

(4) is an out-of-school youth 16 years of age or older who has not graduated from high school and who:

(A) is basic skills deficient;

(B) does not have a secondary school diploma, its recognized equivalent, or an equivalent level of education;

(C) is an ELL;

(b) A non-resident may be treated as an eligible adult education student in accordance with an individual agreement between an eligible provider and another state.

(5) "Eligible Provider" may include:

(a) an LEA;

(b) a community-based or faith-based organization;

(c) a voluntary literacy organization;

(d) an institution of higher education;

(e) a public or private non-profit agency;

(f) a library;

(g) a public housing authority;

(h) a non-profit institution not described in Subsections (a) through (g) that has the ability to provide adult education and literacy activities to eligible adult education students.

(i) a consortium or coalition of providers identified in Subsections (a) through (h); or

(i) a partnership between an employer and a provider identified in Subsections (a) through (i);

(j) a public agency;

(k) a private non-profit agency;

(l) an academic assessment establishing an Entering Functioning Level;

(iii) a voluntary literacy organization;

(iv) a public library;

(v) a private non-profit agency; and

(vi) a public agency.

(10)(a) "Enrollee" means an adult student who has:

(i) 12 or more contact hours in an adult education program during a fiscal year;

(ii) an academic assessment establishing an Entering Functioning Level;

(iii) [has] an adult education [Student Education Occupation Plan (SEOP)] CCRP with an established goal and a defined funding code.

(b) An "Enrollee" enrollee's status is based on the last date that [all of the above] were entered into UTopia.

(11) "English Language Learner" or "ELL" means an individual:

(a) who has limited ability in reading, writing, speaking, or comprehending the English language and whose native language is a language other than English, or

(b) who lives in a family or community where a language other than English is the dominant language.

(12)(a) "Fee" means any charge, deposit, rental, or other mandatory payment, however designated, whether in the form of money or goods.

(b) Admission fees, transportation charges, and similar payments to third parties are fees if the charges are made in connection with an activity or function sponsored by or through an adult education program.
(c) All fees are subject to approval by \[the local school board of education or local board of trustees\] an eligible provider's governing board.

(2) N. "General Educational Development (GED) preparation" means a program that provides instruction in five specific subject areas for eligible adult education students who seek a Utah High School Completion Diploma by successfully passing all five GED Tests.

O. "General Educational Development (GED) Testing" means the test required under R277-702.

(13) "High School Equivalency Exam" or "HSE" means a Board approved examination whose modules are aligned with current high school core standards and adult education College and Career Readiness standards.

P. "LEA" means a local education agency, including local school boards and public school districts.

Q. "Measurable outcomes" means indicators of student achievement in adult education programs used for state funding purposes. These outcomes are described in R277-733-10.

R. "Northwest" means the Northwest Accreditation Commission, the regional accrediting association of which Utah is a member.

S. "TEOSL" means the Teachers of English to Speakers of Other Languages, or its successor organization.

T. "WPU" means the basic per pupil unit (WPU) and collected fees, or are pro-rated and credited to the adult education program for attendance in an adult education program.

(15) "Out-of-school youth" means a student 16 years of age or older who has not graduated and who is counted in the regular school program, receiving instruction in both a traditional and adult education program.

(b) The Superintendent shall pro-rate and provide a credit to an adult education program for funds generated for an other eligible adult education student, weighted pupil unit (WPU) and collected fees, or are pro-rated and credited to the adult education program for attendance in an adult education program.

(16) "Teachers of English to Speakers of Other Languages" or "TESOL(s)" means a credential for teachers of ESLELL students.

X. "Tuition" means the base cost of an adult education program that provides services to adult education students.

Y. "UTOE" means the Utah State Office of Rehabilitation.

Z. "Utah High School Completion Diploma" means a diploma issued by the Board and distributed by \[the GED Testing Centers as agents of the\] Board approved contractor to an individual who \[passes\] has passed all \[five\] subject areas, modules of the GED Tests at a Utah GED Testing Center.

AA. "Utopia" means the Utah Online Performance Indicators for Adult Education statewide database.

BB. "Waiver release form" means a form signed by an adult education student allowing for release of the student's CCRP and personal data and student education occupation plan, including social security number and [GED] HSE scores, for data matching purposes with [partners] agencies such as including:

(i) the Department of Workforce Services;
(ii) higher education institutions;
(iii) the Utah State Office of Rehabilitation; and
(iv) [GED Scoring Services] a Board approved HSE contractor.

(18) A "signed waiver release allows a student's education records to be shared with other adult education programs or interested agencies for the purpose of skill development, job training, career planning, or other purposes if specified in the waiver release form.

(20) "Weighted pupil unit" or "WPU" means the basic per pupil unit used to calculate the amount of state funds for which a school district is eligible.

R277-733-3. Federal Adult Education Funds.

[The Board adopts the Adult Education and Family Literacy Act (AEFLA), Title II of the Workforce Investment Act (WIA), Public Law. 105-220, 20 U.S.C. 1201 et seq., as incorporated by reference, and the related current state plan required under that statute.]

The Superintendent shall follow the standards and procedures contained in AEFLA and the WIOA state plan adopted by the Board pursuant to AEFLA to administer [governing] both federal and state funding of adult education programs administered by the USOE.

R277-733-4. Program Standards.

(1) Adult education programs shall comply with state and federal [requirements and Board rules] law and administrative regulations and follow the procedures [as defined][contained in the Utah Adult Education [Policy] Policies and Procedures Guide] published, updated, and available from the USOE.

(2) Adult education programs shall make reasonable efforts to:

(a) market and inform prospective students within their geographic areas of the availability of [the] adult education programs and
(b) provide enrollment information to prospective students.

(3)(a) Adult education programs may offer [Utah] adult education services [may be offered] to a qualifying individual\[s\] whose primary residence is located in communities closely bordering Utah if the student's circumstances are not conducive to commuting to the bordering state's closest adult education program.

(b) An adult education program shall not charge tuition to a student receiving services in accordance with Subsection (3)(a).

[These individuals shall not be charged out of state Adult Education tuition.]

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Adult education programs shall make reasonable efforts to schedule classes at sites and times that meet the needs of adult education students.

Each eligible adult education student shall have a written [Student Education Occupation Plan (SEOP)]/CCRP defining the student's goal[s] based upon:

(i) a complete academic assessment[s];

(ii) prior academic achievement[s];

(iii) work experience; and

(iv) an established [Entering Functioning Level] entering functioning level.

(b) Annually, the plan shall be reviewed by the [A designated program official shall review a student's plan and waiver release form annually with the student] and a designated program official and maintained in the student's file along with a signed data matching/agency sharing waiver release form.

(Only) Adult education staff shall only teach courses identified in R277-733-8 shall be taught by adult education staff.

G. Adult education programs shall establish and maintain a local adult education advisory committee consisting of representation from the Utah Department of Workforce Services, Vocational Office of Rehabilitation, higher education and other interested community members with the responsibility to advocate for exemplary adult education programs through collaboration and partnerships with businesses and other community agencies.

The USOE Superintendent shall evaluate programs for compliance through;

(a) tri-annual site monitoring visits[s];

(b) monthly desk monitoring[s]; and as needed.

(c) additional monitoring as needed [site visits or both, to ensure compliance.]

Education staff, including Adult education program staff [program administrators, teachers, instructors, and counselors shall be qualified and have appropriate qualifications for their assignments.

An eligible provider may consider a staff member's teaching certificate and endorsement [held by a staff member of an LEA or community-based program shall be important in evaluating the appropriateness of the [teacher's] staff member's assignment-but not controlling].

(b) Notwithstanding Subsection (9)(a) an eligible provider may assign staff members to teach in circumstances not generally covered by their teaching certificate and endorsement under appropriate circumstances, such as placing an[For instance, elementary teacher(s) may] to teach adult students who are performing academically at an elementary level in certain subjects.

(c) An individual[s] teaching an adult education high school completion class shall hold a valid Utah elementary or secondary education license and may issue adult education high school completion credits in multiple subjects.

(d) A non-licensed individual[s] providing instruction in [ESOL], ABE, [GED Test], [HSE] preparation, or AHSC classes shall instruct under the supervision of a licensed program employee.

A non-licensed individual[s], individual with a post-secondary degree[s] not in possession of a Utah teaching license may be considered for employment solely in an adult education program teaching adult students by obtaining an-
(10)(a) The Superintendent shall provide a competitive bidding process for an eligible provider to apply for federal adult education funds.

(b) The Superintendent shall only fund an eligible provider following an award under Subsection (10)(a) on a reimbursement basis.

(c) An eligible provider is subject to all laws and regulations regarding adult education funds, which are applicable to an LEA.

R277-733-6. Adult Education Program Student Eligibility.

A. An individual is eligible to be a Utah adult education student if

(1) the prospective adult education student is at least 16 years of age and the student's class has not graduated; or

(2) a prospective adult education student who is otherwise eligible provides proof of Utah residency as defined in adult education policy.

B. The following do not establish residency for purposes of adult education programs:

(1) mail addressed to occupant or resident;

(2) letters from friends or relatives;

(3) power of attorney documents;

(4) personal correspondence addressed to a post office box.

C. To be eligible for participation in an adult education program, a Utah resident shall be:

(1) an individual 17 years of age or older whose high school class cohort has graduated; or

(2) an individual emancipated under Section 78.3a 1005;

(3) an individual emancipated by marriage;

(4) an individual who is at least 16 years of age who has not graduated from high school and who is no longer enrolled in a K-12 program of instruction; or

(5) a student 16 to 19 years of age whose class has not graduated and who is attending adult education classes as an alternative to a traditional public education program.

D. Non-Utah residents from states bordering Utah seeking enrollment into an adult education program in Utah shall be considered resident Utah students consistent with individual agreements between the Utah Adult Education Program and the individual states bordering Utah.


[A.] (1) A[s] LEA district administered adult education program shall receive WPU funding for a student at the rate of 990 clock hours of membership per one weighted pupil unit (with part-time enrollment prorated by the LEA) for a student who is a resident of a Utah school district [who and] meets the following criteria:

[1] a student is at least 16 years of age but less than 19 years of age;

[2] has not received a high school diploma or a Utah High School Completion Diploma;

[3] intends to graduate from a K-12 high school;

and

[4] attends an [C-SEOP] CCRP meeting with his school counselor, school administrator[or designee, and parent[.] or legal guardian to discuss the appropriateness of the student's participation in adult education; or

(5) A district may additionally receive WPU funding for a student at the rate of 990 clock hours of membership per one weighted pupil unit for a resident student who meets the following criteria:

(a) A student is 19 years of age or older[; without]

(b) has not received a high school diploma but whose high school class has graduated[; who is a Utah resident[; and]

(c) who intends to graduate from a K-12 high school[;]

may, with parental/guardian consultation and written approval from all parties (if applicable), enroll in the state administered adult education program upon proof of Utah residency[; and]

(d) has written approval from all parties following consultation with the student's parent or guardian.

(2) Student attendance up to 990 clock hours of membership is equivalent to 1 FTE per year.

[B.] (3) The Superintendent shall prorate the clock hours of students enrolled part-time[ shall be prorated.]

[C.] (4) As an alternative, a district may generate equivalent WPLs [may be generated] for competencies mastered on the basis of prior authorization of a school district plan by the USOE[.]

[D.] (5)(a) For purposes of funding in an adult education program, a student can only be a pupil[.] A student may only be counted in average daily membership once on any day.

(b) If the student is part-time in the regular school program and part-time in the adult education program, a district shall report the student's membership[ shall be reported] on a prorated basis for each program.

(c) A district may not receive funding for [A] student [may not be funded] for more than one regular WPU for any school year.

[E.] (6) An out-of-school youth (minimum age of 16) who has not graduated from high school, may, with parental/guardian written approval (if applicable), school district administrative written approval and proof of Utah residency, if an eligible adult education student as specified in R277-733-3(8)(a)(iv) enroll in an adult education program:

[1] The district may not receive WPU funding for shall not be generated by the student's participation in an adult education program[;]

[2] This The student [shall] may be eligible for adult education state funding[;]

[3] This The student shall be presented with information prior to or at the time of enrollment in an adult education program that defines the consequences of the student's decision, including the following:

[i] The student may receive an Adult Education Secondary Diploma upon completion of the minimum required Carnegie units of credit as defined by the adult education program[;]

[ii] The student may earn a Utah High School Completion Diploma upon successful passing of all GED Tests or an HSE exam[;]

[iii] The student may, at the discretion of the LEA district, return to his regular high school prior to the time his class graduates with the understanding and expectation that all
necessary requirements for the traditional [K]-12 diploma shall be completed, provided that the student:

(i) is released from the adult education program;

(ii) has completed the requirements necessary for an Adult Education Secondary Diploma; and

(iii) has not successfully passed all five GED Tests an HSE exam and has not received a Utah High School Completion Diploma;

(4) The student may not [An out-of-school youth of school age who has received an Adult Education Secondary Diploma is not eligible to] return to a [K]-12 school after receiving an Adult Education Secondary Diploma;

(§) An out-of-school youth of school age who has received an Adult Education Secondary Diploma or a Utah High School Completion Diploma shall be reported as a graduate for [K]-12 graduation (AYP) outcomes.

(7) An out-of-school youth of school age may be considered eligible to The student may take the GED Test if all requirements as stated in R277-702, Procedures for Utah General Educational Development Certificate, are followed an HSE exam in accordance with the provisions of R277-702.

R277-733.8. Program, Curriculum, Outcomes and Student Mastery.

(1) The Utah Adult Education Program shall offer courses consistent with the Utah Core curriculum Elementary and Secondary General Core under R277-700.

(2) The Utah Core curriculum and teaching strategies core standards may be modified or adjusted to meet the individual needs of the adult education student.

(3) An LEA shall develop written course descriptions for AHSC required and elective courses shall be developed by LEA adult education programs for all education program classes taught, consistent with the Utah Core curriculum standards and Utah adult education curriculum college and career readiness standards, as provided by the USOE Superintendent.

(4) The Superintendent, in cooperation with eligible providers, shall develop written course descriptions for GED Test HSE exam preparation, ESOL ELL and ABE courses shall be developed cooperatively by LEAs, CBOs and the USOE based on Utah’s Core curriculum standards, modified for adult learners.

(5) Course descriptions shall contain adult education mastery criteria and shall stress mastery of adult life skill material consistent with Core objective standards and the Core curriculum.

(6) Course descriptions shall stress content mastery rather than completion of predetermined seat time in a classroom.

(7) Adult high school completion education shall include the following prerequisite courses:

(H) ESOL ELL competency AEFLA levels one through six; or

(A) ABE competency AEFLA levels one through four.

(7) AHSC courses for students seeking an Adult Education Secondary Diploma shall meet federal AEFLA AHSC Levels I and II competency requirements with a minimum completion of 24 credits consistent with core standards and adult education college and career readiness standards under the direction of a Utah licensed teacher as provided below in the Utah Adult Education Policies and Procedures Guide.

(1) Adult High School Core Courses, as offered consistent with Utah Core objectives:

(a) 24.0 units of credit required through satisfaction of a course of study by demonstrated course competency or LEA approved competency examination in correlation with the student’s SEOP career focus as defined in the following instructional areas:

(i) Language Arts: 4.0;

(ii) mathematics: 3.0 individualized mathematics courses to meet the life needs of adult learners;

(iii) science: 3.0 from the four science foundations of chemistry, biological science, earth science, or physics;

(iv) social studies: 3.0 including 1.0 in United States history, 50 in United States government and citizenship, 50 in geography, 50 in world civilizations, and 50 general financial literacy;

(v) arts: 1.50;

(vi) healthy lifestyles: 2.0 individualized courses meeting the life needs of adult learners that include: 25 to 1.50 health education, 25 to 1.50 individualized fitness for life courses;

(vii) career and technical education (CTE): 1.00;

(viii) information technology: 50 computer technology courses or successful completion of school district approved competency examination; and

(ix) electives: 6.0 units of credit.

(b) approved adult education credit options including continuous professional employment training required for a professional license; or

(c) documented achievement of a trade or skill;

(d) basic or advanced military training;

(e) apprenticeship, union or registered work credentials;

(f) successful passing score on all five GED Tests: academic credit for successfully passing all five GED Tests may only be applied toward an Adult Education Secondary Diploma if the proposed awarded units of credit were transferred by June 30, 2009;

(g) transcripted college or university courses as they align to the Core instructional areas.

(8) The USOE Adult Education Section and LEA programs Superintendent and eligible providers shall disseminate clear information regarding revised adult education graduation requirements.

(9) An Adult education student receiving education services in a state prison or jail education program may graduate with an Adult Education Secondary Diploma upon completion of the state required 24.0 units of credit required under R277-700 and;

(a) [satisfied through]-completed credits; or

(b) demonstrated course competency; or
(c) a Utah High School Completion Diploma with a successful passing score on all five of the GED Tests an HSE exam consistent with the student’s career focus.

(10) An eligible provider may modify Adult Education Secondary Diploma graduation requirements to meet unique educational needs of an adult student’s with:

(a) documented disabilities through Individual Education Plans (IEPs) from age 16 until the student’s 22nd birthday;

(b) an adult education or SEOP.

(11) A student’s IEP or adult education adult education shall document the nature and extent of modifications, substitutions, or exemptions made to accommodate the student’s disabilities.

(12) Modified graduation requirements for an individual student shall:

(1) a) be consistent with the student’s IEP or SEOP;

(2) b) be maintained in the student’s adult education files; and

(3) c) maintain the integrity and rigor expected for AHSC graduation.

(13) An LEA[s] shall establish policies allowing or disallowing adult education student participation in graduation activities or ceremonies.

(14) An adult education student may only receive an Adult Education Secondary Diploma earned through a designated Northwest accredited Utah adult education program as approved by the Board.

(15) An adult education program[s] shall accept credits and grades awarded to a student without alteration from other accredited state-recognized adult education programs accredited by the Board or eligible providers approved by the Superintendent.

(16) An adult education program[s] may establish reasonable timelines and may require adequate and timely documentation of authenticity for credits and grades submitted from schools or private providers.

(17) An LEA adult education program is the final decision-making authority for the awarding of credit and grades from non-accredited sources.

(18) An adult education program[s] shall provide instruction that allows a student to transition between sites in a seamless manner.

(19) An adult education program shall offer adult education student seeking a Utah High School Completion Diploma a course of academic instruction designed to prepare the student to take the GED Tests.

(20) The Superintendent shall award a Utah High School Completion Diploma if a student passes an HSE exam.

(21) Notwithstanding [4], receipt of the Utah High School Completion Diploma does not end entitlement a student may still be entitled to a free appropriate public education for a student eligible for special education under IDEA requirements.
An eligible provider receiving state or federal adult education funds shall provide annual written assurances on a form approved by the Superintendent that funds are used solely and specifically for adult education programming; and
(3) not withheld and maintained in a general maintenance and operation fund.

An eligible provider shall spend all collected fees and tuition generated from the previous fiscal year in the adult education program in the ensuing program year.

(3) A district may not be used by an LEA in calculating carryover fund balance amounts.

(4) An eligible provider may not count collected fees and tuition as part of the program's award.

(5) An eligible provider receiving state or federal adult education federal ALEFA funds shall be distributed based on a competitive application.

The Superintendent shall distribute to an LEA recaptured LEA funds that are greater than allowable carryover amounts for the available supplemental funds.

An eligible provider may not count fees and tuition toward meeting federal matching, cost sharing, or maintenance of effort requirements related to the program's award.

R277-733-10. Allocation of Adult Education Funds.
(1) The Superintendent shall distribute adult education state funds to an LEA[s] offering adult education programs consistent with percentages defined in the Utah Adult Education Policies and Procedures Guide.

(a) Base amount distributed equally to each participating school district with a Board approved adult education plan and budget.

(b) Enroll student status students (not participants).

(c) Contact hours (instructional and non-instructional) for both education status students and participants.

(D) Adult Education Secondary Diplomas or Utah High School Completion Diplomas, whichever is awarded first.

(e) Enroll primary gains.

(f) Enroll adult education earned secondary credits.

(g) Educational support, to be distributed to

(2) The Superintendent shall distribute supplemental support to LEA adult education program[s] with no carryover funds, which receives less than one percent of the state allocation as indicated on the state allocation table that do not have any carryover funds.

(b) The Superintendent shall accept and process applications for supplemental funds annually between October 15 and October 31.

(c) An LEA receiving supplemental support shall use the awarded funds for special program needs or professional development, as determined by the Superintendent's evaluation of the LEA's written request and USOE evaluation of need and approval.

(d) An LEA may apply for the Any balance of supplemental funds may be applied for by all remaining eligible LEAs who may or may not have carryover funds for special program needs or professional development as determined by written request and USOE evaluation of need and approval.

(e) Following review of a written request submitted pursuant to Subsection (d), the Superintendent shall distribute funds based on need.

(f) The Superintendent shall add recaptured LEA funds that are greater than allowable carryover amounts to the available supplemental funds awarded to adult education programs based on the criteria defined in R277-733-10(a) through (e).

(1) An LEA shall maintain official records regarding an eligible adult education student in accordance with state retention schedules SD17-25 and SD 17-32.

(a) To validate student outcomes, programs shall maintain records for each program in perpetuity which clearly and accurately show for each student

(b) documentation of Utah residency, the student's initial managing program shall maintain documentation of Utah residency in the student's file in perpetuity;

(c) documentation of such proof shall be entered in the student's UTopia data record;

(d) copies of;

(e) transcripts, grade point average, previous reports, fiction, test results, professional credentials, licenses, and work experience.

(f) completed Core Curriculum surveys;

(g) releases of information requesting student record information and releases of student information to other requesting agencies;
NOTICES OF PROPOSED RULES  

(d) special education IEPs for students under the age of 22; and  
(e) outside psychological, psychiatric or medical documentation used in determining education program accommodations; and records of accommodations.]

[5] An eligible provider shall maintain records for each student [¶] to validate student outcomes annually[¶] in accordance with the Utah Adult Education Policies and Procedures Guide.[¶] The student's managing program shall maintain records for each program site which clearly and accurately show for each student:  
(1) signed or refusal to sign waiver or release form;  
(2) all assessment protocol sheets (pre- and post-tests) used to determine student's EFL and level gains; and  
(3) contact hours (both noninstructional and instructional) documentation.  

C. Audit.

[14] To ensure valid and accurate student data, all programs accepting [either] state or federal adult education funds, or both, shall enter and maintain student data in the UTopia data system.

[23] An eligible provider shall [¶] annually[¶] retain an independent auditor [¶] to:  
(a) audit student accounting records;[¶]  
(b) verify UTopia data entries; and  
(c) validate the cash controls over collection[s] of student fees.

[33] Reports of accuracy shall be completed and submitted to the LEAs boards, the CBOs' boards of trustees, and as appropriate, the local adult education program director, and the USOE.]

[43] An auditor retained pursuant to Subsection (4) shall submit a written report by September 15 annually to:  
(a) the eligible provider's governing board or board of trustees;  
(b) the Superintendent; and  
(c) the local adult education program director, if appropriate.

[53] The USOE shall receive the final auditor report from each adult education program by September 15 annually.

In the event of an audit finding of non-compliance with state or federal law, regulation, or policy, [¶] a program shall prepare and submit to the USOE a written corrective action plan for each audit finding by October 15 annually.  

[67] USOE adult education staff members are responsible for the USOE to monitor and assist program[s] in the resolution of corrective action plan[s].

[72] The Superintendent may recommend that the Board terminate [¶] a program's state or federal funding for failure to resolve audit findings [¶] may result in the termination of state or federal funding for both in accordance with R277-114.

[82] Independent audit reporting dates, forms, and procedures are available in the state of Utah Legal Compliance Audit Guide provided to the school districts and CBOs[¶] an eligible provider by the USOE in cooperation with the State Auditor's Office and published under the heading of APPC-5.

[92] USOE Adult Education program staff shall conduct tri-annual program reviews of each adult education program to ensure accuracy of program data and program compliance. Desk monitoring shall be completed with program directors throughout the program year. Additional informal monitoring or reviews or site visits may be conducted as necessary.

[103] Monitored programs shall prepare and submit to the USOE a written corrective action plan for each monitoring finding as requested by the USOE.

[113] A program's failure to resolve audit findings may result in the termination of state or federal funding or both as provided in R277-114, Corrective Action and Withdrawal or Reduction of Program Funds.

[118] The USOE may (¶) review for cause an eligible provider's[¶] school district or CBO[¶] records and practices for compliance with the law and this rule.


[¶] The [¶] State Workforce Development Board as a voting member, in accordance with WIOA.  

B. Adult education programs shall participate on or establish and maintain a local interagency advisory council consisting of a minimum of partner agencies including the Department of Workforce Services, the State Office of Rehabilitation, higher education, the Utah College of Applied Technology, industry and community representation, and other appropriate agencies with the purpose of supporting the mission of adult education in Utah:

[2] The Superintendent may assign Board staff to State Workforce Development Board WIOA committees to the purpose of implementation of the State's WIOA Unified Plan.


The Board may designate no more than two percent of the total legislative appropriation for adult education services to be used specifically by the USOE[¶] for oversight, monitoring, and evaluation of adult education programs and their compliance with law and [¶] this rule[¶] regulation.

KEY: adult education

Date of Enactment or Last Substantive Amendment: [¶] June 7, 2012[¶] 2017  
Notice of Continuation: October 5, 2012  
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-15-401; 53A-1-402(1); 53A-1-401(2); 53A-1-403.5; 53A-17a-119; 53A-15-404

Education, Administration

R277-735  
Corrections Education Programs
NOTICE OF PROPOSED RULE
(AMENDMENT)
DAR FILE NO.: 41792
FILED: 06/09/2017

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-735 is amended to update program standards and procedures following a review of the rule.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-735 update procedures for providing services, allocation of funds, fiscal procedures, and definitions. Technical and conforming changes are provided in accordance with the Rulewriting Manual for Utah.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Procedural changes and technical and conforming changes will likely not result in a cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: Procedural changes and technical and conforming changes will likely not result in a cost or savings to local government.
♦ SMALL BUSINESSES: Procedural changes and technical and conforming changes will likely not result in a cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Procedural changes and technical and conforming changes will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Procedural changes and technical and conforming changes will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the 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 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

AUTHORIZED BY: Angela Stallings, Deputy Superintendent, Policy and Communication
NOTICES OF PROPOSED RULES

B. "Adult Education and Family Literacy Act (AEFLA)" means Title II of the Workforce Investment Act (WIA) of 1998, which provides the principal source of federal support for adult basic and literacy education programs for adults who lack basic skills, an Adult Education Secondary Diploma or its equivalency, or proficiency in English.

C. "Adult High School Completion (AHSC)" means a program of academic instruction at the 9.0 grade level or above in Board approved subjects for eligible adult education students who are seeking an Adult Education Secondary Diploma from an adult education program.

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

E. "Community based organization (CBO)" means a nonprofit organization:
   (1) eligible for and accepting federal AEFLA funds; and
   (2) for the sole purpose of providing adult education services to qualified adult education learners.

   (a) apply to the USOE;
   (b) receive adult education funding through a competitive process; and
   (c) receive USOE funding on a reimbursement basis only.

F. "Custody" means the status of being legally in the control of another adult person or a public agency.

G. "Education Contracts funds" means funds appropriated annually by the Legislature to be used partly for corrections education.


I. "General Educational Development (GED) Testing" means the test required under R277-792.

J. "Inmate" means an offender who is incarcerated in state or county correctional facilities located throughout the state.

K. "SEOP/plan for college and career readiness" means a plan for students in grades 7-12 that includes:
   (1) all Board and LEA board graduation requirements;
   (2) the individual student’s specific course plan that will meet graduation requirements and provides a supportive sequence of courses consistent with identified post secondary training goals;
   (3) evidence of parent, student, and school representative involvement annually; and
   (4) attainment of approved workplace skill competencies.

L. "TESOL" means a credential for teachers of ESOL.

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

N. "UTopia" means the Utah Online Performance Indicators for Adult Education or "UTopia" means a statewide database for tracking adult education student progress and outcomes.


   [A] (1) The Board may contract to provide educational services for inmates with:
      (a) local school boards;
      (b) state post-secondary educational institutions;
      (c) other state agencies;
      (d) private providers recommended by a local school board; or
      (e) choosing to provide educational services for inmates.

      (2) A contract made in accordance with Subsection (1) shall be in writing and shall provide for:
         (a) services to students in an appropriate environment for student behavior and educational performance;
         (b) compliance with relevant Board standards;
         (c) program monitoring by the Superintendent in accordance with R277-733; and
         (d) coordination of services with non-custodial programs to enable an inmate in custody to continue the inmate's public school education with minimal disruption following discharge.

   (3) The respective responsibilities of the Board, local school boards, and other service providers for education shall be established by memoranda of agreement or contracts.

   (4) A school district may sub-contract with local educational service providers for the provision of educational services to students in custody.

   (5) Educational services shall be provided in the appropriate environment for the student’s behavior and educational performance.

   (6) Educational programs to which inmates are assigned shall meet the standards adopted by the Board for that type of program.

   (7) Educational services shall be monitored by the USOE in periodic review visits.

   (8) Educational services shall be sufficiently coordinated with non-custody programs to enable inmates in custody to continue their public school education with minimal disruption following discharge from custody.

   (9) Custodial status alone does not qualify an individual for services under the Individuals with Disabilities Act (IDEA), 20 U.S.C. Sec. 1400 et seq., amended in 2004.

   [B] (5) When a student inmate is transferred to a new program, the sending program shall update and finalize all school records in UTopia releasing the student's records as soon as possible after receiving notice of the transfer.

   (6) An educational service provider shall only disclose educational records of a student inmate if released, before or after release from custody, educational records shall only be available to consistent with the Family Education Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g. 34 CFR Part 99.

   (7) Corrections education programs shall adhere to the same overarching program standards and practices defined for all adult education programs, consistent with R277-733, unless otherwise noted herein.


   [A] (1) An [H]inmate[s] receiving educational services by or through a school district [become] shall be a student[s] of that school district for funding purposes.

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The Superintendent shall allocate [6] state corrections education funds [appropriated to the USOE for corrections education shall be allocated] to school districts on the basis of annual applications.

A program receiving [F] funds approved for a corrections education project[s] shall only expend funds [can be expended only] for the purposes described in the respective funding application.

Education Contracts funds used for corrections education shall be subject to Board accounting, auditing and budgeting rules and policies.

Ten percent or $50,000, whichever is less, of state funds designated for corrections education not expended in the current fiscal year may be carried over [deferred] and spent by a school district in the next fiscal year with written approval [by the USOE] from the Superintendent [and spent in the next fiscal year].

The Superintendent shall establish a timeline for submission and approval of [Requested and approved] school district budgets and carry over requests that show carry over funds shall be submitted for approval according to a time line and dates set by the USOE.

The USOE Superintendent may consider excess funds in determining [the] a school district's allocation for the next fiscal year.

The USOE Superintendent shall recapture [from] student districts' allocation for the next fiscal year.

The USOE Superintendent shall prorate the balance of the education contracts funds to school districts based upon [total student enrollments] counts as per the State Funding Program Outcome Measures (POM) report, provided by the Adult Education Program, used to determine adult education funding.

Program, Curriculum, Outcomes and Student Mastery.

Corrections education programs shall provide programs that allow students to transition between correctional sites in a seamless manner.

Programs shall be maintained in the student's files; and evaluation of corrections adult education funding shall be subject to Board accounting, auditing and reporting of the average number of state inmates receiving educational services from August 1 through March 1 of the prior school year.

Allocation of Education Contracts Funds Designated for Corrections Education.

Oversight, monitoring, evaluation, and reports:

The Board [Superintendent] may [designate or not allocate] more than four percent of the total legislative [E]ducation [E]contracts funding appropriated for adult corrections education [for USOE] administrative services.

The USOE Superintendent shall use [designated] funds allocated in accordance with Subsection (1) for oversight, monitoring, and evaluation of corrections adult education [programs and] program compliance with law and this rule.

The Superintendent shall annually calculate:

(a) the total number of incarcerated offenders in the custody of the Utah Department of Corrections; and,

(b) the percentage of incarcerated offenders housed in county jail; and,

(c) the percentage of incarcerated offenders housed at prison sites; shall be calculated each year.

Those percentages shall determine the percentages of Education Contracts funding designated for corrections education that is provided to school districts serving students in respective facilities.

The Superintendent shall use the calculations made under Subsection (3) to determine the allocation of education contracts funds to school districts.

An [E]ligible school district[s] shall receive a base amount of $10,000 for each [prison or county jail] correctional facility in which they provide services.

The Superintendent shall prorate the balance of the education contracts funds allocation [percentages shall be prorated] to [respectively] school districts based upon [total student enrollments] counts as per the State Funding Program Outcome Measures (POM) report, provided by the Adult Education Program, used to determine adult education funding.

Adult education UTopia data reporting from the average number of state inmates receiving educational services from August 1 through March 1 of the prior school year.

Programs, Curriculums, Outcomes and Student Mastery.

Corrections education programs shall provide programs that allow students to transition between correctional sites in a seamless manner.

Programs shall be maintained in the student's files; and evaluation of corrections adult education funding shall be subject to Board accounting, auditing and reporting of the average number of state inmates receiving educational services from August 1 through March 1 of the prior school year.

The superintendent shall prorate the balance of the education contracts funds to school districts based upon [total student enrollments] counts as per the State Funding Program Outcome Measures (POM) report, provided by the Adult Education Program, used to determine adult education funding.

Programs shall be subject to Board accounting, auditing and reporting of the average number of state inmates receiving educational services from August 1 through March 1 of the prior school year.

The Superintendent shall use the calculations made under Subsection (3) to determine the allocation of education contracts funds to school districts.

An [E]ligible school district[s] shall receive a base amount of $10,000 for each [prison or county jail] correctional facility in which they provide services.

The Superintendent shall prorate the balance of the education contracts funds allocation [percentages shall be prorated] to [respectively] school districts based upon [total student enrollments] counts as per the State Funding Program Outcome Measures (POM) report, provided by the Adult Education Program, used to determine adult education funding.

The Superintendent shall use the calculations made under Subsection (3) to determine the allocation of education contracts funds to school districts.

An [E]ligible school district[s] shall receive a base amount of $10,000 for each [prison or county jail] correctional facility in which they provide services.

The Superintendent shall prorate the balance of the education contracts funds allocation [percentages shall be prorated] to [respectively] school districts based upon [total student enrollments] counts as per the State Funding Program Outcome Measures (POM) report, provided by the Adult Education Program, used to determine adult education funding.

The Superintendent shall use the calculations made under Subsection (3) to determine the allocation of education contracts funds to school districts.

An [E]ligible school district[s] shall receive a base amount of $10,000 for each [prison or county jail] correctional facility in which they provide services.
K. Adult high school completion education is determined by the following prerequisite courses:

1. ESOL competency AEFLA levels one through six;

2. ABE competency AEFLA levels one through four.

L. AHSC courses for students seeking an Adult Education Secondary Diploma should meet the federal AEFLA AHSC Levels I and II competency requirements.

M. (3) An adult student[s] in custody seeking an adult high school diploma shall have the minimum credits defined in R277-705.

N. The courses shall be supervised by a Utah licensed educator.

(a) A district shall employ a qualified Utah licensed educator to teach corrections education courses.

R277-735-(78). Confidentiality.

[1. (A) The transcript[s] and diploma[s] prepared for any inmate[s] in custody shall:

(a) include the name of the contracted educational agency which also provides service to non-custodial offenders; and

(b) not include reference to the inmate's custodial status.

2. (a) A district or corrections education provider shall keep an inmate's education records which refer to custodial status, inmate court records, and related matters separate from permanent school records.

(b) A district shall destroy or seal an inmate's education records upon order of a court of competent jurisdiction.

C. Access to Student Records

(1) Staff who design and oversee individual student education plans shall have access to all appropriate records relevant to a student's education.

(2) Information obtained from student records remains the property of the supplying agency and shall be transferred or shared with other persons or agencies only consistent with 34 CFR 99.44.

(3) A district or corrections education provider may only provide access to education records in accordance with FERPA.

R277-735-(8)9. [Corrections Education Records and Audits] Adult Education Standards.

Corrections adult education programs shall meet program standards defined in R277-733-[4A, 5A and B] and the Utah Adult Education Policies and Procedures Guide.

KEY: public education, custody[4], inmates[2]

Date of Enactment or Last Substantive Amendment: [May 8, 2014]

Notice of Continuation: March 14, 2014

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-403.5; 53A-1-401(3)
COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the 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 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

R277. Education, Administration.
R277-753. LEA Reporting Requirements for Section 504 Students.

(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) Subsection 53A-17a-112(2)(a), which directs the Board to make rules for implementation of a reimbursement program for special education funds to address Section 504 accommodations.

(2) The purpose of this rule is to establish reporting requirements for LEAs providing Section 504 accommodations to students.

R277-753-1. Authority and Purpose.
(1) "Autism" means a disability of verbal, non-verbal or social interaction that substantially limits one or more major life activities and does not require specialized instruction under special education services.
(2) "Brain injury impairment" or "Concussion impairment" means a short term disability of the brain caused by an external physical force that substantially limits one or more major life activities, and which adversely affects a student's access to the student's education.
(3) "Hearing impairment" means a hearing disability that substantially limits one or more major life activities, which may require assistive technology but does not require specialized instruction under special education services.
(4) "Learning impairment" means a learning disability, which includes, but is not limited to, dyslexia, dysgraphia, and dyscalculia, that substantially limits one or more major life activities, but does not require specialized instruction under special education services.
(5) "Major bodily function impairment" means an impairment to any of the following functions that adversely limit a student's access to the student's education:
(a) immune system function;
(b) normal cell growth;
(c) genitourinary function;
(d) bladder function;
(e) brain function;
(f) circulatory function;
(g) endocrine function;
(h) lymphatic function;
(i) special sensory organ and skin function;
(j) digestive function;
(k) bowel function;
(l) neurological function;
(m) respiratory function;
(n) cardiovascular function;
(o) hemic function;
(p) musculoskeletal function; and
(q) reproductive function.
(6) "Medical impairment" means a disability that is chronic or acute in nature, which may be active or in remission, and which substantially limits one or more major life activities, including, but not limited to:
(a) allergies;
(b) asthma;
(c) attention deficit disorder or attention deficit hyperactivity disorder;
(d) chemical sensitivities;
(e) diabetes;
(f) epilepsy;
(g) a heart condition;
(h) hemophilia;
(i) lead poisoning;
(j) leukemia;
(k) cancer;
(l) arthritis;
(m) nephritis;
(n) rheumatic fever;
(o) sickle cell anemia;
(p) Tourette syndrome;
(q) HIV/AIDS; or
(r) an acquired brain injury adversely affecting a student's access to the student's education, which may result from health problems such as:
(i) an hypoxic event;
(ii) encephalitis;
(iii) meningitis;
R277-911. Secondary Career and Technical Education

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41794
FILED: 06/09/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-911 is amended to provide a new requirement in disbursement of funds, update definitions, and provide minor terminology changes.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-911 provide for school districts and charter schools that receive additional funding for career and technical education (CTE) programs to annually submit a memorandum of understanding (MOU) to the State Superintendent of Public Instruction; revised and new terms; and minor terminology changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-15-202

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Changes to procedures, definitions, and terminology in this rule will likely not result in a cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: Changes to procedures, definitions, and terminology in this rule will likely not result in a cost or savings to local government.
♦ SMALL BUSINESSES: Changes to procedures, definitions, and terminology in this rule will likely not result in a cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Changes to procedures, definitions, and terminology in this rule will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A provision in Rule R277-911 provides for withholding of funds from a school district or charter school for not submitting an MOU as required in this rule. If that were to happen, costs are too speculative to determine at this time. It is anticipated, however, that a school district or charter schools will comply with the requirements of this rule, so there will likely be no compliance costs for affected persons.
COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the 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 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

R277. Education, Administration.
R277-911. Secondary Career and Technical Education.
R277-911-1. 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-15-202, which allows the Board to establish minimum standards for CTE programs in the public education system; and
(d) Sections 53A-17a-113 and 53A-17a-114, which direct the Board to distribute specific amounts and percentages for specific CTE programs and facilitate administration of various programs.

(2) This rule establishes standards and procedures for LEAs seeking to qualify for funds administered by the Board for CTE programs in the public education system.

(1) "Aggregate membership" means the sum of all days in membership during a school year for:
(a) the student;
(b) the program;
(c) the school;
(d) the LEA; or
(e) the state.

(2) "Approved program" means a program annually approved by the Board through the consent calendar process that meets or exceeds the state program standards or outcomes for career and technical education programs.

(3) "Bureau of Apprenticeship and Training" means a branch office for apprenticeship administered by the United States Department of Labor and located in Salt Lake City.

(4)(a) "Career and technical education" or "CTE" means organized educational programs that:
(i) prepare individuals for a wide range of high-skill, high-demand careers;
(ii) provide all students with a seamless education system from public education to post-secondary education, driven by a Plan for College and Career Readiness; and
(iii) provide students competency-based instruction, hands-on experiences, and certified occupational skills, culminating in further education and meaningful employment.

(b) CTE areas of study include:
(i) agriculture;
(ii) business;
(iii) family and consumer sciences;
(iv) health science;
(v) information technology;
(vi) marketing;
(vii) skilled and technical sciences; and
(viii) technology and engineering education.

(5)(a) "CTE pathway" means a planned sequence of courses within a program of study to assure strong academic and technical preparation connecting high school coursework to work beyond high school.

(b) A CTE pathway ensures that a student will be prepared to take advantage of the full range of post-secondary options, including:
(i) on-the-job training;
(ii) certification programs; and
(iii) two- and four-year college degrees.

(6) "CIP code" means the Classification of Instructional Programs, a federal curriculum listing.

(7)(a) "Course" means an individual CTE class structured by state-approved standards and CIP code.

(b) An approved course may require one or two periods for up to one year.

(c) Courses may be completed by demonstrated competencies or by course completion.

(8)(a) "Entry-level" means a set of tasks identified and validated by workers and employers in an occupation as those of a beginner in the field.

(b) Entry-level skills are a limited subset of the total set of tasks performed by an experienced worker in the occupation.

(c) Competent performance of entry-level tasks enhances employability and initial productivity.

(9) "Extended year program" means CTE programs no longer than 12 weeks in duration, offered during the summer recess, and supported by extended-year or other CTE funds.

(10) "CTE Maintenance of Effort" or "MOE" means the expenditure plan outlined in Subsection R277-911-4(1).
NOTICES OF PROPOSED RULES

(1) "Program" means a combination of CTE courses that:
(a) provides the competencies for specific job placement or continued related training; and
(b) is outlined in the Plan for College and Career Readiness using all available and appropriate high school courses.

"Program completion" means the student completion of a sequence of approved courses, work-based learning experiences, or other prescribed learning experiences as determined by the Plan for College and Career Readiness.

(1) "Regional consortium" means the LEAs, applied technology colleges, colleges and universities within the regions that approve CTE programs.

(1) "Registered apprenticeship" means a training program that:
(a) includes on-the-job training in a specific occupation combined with related classroom training; and
(b) has approval of the Bureau of Apprenticeship and Training.

"Related training" means a course or program that is:
(a) directly related to an occupation;
(b) compatible with apprenticeship training;
(c) taught in a classroom; and
(d) approved by the Bureau of Apprenticeship and Training.

(1) "Scope and sequence" means the organization of all CTE courses and related academic courses into programs within the high school curriculum that lead to:
(a) specific skill certification;
(b) job placement;
(c) continued education; or
(d) training.

(1) "Skill certification" means a verification of competent task performance.

(1) "Weighted pupil unit" or "WPU" means the basic unit used to calculate the amount of state funds for which an LEA is eligible.

(1) "Work-based learning" means a student instructional program that:
(a) provides a student training by employment or other activity at a worksite;
(b) may take place at a place of business, a home, or a farm, and
(c) is supplemented by needed classroom instruction or teacher assistance.

(1) "Work-based learning" or "WBL" means a continuum of awareness, exploration, preparation, and training activities that combine structured learning and authentic work experiences implemented through industry and education partnerships.

R277-911-3. CTE Program Approval.

(1)(a) The Superintendent shall approve CTE programs based on verified training needs of the area and the competencies necessary to provide occupational opportunities for students.

(b) Programs are supported by a data base, including:

(i) local, regional, state, and federal manpower projections;
(ii) student occupational/interest surveys;
(iii) regional job profile;
(iv) advisory committee information; and
(v) follow-up evaluation and reports.

(2) LEA CTE directors shall meet the requirements specified in R277-911.

(3) Within available resources, instructional materials, including textbooks, reference materials, and media, shall reflect current technology, processes, and information for the CTE programs.

(4)(a) An LEA shall provide CTE guidance, counseling, and Board approved testing for students enrolled in CTE programs.

(b) An LEA shall develop a written plan for placement services with the assistance of local advisory committees, business and industry, and the Department of Workforce Services.

(c) An LEA shall develop a Plan for College and Career Readiness for all students, which shall include:
(i) a student's education occupation plans (grades 7-12), including job placement when appropriate;
(ii) all Board, local board and local charter board graduation requirements;
(iii) evidence of annual parent, student, and school representative involvement;
(iv) attainment of approved workplace skill incompetencies; and
(v) identification of a CTE post-secondary goal and an approved sequence of academic and CTE courses.

(5)(a) An LEA shall use curricula and instruction that is directly related to business and industry validated competencies.

(b) An LEA shall use a valid skill certification process to verify successful completion of competencies.

(c) An LEA shall provide instruction in proper and safe use of any equipment required for skill certification within the approved program.

(6) An LEA shall provide and safely maintain equipment and facilities, consistent with the validated competencies identified in the instruction standard and applicable state and federal laws.

(7)(a) Counselors and instructional staff shall hold valid Utah teaching licenses with endorsements appropriate for the programs they teach.

(b) Licenses and endorsements required under Subsection (7)(a) may be obtained through an institutional recommendation or through occupational and educational experience verified by the Board's licensure process.

(c) CTE program instructors shall keep technical and professional skills current through business and industry involvements in order to ensure that students are provided accurate state-of-the-art information.

(8) An LEA shall conduct CTE programs consistent with Board policies and state and federal laws and regulations on access that prohibit discrimination on the basis of:
(a) race;
(b) creed;
(c) color;
(d) national origin;
(e) religion;
(f) age;
R277-911-4. Disbursement and Expenditure of CTE Funds -- General Standards.

(1) To be eligible for state CTE program funds, an LEA shall first expend for CTE programs an amount equivalent to the regular WPU for students in approved CTE programs, grades nine through twelve, based on prior year aggregate membership in funded CTE programs, times the current year WPU value, less the amount for:
   (a) college and career awareness;
   (b) work-based learning; and
   (c) comprehensive counseling and guidance.

(2) An LEA may thereafter expend State CTE program funds only for approved CTE programs, grades nine through twelve.

(3) An LEA that does not meet MOE may be subject to a corrective action plan and potential reduction of funds or penalty in accordance with R277-114.

R277-911-5. Disbursement of Funds -- Added Cost Funds.

(1)(a) WPUs shall be allocated for the added instructional costs of approved CTE programs operated or contracted by an LEA.

(b) Programs and courses provided through [applied technology]technical colleges[c] and higher education institutions do not qualify for added cost funds except for specific contractual arrangements approved by the Board.

(2)(a) Computerized or manually produced records for CTE programs shall be kept by:
   (i) teacher;
   (ii) class; and
   (iii) [CIP]core code.

(b) Records described in Subsection (2)(a) shall show clearly and accurately the entry and exit date of each student and whether a student has been absent from a CTE class ten consecutive days.

(3) Added cost funds shall not be generated:
   (a) during bus travel;
   (b) until a student starts attending an approved CTE course;
   (c) when a student has been absent, without excuse, for the previous 10 days.

(4) Approved CTE programs shall receive funds determined by prior year hours of membership for approved programs.

(5) Allocations under this R277-911-5 are computed using grades nine through twelve aggregate membership in approved programs for the previous year with a growth factor applied to LEAs experiencing growth of one percent or greater in grades nine through twelve except as provided by R277-462 and R277-916.

(6) Added cost funds shall be used to cover the added CTE program instructional costs of LEA programs.

(7) An LEA that does not comply with the requirements of this Subsection may be subject to a corrective action plan and potential reduction of funds or penalty in accordance with R277-114.

R277-911-6. Disbursement of Funds -- Skill Certification.

(1) An LEA that demonstrates approved student skill certification may receive additional compensation.

(2)(a) To be eligible for skill certification compensation, an LEA shall show its student completer has demonstrated mastery of standards, as established by the Board.

(b) An authorized test administrator shall verify student mastery of the skill standards.

(3) The Superintendent may only disburse skill certification compensation if an approved skill certification assessment is developed for the program.

R277-911-7. Disbursement of Funds -- CTE Leadership Organization Funds.

(1) Participating LEAs sponsoring CTE leadership organizations shall be eligible for a portion of funds set aside for these organizations.

(2) Qualifying CTE leadership organizations shall be nationally chartered and include:
   (a) SkillsUSA (an association of Skilled and Technical Sciences Education students);
   (b) DECA (Distributive Education Clubs of America);
   (c) FFA (Future Farmers of America);
   (d) HOSA (Health Occupations Students of America);
   (e) FBLA (Future Business Leaders of America);
   (f) FCCLA (Family, Career and Community Leaders of America); and
   (g) TSA (Technology Students Association).

(3) Up to 1% of the state CTE appropriation for LEAs shall be allocated to eligible LEAs based on documented prior year student membership in approved CTE leadership organizations.

(4)(a) A portion of funds allocated to an LEA for CTE leadership organizations shall be used to pay the LEA’s portion of statewide administrative and national competition costs.

(b) An LEA shall use the remaining amount available for the LEA’s CTE leadership organization expenses.


(1) The Superintendent shall allocate WPUs for costs of administration of CTE programs as described in this section.
(2)(a) The Superintendent shall distribute Twenty (20) WPUs to a school district for costs associated with the administration of CTE.

(b) To qualify, a school district shall employ a minimum one-half time CTE director.

(3)(a) To encourage multidistrict CTE administrative services, the Superintendent shall distribute 25 WPUs to a school district that consolidates CTE administrative services with one or more other school districts;

(b) To qualify, a participating school district shall employ a full-time CTE director.

(4)(a) The Superintendent shall distribute Twenty-five (25) WPUs to a single charter school acting as fiscal agent, to provide CTE administrative services to at least 10 charter schools offering CTE pathways, grades 9-12.

(b) If more than 10 charter schools offer CTE pathways, the Superintendent shall distribute additional 5 WPUs for each additional charter school over 10.

(c) To qualify, the charter school acting as fiscal agent must employ a full-time CTE director.

(5)(a) A district or charter school receiving additional WPUs under Subsection (3)(a) or (4)(a) shall annually submit to the Superintendent a Memorandum of Understanding with each partnering district or school, which shall include:

(i) a scope of work to be performed by the full-time CTE director for each LEA or school involved;

(ii) provisions for sharing data under the agreement, including provisions for protecting the privacy of student education records under FERPA;

(iii) maintenance of effort requirements; and

(iv) other information as directed by the Superintendent.

(b) The Superintendent may withhold funds from a district or charter school under Rule R277-114 for failure to submit a memorandum of understanding as required by this rule.

(6)(a) The Superintendent shall distribute 10 WPUs to a small school district consisting of only necessarily existent small high school(s), where multi-district CTE administration is not feasible.

(b) To qualify, a small school district shall assign a CTE director to a minimum of part-time CTE administration.

(7) To qualify for 10, 20 or 25 CTE administrative WPUs as provided in this Subsections (1) through (5), a CTE director shall:

(a) hold or be in the process of completing requirements for a Education Leadership License Area of Concentration described in R277-505;

(b) have a non-educational endorsement in at least one career and technical area listed in Rule R277-518; and

(c)(i) have four years of experience as a full-time career and technical educator; or

(ii) complete a prescribed professional development program provided by the Superintendent within a period of two years following board appointment as an LEA CTE director.

(8) In addition to WPUs appropriated under Subsections (1) through (5), the Superintendent shall allocate funds to each approved high school as described in Subsections (5)(9) through (5)(16):

(9) The Superintendent shall distribute 10 WPUs to a high school that:

(a) conducts approved programs in a minimum of two CTE areas specified in Subsection R277-911-1(4)(b);

(b) conducts a minimum of twelve different state-approved CIP-coded CTE courses including at least one CTE pathway; and

(c) has at least one approved career and technical student leadership organization.

(10) Consolidated courses in small schools may count as more than one course as approved by the Superintendent.

(11) The Superintendent shall distribute 15 WPUs to a high school that:

(a) conducts approved programs in a minimum of three CTE areas specified in Subsection R277-911-2(4)(b);

(b) conducts a minimum of twelve different state-approved CIP-coded CTE courses including at least one CTE pathway; and

(c) has at least one approved CTE student leadership organization.

(12) The Superintendent shall distribute 20 WPUs to a high school that:

(a) conducts approved programs in a minimum of four CTE areas specified in Subsection R277-911-2(4)(b);

(b) conducts a minimum of twelve different state-approved CIP-coded CTE courses including at least two CTE pathways; and

(c) has at least two approved CTE student leadership organizations.

(13) Consolidated courses in small schools may count as more than one course as approved by the Superintendent.

(14) The Superintendent shall distribute 25 WPUs to a high school that:

(a) conducts approved programs in a minimum of five CTE areas specified in Subsection R277-911-2(4)(b);

(b) conducts a minimum of fifteen different state-approved CIP-coded CTE courses including at least two CTE pathways; and

(c) has at least three approved CTE student leadership organizations.

(15) Consolidated courses in small schools may count as more than one course as approved by the Superintendent.

(16) A maximum of one approved alternative high school, as outlined in Rule R277-730, per school district may qualify for funds under Subsection (12).

(b) LEAs sharing an alternative school shall receive a prorated share.

(17) Programs and courses provided through school district technical centers may not receive funding under this section.


(1) The Superintendent may award a maximum of forty WPUs for each school district operating an approved school district center.

(b) To qualify under the approved school district technical center provision, the school district shall:

(i) provide at least one facility other than an existing high school as a designated school district technical center;

(ii) employ a full-time CTE administrator for the center;
R277-911-10. Disbursement of Funds -- Summer CTE Agriculture Programs.
(1)(a) To receive state summer CTE agriculture program funds, an LEA shall submit to the Superintendent, an application for approval of the LEA's program.
(b) An LEA shall submit its application prior to the annual due date specified by the Superintendent each year.
(c) The Superintendent shall send notification of approval of an LEA's program within ten calendar days of receiving the application.
(2) A teacher of a summer CTE agriculture program shall:
(a) hold a valid Utah teaching license, with an endorsement in agriculture, as outlined in Subsection R277-911-3(7);
(b) develop a calendar of activities which shall be approved by LEA administration and reviewed by the Superintendent;
(c)(i) work a minimum of eight hours a day in the summer CTE agriculture program;
(ii) An LEA may approve exceptions which shall be reflected in the calendar of activities;
(d) not engage in other employment, including self-employment, which conflicts with the teacher's performance in the summer CTE agriculture program;
(e) develop and file a weekly schedule and a monthly report outlining accomplishments related to the calendar of activities with:
(i) the school principal;
(ii) the LEA CTE director; and
(iii) the Superintendent; and
(f) visit the participating students a minimum of two times during the summer program with a minimum average of four on-site visits to students.
(3) College interns may be approved to conduct summer CTE agriculture programs upon approval by the Superintendent.
(4) Students enrolled in the summer CTE agriculture program shall:
(a) have on file in the LEA office the student's Plan for College and Career Readiness goal related to agriculture;
(b) in conjunction with the student's parent or employer and the teacher, develop an individual plan of activities, including a supervised occupational experience program;
(c) have completed the eighth grade; and
(d) have not have graduated from high school.
(5)(a) The Superintendent shall collect data from the program and staff of each LEA to ensure compliance with approved standards.
(6)(a) The Superintendent shall allocate Summer CTE agricultural funding to each LEA conducting an approved program for a minimum of 35 students lasting nine weeks.
(b) An LEA may receive funding for no more than nine weeks or 35 students.
(7) An LEA operating a program with fewer than 35 students per teacher or for fewer than nine weeks may only receive a prorated share of the summer CTE agricultural allocation.
R277-911-11. Disbursement of Funds - Comprehensive Counseling and Guidance; College and Career Awareness, and Work-Based Learning Programs.
(1) The Superintendent shall distribute funds to LEAs consistent with Section 53A-17a-113.
(2) An LEA shall spend funds distributed for comprehensive guidance consistent with Subsection 53A-1a-106(2)
(b) and R277-462, which explain the purpose and criteria for student [education plans (SEPs) and -]Plan for College and Career Readiness.
(3) An LEA may spend funds allocated under this section to fund work-based learning programs consistent with Rules R277-915 and R277-916.
(4) An LEA may spend funds allocated under this section to fund College and Career Awareness programs consistent with Rule R277-916.

KEY: career and technical education

Date of Enactment or Last Substantive Amendment: [August 14, 2016][2017]
Notice of Continuation: August 14, 2012
Authorizing, and Implemented or Interpreted Law: Art X Sec
3; 53A-15-202; 53A-17a-113; 53A-17a-114

Education, Administration
R277-923
American Indian and Alaskan Native Education State Plan Pilot Program

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41795
FILED: 06/09/2017

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-923 is amended to include a pilot program created in H.B. 43 from the 2017 General Session.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-923 provide for four- and five-year American Indian and Alaskan Native Education State Plan Pilot Program grants.
R277. Education, Administration.
R277-923. American Indian and Alaskan Native Education State Plan Pilot Programs.
R277-923-1. 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-31-404, which provides that the Board
may make rules related to the pilot programs; 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 provide:
   (a) criteria for evaluating grant applications; and
   (b) procedures for:
      (i) a school district to apply to the Board to receive grant
money; and
      (ii) the review of the use of grant money.

(1) "American Indian and Alaskan Native concentrated
school" has the same meaning as that term is defined in Section
53A-31-402.
(2) "Program site" means the school where an LEA plans

(1) An LEA may apply for a grant described in Section
53A-31-404 by submitting an application to the Superintendent on
or before the last Friday in May.
(2) The Superintendent shall develop a grant application
and make the grant application available to LEAs that meet the
eligibility as an American Indian and Alaskan Native concentrated
school.

(1) The Superintendent shall award:
   (a) one American Indian and Alaskan Native Education
State Plan Pilot Program grant to an LEA to serve one or more
program sites for the five-year pilot program created in Subsection
53A-31-403(1); and
   (b) one grant to an LEA to serve one or more program
sites for the four-year pilot program created in Subsection 53A-31-
403(2).

(2) The Superintendent shall award the grant described in Subsection (1) to the LEA based on the following
criteria:
   (a) up to 20 points will be awarded based on the
percentage of American Indian and Alaskan Native students
enrolled in the program sites;
   (b) up to 15 points will be awarded based on the educator
recruiting and retention needs of the program sites;
   (c) up to 15 points will be awarded based on the strength
of the LEA's program design plan;
NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 41814
FILED: 06/14/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide a definition for "coating" that will apply generally to the Utah Air Quality rules. "Composite vapor pressure" and "VOC content" are defined to help the regulated community determine whether they are complying with the VOC content and vapor pressure limits in the rules.

SUMMARY OF THE RULE OR CHANGE: The rule defines "coating" with a definition that has been used by EPA and is similar to prior definitions used by the Division of Air Quality (DAQ). The definition for "coating" is currently included in each rule, but with this rule amendment it is being moved to the general definitions section. The rule defines "composite vapor pressure" as the sum of the partial pressures of the compounds defined as VOCs. The rule defines "VOC content" with an equation that can be used by regulated sources.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:
♦ LOCAL GOVERNMENTS: This rule amendment does not add any costs or savings to the local government because it is merely defining terms that are used throughout the Utah Air Quality rules. It does not add any substantive requirements for third parties.
♦ SMALL BUSINESSES: This rule amendment does not add any costs or savings to small businesses because it is merely defining terms that are used throughout the Utah Air Quality rules. It does not add any substantive requirements for third parties.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule amendment does not add any costs or savings to persons other than small businesses, businesses, or local government entities because it is merely defining terms that are used throughout the Utah Air Quality rules. It does not add any substantive requirements for third parties.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because this rule amendment does not add any substantive requirements for third parties.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses. This rule amendment does not add any costs or savings to businesses because it is merely defining terms that are used throughout the Utah Air Quality rules. It does not add any substantive requirements for third parties.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director

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

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

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

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

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

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

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

"Air pollutant" means a substance that qualifies as an air pollutant as defined in 42 U.S.C. Sec. 7602.

"Air Pollutant Source" means private and public sources of emissions of air pollutants.

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

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

"Ambient Air" means that portion of the atmosphere, external to buildings, to which the general public has access. (Section 19-2-102(4)).

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

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

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

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

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

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

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

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

"Carcinogenic Hazardous Air Pollutant" means any hazardous air pollutant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

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

1. Carbon monoxide;
2. Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated or established by Title VI of the Act, Stratospheric Ozone Protection;
3. Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act, Prevention of Accidental Releases.

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

"Clean Air Act" means federal Clean Air Act as found in 42 U.S.C. Chapter 85.

"Clean Air Act" means the federal Clean Air Act as found in 42 U.S.C. Chapter 85.
"Clean Coal Technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

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

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

"Coating" means a material that can be applied to a substrate and which cures to form a continuous solid film for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, caulks, maskants, inks, and temporary protective coatings.

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

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Composite vapor pressure" means the sum of the partial pressures of the compounds defined as VOCs.

"Condensable PM2.5" means material that is vapor phase at stack conditions, but which condenses and/or reacts upon cooling and dilution in the ambient air to form solid or liquid particulate matter immediately after discharge from the stack.

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

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

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

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

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

"Division" means the Division of Air Quality.

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

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

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

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

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

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

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

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

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

"EPA" means Environmental Protection Agency.

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

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

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

"Facility" means machinery, equipment, structures of any part or accessories thereof, installed or acquired for the primary purpose of controlling or disposing of air pollution. It does not include an air conditioner, fan or other similar device for the comfort of personnel.
"Filterable PM2.5" means particles with an aerodynamic diameter equal to or less than 2.5 micrometers that are directly emitted by a source as a solid or liquid at stack or release conditions and can be captured on the filter of a stack test train.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Salt Lake County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on December 2, 2015; and
(ii) Utah County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on December 2, 2015; and
(iii) Ogden City, effective on the date that EPA approves the maintenance plan that was adopted by the Board on December 2, 2015.

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

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

(1) routine maintenance, repair and replacement;
(2) use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;
(3) use of an alternative fuel by reason of an order or rule under section 125 of the federal Clean Air Act;
(4) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
(5) use of an alternative fuel or raw material by a source:
   (a) which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition; or
   (b) which the source is otherwise approved to use;
(6) an increase in the hours of operation or in the production rate unless such change would be prohibited under any enforceable permit condition;
(7) any change in ownership at a source
(8) the addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the director determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:
   (a) when the director has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Clean Air Act, if any, and
(b) the director determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

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

(a) the Utah State Implementation Plan; and

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

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

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

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

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

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

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

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

(a) Coal cleaning plants (with thermal dryers);
(b) Kraft pulp mills;
(c) Portland cement plants;
(d) Primary zinc smelters;
(e) Iron and steel mills;
(f) Primary aluminum or reduction plants;
(g) Primary copper smelters;
(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(i) Hydrofluoric, sulfuric, or nitric acid plants;
(j) Petroleum refineries;
(k) Lime plants;
(l) Phosphate rock processing plants;
(m) Coke oven batteries;
(n) Sulfur recovery plants;
(o) Carbon black plants (furnace process);
(p) Primary lead smelters;
(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants;
(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;
(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;
(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the federal Clean Air Act.

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

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

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

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

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

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

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

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

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

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

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

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

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.
(iv) It has not been relied on in issuing any permit under R307-401 nor has it been relied on in demonstrating attainment or reasonable further progress.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Regulated air pollutant" means any of the following:

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

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

(1) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.
(2) The director shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under section 409 of the Clean Air Act.

"Representative Actual Annual Emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of unit, (or a different consecutive two-year period within 10 years after that change, where the director determines that such period is more representative of source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the director shall:
(1) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State of Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and
(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

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

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

"Road" means any public or private road.

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

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

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

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

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

"Significant" means:
(1) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:
Carbon monoxide: 100 ton per year (tpy);
Nitrogen oxides: 40 tpy;
Sulfur dioxide: 40 tpy;
PM10: 15 tpy;
PM2.5: 10 tpy;
Particulate matter: 25 tpy;
Ozone: 40 tpy of volatile organic compounds;
"Solid Fuel" means wood, coal, and other similar organic material or combination of these materials.

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

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

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

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

"State" means Utah State.

"Temporary" means not more than 180 calendar days.

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

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

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

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

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

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

"VOC content" means the weight of VOC per volume of material and is calculated by the following equation in gram/liter (or alternately in pound/gallon):

\[
\text{Grams of VOC per Liter of Material} = \frac{W_s - W_w - W_{es}}{V_m}
\]

Where:

\[
W_s = \text{weight of volatile organic compounds}
\]

\[
W_w = \text{weight of water}
\]

\[
W_{es} = \text{weight of exempt compounds}
\]

\[
V_m = \text{volume of material}
\]

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

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

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

KEY: air pollution, definitions
Date of Enactment or Last Substantive Amendment: [August 4, 2016]2017
Notice of Continuation: May 8, 2014
Authorizing, and Implemented or Interpreted Law: 19-2-104(1) (a)

Environmental Quality, Air Quality
R307-304
Solvent Cleaning

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 41809
FILED: 06/14/2017

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to create a new rule that regulates industrial solvent cleaning operations and general solvent use. These activities were previously regulated under Rule R307-335. This new rule is being proposed to achieve further volatile organic compound (VOC) emissions reductions that are required by the Clean Air Act and the Serious Area PM2.5 requirements. (Editor's Note: The proposed amendment to Rule R307-335 is under Filing No. 41810 in this issue, July 1, 2017, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The proposed rule will contain the industrial solvent cleaning requirements that were previously found in Rule R307-335. The applicability threshold of this rule will also be lower than the previous version found in Rule R307-335. The rule will also provide a vapor pressure limit that can be used by regulated entities as an alternative to the VOC content limits in the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104
ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no anticipated costs or saving to the state budget because the rule is regulating solvent cleaning operations that use 55 gallons or more of VOC containing solvent products a year. This does not describe the state.
♦ LOCAL GOVERNMENTS: There are no anticipated costs or saving to local governments because the rule is regulating solvent cleaning operations that use 55 gallons or more of VOC containing solvent products a year. This does not describe local governments.
♦ SMALL BUSINESSES: There are no anticipated costs or saving to small businesses. Small businesses that use VOC containing solvent products for solvent cleaning operations and general solvent usage are likely already regulated under Rule R307-335. The content limits have not changed. Due to the lower threshold for applicability, more people may be regulated by this rule than are currently regulated under Rule R307-335. The cost per ton of emissions reduced for these additional sources will be about $4.36 per ton of VOCs removed.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will likely be no costs or savings to “other persons” because the applicability threshold is set at a level that is meant to exclude all hobbyists that are not part of a business or governmental entity.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs will be the same as they were when these requirements were originally included in Rule R307-335. The cost per ton of VOC emissions reduced as a result of this rule will be about $4.36. A greater amount of product used will result in a greater total cost.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses. This is because the source of any cost would be the difference in the price between compliant and non-compliant solvents. The difference in this cost is nominal. In addition to the nominal price difference, the rule provides more flexibility for sources to choose what type of solvent they would like to use. This is done in the form of a vapor pressure limit alternative that can be used in place of the nominal price difference, combined with the opportunity to use a wider variety of products, means that the rule amendment will not have a fiscal impact on businesses.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director

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R307-304-1. Purpose.
The purpose of R307-304 is to limit volatile organic compound (VOC) emissions from solvent cleaning operations.

(1) R307-304 applies to solvent cleaning operations within Box Elder, Cache, Davis, Salt Lake, Tooele, Utah or Weber counties.
(2) Before September 1, 2018, R307-304 applies to an owner or operator using 720 gallons or more a year of VOC containing solvent products.
(3) Effective September 1, 2018, R307-304 shall apply to an owner or operator using 55 gallons or more a year of VOC containing solvent products.

(1) The requirements of R307-304 do not apply to the operations that are regulated under R307-342 through R307-347 and R307-349 through R307-355.
(2) Shipbuilding and repair and fiberglass boat manufacturing materials.
(3) Operations that are exclusively covered by Department of Defense military technical data and performed by a Department of Defense contractor and/or on site at installations owned and/or operated by the United States Armed Forces are exempt from the requirements of R307-304.
(4) Janitorial cleaning.
(5) Graffiti removal.
(6) Waste solvent from analytical laboratories.
(7) Cleaning with aerosol products not greater than 16 fluid ounces.

The following additional definitions apply to R307-304:
Solvent cleaning means operations performed using a liquid that contains any VOC, or combination of VOCs, which is used to clean parts, tools, machinery, equipment and work areas. Cleaning operations include, but are not limited to, spraying, wiping, flushing, and purging.
“Janitorial cleaning” means the cleaning of building floors, ceilings, walls, windows, doors, stairs, bathrooms, office surfaces and equipment.

**R307-304-5. VOC Content Limits.**

(1) No person shall use solvent products with a VOC content greater than the amounts specified in Table 1, unless the owner or operator uses an add-on control device as specified in R307-304-7 or the alternative method in R307-304-S(2).

**TABLE 1**

<table>
<thead>
<tr>
<th>Solvent Cleaning Category</th>
<th>VOC Limit (lb/gal)</th>
<th>g/L</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coatings, adhesives and ink manufacturing</td>
<td>4.2</td>
<td>500</td>
</tr>
<tr>
<td>Electronic parts and components</td>
<td>4.2</td>
<td>500</td>
</tr>
<tr>
<td>Medical devices and pharmaceutical tools, equipment and machinery</td>
<td>6.7</td>
<td>800</td>
</tr>
<tr>
<td>General surface cleaning</td>
<td>5.0</td>
<td>600</td>
</tr>
<tr>
<td>Screening printing operations</td>
<td>4.2</td>
<td>500</td>
</tr>
<tr>
<td>Semiconductor tools, maintenance and equipment cleaning</td>
<td>6.7</td>
<td>800</td>
</tr>
</tbody>
</table>

(2) As an alternative to the limits in Table 1 and for all general miscellaneous cleaning operations, a person may use a cleaning material with a VOC composite vapor pressure no greater than 8 mm Hg at 20 degrees Celsius.

**R307-304-6. Work Practices.**

An owner or operator shall store used applicators and shop towels in closed fireproof containers.


(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on control system in accordance with the manufacturer recommendations and maintain an overall capture and control efficiency of at least 85%. The overall capture and control efficiency shall be determined using EPA approved methods, as follows:

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable;

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable;

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

**R307-304-8. Recordkeeping.**

(1) The owner or operator shall maintain records of the following:

(a) The VOC content or composite vapor pressure of the solvent product applied and

R307-335-1. Purpose.

The purpose of this rule is to limit volatile organic compound (VOC) emission from degreasing and solvent cleaning operations.
drainage facility may be external for applications where an internal type cannot fit into the cleaning system.

(3) Waste or used solvent shall be stored in covered containers.

(4) Tanks, containers and all associated equipment shall be maintained in good operating condition, and leaks shall be repaired immediately or the degreaser shall be shutdown.

(5) Written procedures for the operation and maintenance of the degreasing or solvent cleaning equipment shall be permanently posted in an accessible and conspicuous location near the equipment.

(6) If the solvent volatility is greater than 4.3 kPa (33 mm Hg or 0.6 psi) measured at 38 degrees C (100 degrees F), or if solvent is heated above 50 degrees C (120 degrees F), then one of the following control devices shall be used:
   (a) Freeboard that gives a freeboard ratio greater than 0.7;
   (b) Water cover if the solvent is insoluble in and heavier than water; or
   (c) Other systems of equivalent control, such as a refrigerated chiller or carbon adsorption.

(7) If used, the solvent spray shall be a solid fluid stream at a pressure that does not cause excessive splashing and may not be a fine, atomized or shower type spray.

R307-335-5. Open Top Vapor Degreasers.

Owners or operators of open top vapor degreasers shall, in addition to meeting the requirements of R307-335-4(3), (4) and (5),

(1) Equip the vapor degreaser with a cover that can be opened and closed without disturbing the vapor zone. The cover shall be closed except when processing work loads through the degreaser;

(2) Install one of the following control devices:
   (a) Equipment necessary to sustain:
       (i) A freeboard ratio greater than or equal to 0.75, and
       (ii) A powered cover if the degreaser opening is greater than 1 square meter (10.8 square feet),
   (b) Refrigerated chiller,
   (c) Enclosed design (cover or door opens only when the dry part is actually entering or exiting the degreaser),
   (d) Carbon adsorption system, with ventilation greater than or equal to 15 cubic meters per minute per square meter (50 cubic feet per minute per square foot) of air/vapor area when cover is open and exhausting less than 25 parts per million of solvent averaged over one complete adsorption cycle;

(3) Minimize solvent carryout by:
   (a) Racking parts to allow complete drainage,
   (b) Moving parts in and out of the degreaser at less than 3.3 meters per minute (11 feet per minute),
   (c) Holding the parts in the vapor zone at least 30 seconds or until condensation ceases,
   (d) Tipping out any pool of solvent on the cleaned parts before removal, and
   (e) Allowing the parts to dry within the degreaser for at least 15 seconds or until visibly dry.

(4) Spray parts only in or below the vapor level;

(5) Not use ventilation fans near the degreaser opening, nor provide exhaust ventilation exceeding 20 cubic meters per minute per square meter (65 cubic feet per minute per square foot) in degreaser open area, unless necessary to meet state and federal occupational, health, and safety requirements.

(6) Not degrease porous or absorbent materials, such as cloth, leather, wood or rope;

(7) Not allow work loads to occupy more than half of the degreaser's open top area;

(8) Ensure that solvent is not visually detectable in water exiting the water separator;

(9) Install safety switches on the following:
   (a) Condenser flow switch and thermostat (shuts off sump heat if condenser coolant is either not circulating or too warm); and
   (b) Spray switch (shuts off spray pump if the vapor level drops excessively, i.e., greater than 10 cm (4 inches).

(10) Open top vapor degreasers with an open area smaller than one square meter (10.8 square feet) are exempt from R307-335-5(2)(b) and (d).


Owners and operators of conveyorized degreasers shall, in addition to meeting the requirements of R307-335-4(3), (4) and (5), and R307-335-5(5):

(1) Install one of the following control devices for conveyorized degreasers with an air/vapor interface equal to or greater than two square meters (21.5 square feet):
   (a) Refrigerated chiller; or
   (b) Carbon adsorption system, with ventilation greater than or equal to 15 cubic meters per minute per square meter (50 cubic feet per minute per square foot) of air/vapor area when downtime covers are open, and exhausting less than 25 parts per million of solvent, by volume, averaged over a complete adsorption cycle.

(2) Equip the cleaner with equipment, such as a drying tunnel or rotating (tumbling) basket, sufficient to prevent cleaned parts from carrying out solvent liquid or vapor.

(3) Provide downtime covers for closing off the entrance and exit during shutdown hours. Ensure that down-time cover is placed over entrances and exits of conveyorized degreasers immediately after the conveyor and exhaust are shut down and is removed just before they are started up.

(4) Minimize carryout emissions by racking parts for best drainage and maintaining the vertical conveyor speed at less than 3.3 meters per minute (11 feet per minute).

(5) Minimize openings: Entrances and exits should silhouette work loads so that the average clearance (between parts and the edge of the degreaser opening) is either less than 10 cm (4 inches) or less than 10% of the width of the opening.

(6) Install safety switches on the following:
   (a) Condenser flow switch and thermostat - shuts off sump heat if coolant is either not circulating or too warm;
   (b) Spray switch - shuts off spray pump or conveyor if the vapor level drops excessively, i.e., greater than 10 cm (4 inches); and
   (c) Vapor level control thermostat - shuts off sump level if vapor level rises too high.

(7) Ensure that solvent is not visibly detectable in the water exiting the water separator.

(1) Exemptions: The requirements of R307-335-7 do not apply to aerospace, wood furniture, shipbuilding and repair, flat wood paneling, large appliance, metal furniture, paper film and foil, plastic parts, miscellaneous metal parts coatings and light autobody and truck assembly coatings, flexible packaging, lithographic and letterpress printing materials, fiberglass boat manufacturing materials, and operations that are exclusively covered by Department of Defense military technical data and performed by a Department of Defense contractor and/or on site at installations owned and/or operated by the United States Armed Forces.

(2) Operators of industrial solvent cleaning that emit 15 pounds of VOCs or more per day from industrial solvent cleaning operations, shall reduce VOC emissions from the use, handling, storage, and disposal of cleaning solvents and shop towels by implementing the following work practices:

(a) Covering open containers;

(b) Storing used applicators and shop towels in closed, fireproof containers, and

(c) Limiting VOC emissions by either:

(i) Using solvents (excluding water and solvents exempt from the definition of volatile organic compounds found in R307-101-2) with a VOC limit in Table 1; or

(ii) Installing an emission control system designed to have an overall capture and control efficiency of at least 85%.

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<td>Semiconductor, tools, maintenance and equipment</td>
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</tr>
</tbody>
</table>


(1) Determination of overall capture and control efficiency shall be determined using EPA approved methods, as follows:

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 61, Appendix M, Methods 204, 2014F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A 1, A 6, and A 7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

(2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-335-7(2)(c)(ii).

Environmental Quality, Air Quality
R307-343
Emissions Standards for Wood Furniture Manufacturing Operations

NOTICE OF PROPOSED RULE
(Proposed)
DAR FILE NO.: 41824
FILED: 06/14/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments to this rule strengthen the area source coating rules. These amendments will help further reduce Volatile Organic Compound (VOC) emissions and will be part of the upcoming Serious PM2.5 State Implementation Plan (SIP).

SUMMARY OF THE RULE OR CHANGE: The applicability threshold is reduced from 2.7 tons per year (tpy) potential to emit to the use of a combined 20 gallons or more of coating products and solvents combined. The definition of a coating is removed from the rule and added to the definitions in Rule R307-101, General Requirements. The coating categories are updated to current types of coatings used in the industry. The agency is also separating out the types of polyurethanes...
that currently fall under the topcoat or sealer category. The VOC limits for the two component polyurethanes are being slightly elevated from 0.9 to 1.0 lb VOC/lb solids. Canned aerosol coating products that are less than 22 fl. oz and used exclusively for touch-up or repair are now exempted. (Editor's Note: The proposed amendment to Section R307-101-2 is under Filing No. 41814 in this issue, July 1, 2017, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will be no impact on the state budget because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The state would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.
♦ LOCAL GOVERNMENTS: There will be no impact on local governments because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The local governments would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.
♦ SMALL BUSINESSES: There will be an impact on small businesses because the new rule applicability threshold will cause several small businesses to be regulated by the rule that were not regulated previously. The cost to these businesses will depend on how much material is used. These businesses will pay an estimated $2,616 per ton of VOC emissions removed from the air. The Division of Air Quality (DAQ) has considered methods of reducing the negative fiscal impact of the rule on small businesses in accordance with Subsection 63G-3-301(6) but cannot establish less stringent requirements, schedules, or deadlines; simplify compliance or reporting requirements; replace design standards with performance standards; or exempt small businesses from the proposed rule. This is because the rule is required by federal law to satisfy the Clean Air Act requirement to implement Best Available Control Measures in the manner prescribed by the PM2.5 Implementation Rule, See 42 U.S.C. 7513a (b)(1) and 40 CFR 51.1010(a)(1) through (5). The rule also helps prevent future violations of federal air quality standards. Although the rule is required to help prevent future air quality violations and comply with federal law, DAQ has taken steps to reduce the negative fiscal impact the rule may have on small businesses. The rule provides regulated sources with flexibility and potential cost saving alternatives in regard to compliance. This includes a vapor pressure limit, instead of a density-based limit, for solvents. The vapor pressure limit gives businesses greater flexibility as to the types of solvents they may use. The rule also includes the option to use an add-on control device that can be used as an alternative to meeting the content limits in the rule. These provisions give businesses flexibility to comply with the rule in the way that makes the most sense for them.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses, or local government entities will not be impacted by this rule because the rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for people who are affected by the rule will be about $2,616 per ton of VOC removed from the air.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY: The proposed rule may result in a fiscal impact to some businesses because the rule amendment changes the applicability threshold. The threshold is being changed from the "potential to emit 2.7 tons or more of VOC" to the "use of a combined 20 gallons or more" of product. This new threshold is meant to ensure that businesses that use coatings for wood furniture are regulated by Rule R307-343. Businesses that already have the potential to emit 2.7 tons or more of VOC are not impacted by the rule amendment. Therefore, the businesses most likely impacted by this amendment are small businesses that did not previously meet the applicability threshold of the rule.
II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The number of businesses that are impacted by this rule amendment is difficult to predict because there is no data on the quantity of regulated product used by each business in the relevant areas. The rule generally covers businesses that have the following NAICS Codes: 337122, Nonupholstered Wood Household Furniture Manufacturing; 337215, Showcase, Partition, Shelving, and Locker Manufacturing; 337121, Upholstered Household Furniture Manufacturing; 321999, All Other Miscellaneous Wood Product Manufacturing; 337211, Wood Office Furniture Manufacturing; 337110, Wood Kitchen Cabinet and Countertop Manufacturing; and 337127, Institutional Furniture Manufacturing. The Division used data from Utah's FirmFind database to determine that there are at least 330 total businesses and 317 small businesses that have these codes. Of those businesses, DAQ has determined that 191 sources may be impacted by the rule amendment.
III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The amendments to this rule will likely only have a fiscal impact on small businesses. Big businesses use more product and are already regulated under the current version of the rule. There are 191 small businesses that have been identified by DAQ as businesses that may be fiscally impacted by this rule amendment.
IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT

NOTICES OF PROPOSED RULES

Dar File No. 41824

104

OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: The rule amendment potentially impacts businesses that apply between 20 and approximately 1,200 gallons of regulated product annually. After speaking with industry experts, DAQ has determined that the source of the cost is an average $5 per gallon difference between compliant and non-compliant products. This means that businesses impacted by the rule will spend between $100 and $6,000 annually to comply with the rule. Most of the businesses impacted by the rule will be closer to the $100 amount on the spectrum. This is because the majority of businesses that are impacted by the amendment are small businesses with between 1 and 10 employees. They do not use large quantities of product. It is important to note that many large businesses that are closer to the 1,200 gallon threshold will likely not be impacted by the rule. This is because they may already be required to comply with the rule based on the fact that they have the potential to emit over 2.7 tons of VOC emissions. Some of the small businesses may also already be using compliant coatings and will not have any additional costs as a result of the rule amendment. Based on the 191 businesses identified by, the aggregate annual fiscal impact of the rule on all businesses in Utah will range between $19,100 and $1,146,000. Once again, the total cost will fall toward the lower end of the spectrum ($19,100) because of the size of the businesses and the likelihood that large businesses are already complying with the rule. These figures represent the continuing annual costs associated with the rule amendment. V. DEPARTMENT HEAD’S COMMENTS ON THE ANALYSIS: The above analysis represents DAQ’s best estimate as to the fiscal impact this rule amendment will have on businesses. If a company uses a greater quantity of product, then the rule amendment will cause a more significant fiscal impact. EPA has estimated the total cost of this type of regulation to be $2,616 per ton of VOC emissions. The purpose of R307-343 is to limit volatile organic compound (VOC) emissions from wood furniture manufacturing operations.

R307-343-2. Applicability. R307-343 applies to wood furniture manufacturing operations, including related cleaning activities, that have the potential to emit 2.7 tons or more per year of VOCs and that are a combined 20 gallons or more of coating products and associated solvents per year and are located in Box Elder, Cache, Davis, Salt Lake, Utah, Tooele, and/or Weber counties.

R307-343-3. Definitions. The following additional definitions apply to R307-343:

"Affected source" means a wood furniture manufacturing source that meets the criteria in R307-342-2.

"As applied" means the volatile organic compound and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Coating" means a protective, decorative, or functional material applied in a thin layer to a surface. Such materials may include paints, topcoats, varnishes, sealers, stains, washcoats, basecoats, ink, and temporary protective coatings.

"Compliant coating" means a finishing material or strippable booth coating that meets the emission limits specified in R307-342-4(f).

"Control system" means the combination of capture and control devices used to reduce emissions to the atmosphere.

"Conventional Air Spray" means a spray coating method in which the coating is atomized by mixing it with compressed air at an air pressure greater than ten pounds per square inch (gauge) at the point of atomization. Airless, air assisted airless spray technologies, and electrostatic spray technology are not considered conventional air spray.

"Finishing material" means a coating used in the wood furniture industry, including basecoats, stains, washcoats, sealers, and topcoats.

"Finishing Operation" means those activities in which a finishing material is applied to a substrate and is subsequently air-dried, cured in an oven, or cured by radiation.

"Sealer" means a finishing material used to seal the pores of a wood substrate before additional coats of finishing material are applied. A washcoat used to optimize aesthetics is not a sealer.
"Solids" means the part of the coating that remains after the coating is dried or cured; solids content is determined using data from EPA Method 24.

"Stain" means any color coat having a solids content by weight of no more than 8.0% that is applied in single or multiple coats directly to the substrate, including nongrain raising stains, equalizer stains, sap stains, body stains, no-wipe stains, penetrating stains, and toners.

"Topcoat" means the last film-building finishing material applied in a finishing system. Non-permanent final finishes are not topcoats.

"Touch-up and Repair" means the application of finishing materials to cover minor finishing imperfections.

"Washcoat" means a transparent special purpose coating applied in a finishing system. Non-permanent final finishes are not washcoats.

"Washoff operations" means those operations in which organic solvent is used to remove coating from a substrate.

"Wood furniture" means any product made of wood[9] that is manufactured under any of the following standard industrial classification codes: 2434, 2511, 2512, 2517, 2519, 2521, 2531, 2541, 2599, or 5712. This includes [*] wood products such as rattan or wicker[10] and engineered wood products such as particleboard that is manufactured under any of the following standard industrial classification codes: 2434, 2511, 2512, 2517, 2519, 2521, 2531, 2541, 2599, or 5712.

"Wood furniture manufacturing operations" means the finishing, cleaning, and washoff operations associated with the production of wood furniture or wood furniture components.

R307-343-4. VOC Content Limits.

[1] Each affected source subject to R307-343 shall limit VOC emissions by:

(a) Using the compliant coating method as described in R307-343 (4)(d)(ii) or using the control system method as described in R307-343 (4)(d)(iii).

(i) Compliant coating method is the use of the topcoats or topcoat/sealer combinations in Table 1. [1] No owner or operator shall apply coatings with a VOC content in excess of the amounts specified in Table 1, unless the owner or operator uses an add-on control device as specified in R307-343-6.

(b) Electrostatic application; and

(c) High volume, low pressure (HVLP) spray equipment.

(2) The limits in Table 1 do not apply to canned aerosol coating products less than 22 fl. oz. (0.66 liter) capacity and used exclusively for touch-up or repair.


(1) All coatings shall be applied using equipment having a minimum 65% transfer efficiency, except as allowed under R307-343-5(3) and operated according to the equipment manufacturer specifications. Equipment meeting the transfer efficiency requirement includes:

(a) Brush, dip, or roll coating;

(b) Electrostatic application; and

(c) High volume, low pressure (HVLP) spray equipment.

(2) Other coating application methods that achieve transfer efficiency equivalent to HVLP or electrostatic spray application methods may be used.

(3) Conventional air spray methods may be used under the following circumstances:

(a) To apply finishing materials that have no greater than 1.0 pound of VOC per pound of solids, as applied;

(b) For touch-up and repair under the following circumstances:

(i) The touch-up and repair occurs after completion of the finishing operation; or

---

**Table 1**

<table>
<thead>
<tr>
<th>Coating Category</th>
<th>VOC Content Limit (lb/gal)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Topcoat</td>
<td>0.4</td>
</tr>
<tr>
<td>Single component, non-catalyzed sealer</td>
<td>0.9</td>
</tr>
<tr>
<td>Single component, non-catalyzed topcoat</td>
<td>0.9</td>
</tr>
<tr>
<td>Acid -- cured single and 2 component sealer</td>
<td>1.2</td>
</tr>
<tr>
<td>Acid -- cured single and 2 component topcoat</td>
<td>1.0</td>
</tr>
<tr>
<td>2 component polyurethane topcoat</td>
<td>1.0</td>
</tr>
<tr>
<td>2 component polyurethane sealer</td>
<td>1.0</td>
</tr>
<tr>
<td>Cobalt peroxide cured polyester sealer/topcoat</td>
<td>1.0</td>
</tr>
<tr>
<td>Formaldehyde free acid catalyzed sealer/topcoat</td>
<td>1.0</td>
</tr>
<tr>
<td>Strippable spray booth coatings</td>
<td>0.8</td>
</tr>
</tbody>
</table>
(ii) The touch-up and repair occurs after the application of stain and before the application of any other type of finishing material, and the materials used for touch-up and repair are applied from a container that has a volume of no more than 2.0 gallons;  
(c) When the spray gun is aimed and [triggered] operated automatically, not manually;  
(d) When the emissions from the finishing application station are directed to a control device as specified in R307-343-6;  
(e) When the conventional air gun is used to apply finishing materials and the cumulative total usage of that finishing material is: no more than 10% of the total gallons of finishing material used during the calendar year; or  
(f) When the conventional air gun is used to apply stain on a part for which it is technically or economically infeasible to use any other spray application technology. The following criteria shall be used, either independently or in combination, to support the affected source's claim of technical or economic infeasibility:  
(i) The production speed is too high or the part shape is too complex for one operator to coat the part and the application station is not large enough to accommodate an additional operator; or  
(ii) The excessively large vertical spray area of the part makes it difficult to avoid sagging or runs in the stain.

(1) If an add-on control system is used, the owner or operator shall install and maintain an [incinerator, carbon adsorption, or any other] add-on emission control system, provided that the emission control system is operated and maintained in accordance with the manufacturer recommendations in order to and maintain at least 85% or greater capture and control efficiency.  
(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined using EPA approved methods, as follows.  
(1) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.  
(b) The work practices for cleaning materials shall be implemented at all times to reduce VOC emissions.  
(c) Minimizing spills of VOC-containing coatings, thinners, and coating-related waste materials; and  
(d) Conveying VOC-containing coatings, thinners, and coating-related waste materials from one location to another in closed containers or pipes.  
(2) The work practices for cleaning materials shall be implemented at all times to reduce VOC emissions.  
(a) Storing all VOC-containing cleaning materials and used shop towels in closed containers;  
(b) Ensuring that storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials;  
(c) Minimizing spills of VOC-containing cleaning materials;  
(d) Conveying VOC-containing cleaning materials from one location to another in closed containers or pipes; and  
(e) Minimizing VOC emissions from cleaning of application, storage, mixing, and conveying equipment by ensuring that equipment cleaning is performed without atomizing the cleaning solvent and all spent solvent is captured in closed containers.  
(3) All persons shall perform solvent cleaning operations with cleaning material having VOC content (excluding compounds not classified as VOC) of 0.21 pounds per gallon or less.  
(4) For each calendar year, all sources subject to R307-343 shall maintain records documenting compliance with R307-343-4, R307-343-5 and R307-343-7.  
(a) Records shall include, but shall not be limited to, inventory and product data sheets for all coatings and solvents subject to R307-343.  
(b) These records shall be made available to the director upon request.  
(c) Solvent cleaning operations shall be performed using cleaning materials having a VOC composite vapor pressure no greater than 1 mm Hg or less at 20 degrees Celsius, unless an add-on control device is used as specified in R307-343-6.
Environmental Quality, Air Quality
R307-344
Paper, Film, and Foil Coatings
NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41816
FILED: 06/14/2017

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments to this rule strengthen the area source coating rules. These amendments will help further reduce Volatile Organic Compound (VOC) emissions and will be part of the upcoming Serious PM2.5 State Implementation Plan (SIP).

SUMMARY OF THE RULE OR CHANGE: The applicability section is being amended from "potential to emit 2.7 tons per year or more of VOC" emissions to an application-based threshold of "a combined 20 gallons or more of coating products and associated solvents per year." Other changes included added definitions and a new record keeping section.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will be no impact on the state budget because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The state would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.
♦ LOCAL GOVERNMENTS: There will be no impact on local governments because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The local governments would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.
♦ SMALL BUSINESSES: There will be an impact on small businesses because the new rule applicability threshold will cause several small businesses to be regulated by the rule that were not regulated previously. The cost to these businesses will depend on how much material is used. These businesses will pay an estimated $1,878 per ton of VOC emissions removed from the air. The Division of Air Quality (DAQ) has considered methods of reducing the negative impact of the rule on small businesses in accordance with Subsection 63G-3-301(6) but cannot establish less stringent requirements, schedules, or deadlines; simplify compliance or reporting requirements; replace design standards with performance standards; or exempt small businesses from the proposed rule. This is because the rule is required by federal law to satisfy the Clean Air Act requirement to implement Best Available Control Measures in the manner prescribed by the PM2.5 Implementation Rule, See 42 U.S.C. 7513a (b)(1) and 40 CFR 51.1010(a)(1) through (5). The rule also helps prevent future violations of federal air quality standards. Although the rule helps to prevent future air quality violations and comply with federal law, DAQ has taken steps to reduce the negative fiscal impact this rule may have on small businesses. The rule provides regulated sources with flexibility and potential cost saving alternatives in regard to compliance. This includes a vapor pressure limit, instead of a density-based limit, for solvents. The vapor pressure limit gives businesses greater flexibility as to the types of solvents they may use. It also includes the option to use an add-on control device that can be used as an alternative to meeting the content limits in the rule. These provisions give businesses the flexibility to comply with the rule in the way that makes the most sense for them.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses, or local government entities will not be impacted by this rule because the new rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for people who are affected by the rule will be about $1,878 per ton of VOC removed from the air.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY: The proposed rule may...
result in a fiscal impact to some businesses because the rule amendment changes the applicability threshold. The threshold is being changed from the "potential to emit 2.7 tons or more of VOC" to the "use of a combined 20 gallons or more" of product. This new threshold is meant to ensure that all businesses that use paper, film, and foil coating products are regulated by Rule R307-344. Businesses that already have the potential to emit 2.7 tons or more of VOC are not impacted by the rule amendment. Therefore, the businesses most likely impacted by this amendment are small businesses that did not previously meet the applicability threshold of the rule.

II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The number of businesses that are impacted by this rule amendment is difficult to predict because there is no data on the quantity of regulated product used by each business in the relevant areas. The rule generally covers businesses that have the following NAICS Codes: 322110, Pulp Mills; 322121, Paper (except newsprint) Mills; 322211, Corrugated and Solid Fiber Box Manufacturing; 322212, Folding Paperboard Manufacturing; 322219, Other Paperboard Container Manufacturing; 322220, Paper Bag and Coated and Treated Paper Manufacturing; 322230, Stationery Product Manufacturing; 322299, All other Converted Paper Product Manufacturing; 326111, Plastics Bag and Pouch Manufacturing; and 322291, Sanitary Paper Product Manufacturing. The Division used data from Utah's FirmFind database to determine that there are 35 total businesses and 19 small businesses in the relevant counties that have these codes. Of those businesses, 19 may be impacted by the rule.

III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The amendments to this rule will likely only have a fiscal impact on small businesses. Big businesses use more product and are already regulated under the current version of the rule. There are 19 small businesses that have been identified by DAQ as businesses that are likely to be fiscally impacted by this rule amendment.

IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: The rule amendment potentially impacts businesses that apply between 20 and 2,700 gallons of regulated product annually. After speaking with industry experts, DAQ has determined that the source of the cost is an average $5 per gallon difference between compliant and non-compliant products. This means that businesses impacted by the rule will spend between $100 and $13,500 annually to comply with the rule. Most of the businesses impacted by the rule will be closer to the $100 amount. This is because most of the businesses that are impacted by the amendment are small businesses with between one and ten employees. They do not use large quantities of product. Some of these businesses may also already be using compliant coatings and will not have any additional costs associated with the rule amendment. Large businesses that are closer to the 2,700 gallon threshold are likely not impacted by the rule because they already are required to comply with it based on the fact that they have the potential to emit over 2.7 tons of VOC emissions. Based on the 19 businesses identified by DAQ from the FirmFind database, the aggregate fiscal impact of the rule on all businesses will range between $1,900 and $256,500. Once again, the total cost will fall toward the lower end of the spectrum because of the size of the businesses and the likelihood that large businesses are already complying with the rule. These figures represent the continuing annual cost to businesses. There are no one-time costs associated with the rule amendment.

V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: The above analysis represents DAQ's best estimate as to the fiscal impact this rule amendment will have on businesses. If a company uses a greater quantity of product, then the rule amendment will cause a more significant fiscal impact. The EPA has estimated the total cost of this type of regulation to be $1,878 per ton of VOC emissions removed from the atmosphere. The EPA considers this cost to be reasonable in the context of implementing Best Available Control Measures (BACM), as required by the Clean Air Act for Serious nonattainment areas.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director


The purpose of this rule is to limit volatile organic compound (VOC) emissions from [roll, knife, and rotogravure coating and drying ovens of] paper, film, and foil coating operations.

R307-344 applies to [sources] paper, film, and foil coating operations and related cleaning activities that use a combined 20 gallons or more of coating products and associated solvents per year and are located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.


The following additional definitions apply to R307-344:

"As applied" means the VOC and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Coating" means a protective, functional, or decorative film applied in a thin layer to a surface. This term is often applied to paints such as enamels or enamels. It is also used to refer to films applied to paper, plastics, or foil.

"Film coating" means any coating applied in a web coating process on any film substrate other than paper or fabric, including but not limited to, typewriter ribbons, photographic film, magnetic tape and metal foil gift wrap.

"Foil coating" means a coating applied in a web coating process on any foil substrate other than paper or fabric, including but not limited to, typewriter ribbons, photographic film, magnetic tape, and metal foil gift wrap, but excluding coatings applied to packaging used exclusively for food and health care products for human and animal consumption.

"Knife coating" means the application of a coating material to a substrate by means of drawing the substrate beneath a blade that spreads the coating evenly over the width of the substrate.

"Paper coating" means uniform distribution of coatings put on paper, film, foils and pressure sensitive tapes regardless of substrate. Related web coating processes on plastic film and decorative coatings on metal foil are included in this definition. Paper coating covers saturation operations as well as coating operations.

"Roll coating" means the application of a coating material to a substrate by means of hard rubber or steel rolls.

"Roll printing" means the application of words, designs and pictures to a substrate usually by means of a series of hard rubber or steel rolls each with only partial coverage.

"Rotogravure coating" means the application of a uniform layer of material across the entire width of the web to substrate by means of a roll coating technique in which the pattern to be applied is etched on the coating roll. The coating material is picked up in these recessed areas and is transferred to the substrate.

"Saturation" means dipping the web into a bath.

"Web" means a continuous sheet of substrate.

R307-344-4. VOC Content Limits.

Table 1: Paper, Film, and Foil Coating Limitations

<table>
<thead>
<tr>
<th>Category</th>
<th>VOC Content Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paper, film and foil</td>
<td>0.08</td>
</tr>
<tr>
<td>Pressure sensitive tape and label</td>
<td>0.067</td>
</tr>
</tbody>
</table>


1. Control techniques and work practices are to be implemented at all times to reduce VOC emissions. Control techniques and work practices include:

(a) Using tight fitting covers for open tanks;

(b) Using covered containers for solvent wiping clothes;

(c) Using collection hoods for areas where solvent is used for cleanup;

(d) Minimizing spills of VOC-containing cleaning materials;

(e) Conveying VOC-containing materials from one location to another in closed containers or pipes; and

(f) Cleaning spray guns in enclosed systems.

2. All sources subject to R307-344 shall maintain records demonstrating compliance with R307-344-4 and R307-344-5.

3. Records shall include, but not limited to, inventory and product data sheets of all coatings and solvents subject to R307-344.

4. These records shall be available to the director upon request.

5. No person shall apply coatings unless these materials are applied with equipment operated according to the manufacturer’s specifications, and by the use of one of the following methods:

(a) Flow coater;

(b) Roll coater;

(c) Dip coater;

(d) Foam coater;

(e) Die coater;

(f) Hand application methods;

(g) High-volume, low pressure (HVLP) spray; or

(h) Other application method capable of achieving at least 65% or greater transfer efficiency, as certified by the manufacturer.

6. All persons shall perform [Solvent cleaning operations with shall be performed using cleaning materials having a VOC content (excluding water and solvents exempt from the definition of volatile organic compounds found in R307-101-2) of 0.21 pounds per gallon or less] composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-344-6.

(1) If an add-on control system is used, the owner or operator shall install and maintain [an incinerator, carbon adsorption, or any other] the add-on emission control system in accordance with the manufacturer recommendations [in order to] and maintain [at least] 90% or greater capture and control efficiency. [Determination of] The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

KEY: VOC emission, paper coating, film coating, foil coating

Date of Enactment or Last Substantive Amendment: December 1, 2014

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

Environmental Quality, Air Quality

R307-345

Fabric and Vinyl Coatings

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41817

FILED: 06/14/2017


(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-344. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-344.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-344-6.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

Environmental Quality, Air Quality

R307-345

Fabric and Vinyl Coatings

NOTICE OF PROPOSED RULE

(Comment)

DAR FILE NO.: 41817

FILED: 06/14/2017


(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-344. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-344.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-344-6.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

Environmental Quality, Air Quality

R307-345

Fabric and Vinyl Coatings

NOTICE OF PROPOSED RULE

(Comment)

DAR FILE NO.: 41817

FILED: 06/14/2017


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(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-344-6.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

Environmental Quality, Air Quality

R307-345

Fabric and Vinyl Coatings

NOTICE OF PROPOSED RULE

(Comment)

DAR FILE NO.: 41817

FILED: 06/14/2017


(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-344. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-344.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-344-6.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.
cause several small businesses to be regulated by the rule that were not regulated previously. The cost to these businesses will depend on how much material is used. These businesses will pay an estimated $3,658 per ton of VOC emissions removed from the air. The Division of Air Quality (DAQ) has considered methods of reducing the negative fiscal impact of the rule on small businesses in accordance with Subsection 63G-3-301(6) but cannot establish less stringent requirements, schedules, or deadlines; simplify compliance or reporting requirements; replace design standards with performance standards; or exempt small businesses from the proposed rule. This is because the rule is required by federal law to satisfy the Clean Air Act requirement to implement Best Available Control Measures in the manner prescribed by the PM2.5 Implementation Rule, See 42 U.S.C. 7513a (b)(1) and 40 CFR 51.1010(a)(1) through (5). The rule also helps prevent future violations of federal air quality standards. Although the rule helps to prevent future air quality violations and comply with federal law, DAQ has taken steps to reduce the negative fiscal impact this rule may have on small businesses. The rule provides regulated sources with flexibility and potential cost saving alternatives in regard to compliance. This includes a vapor pressure limit, instead of a density-based limit, for solvents. The vapor pressure limit gives businesses greater flexibility as to the types of solvents they may use. The rule also includes the option to use an add-on control device that can be used as an alternative to meeting the content limits in the rule. These provisions give businesses the flexibility to comply with the rule in the way that makes the most sense for them.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses, or local government entities will not be impacted by this rule because the rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for people who are affected by the rule will be about $3,658 per ton of VOC removed from the air.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY: The proposed rule may result in a fiscal impact to some businesses because the rule amendment changes the applicability threshold. The threshold is being changed from the "potential to emit 2.7 tons or more of VOC" to the "use of a combined 20 gallons or more" of product. This new threshold is meant to ensure that all businesses that use fabric and vinyl coating products are regulated by Rule R307-345. Businesses that already have the potential to emit 2.7 tons or more of VOC are not impacted by the rule amendment. Therefore, the businesses most likely impacted by this amendment are small businesses that did not previously meet the applicability threshold of the rule. II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The number of businesses that are impacted by this rule amendment is difficult to predict because there is no data on the quantity of regulated product used by each business in the relevant areas. The rule generally covers businesses that have the following NAICS Codes: 339991, Gasket Packing, and Sealing Device Manufacturing; 313210, Broadwoven Fabric Mills; and 313320, Fabric Coating Mills. The Division used data from Utah's FirmFind database to determine that there are 12 total businesses and 11 small businesses in the relevant counties that have these codes. Of those businesses, 11 could possibly be impacted by the rule. III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The amendments to this rule will likely only have a fiscal impact on small businesses. Big businesses use more product and are already regulated under the current version of the rule. There are 11 small businesses that have been identified by DAQ as businesses that are likely to be fiscally impacted by this rule amendment. IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: The rule amendment potentially impacts businesses that apply between 20 and approximately 2,455 gallons of regulated product annually. After speaking with industry experts, DAQ has determined that the source of the cost is an average $5 per gallon difference between compliant and non-compliant products. This means that businesses impacted by the rule will spend between $100 and $12,275 annually to comply with the rule. Most of the businesses impacted by the rule will be closer to the $100 amount on the spectrum. This is because most of the businesses that are impacted by the amendment are small businesses with between one and ten employees. They do not use large quantities of product. Some of these businesses may also already be using compliant coatings and will not have any additional costs associated with the rule amendment. Large businesses that are closer to the 2,455 gallon threshold are likely not impacted by the rule amendment because they already are required to comply with it based on the fact that they have the potential to emit over 2.7 tons of VOC emissions. Based on the eleven businesses identified by DAQ from the FirmFind database, the aggregate fiscal impact of the rule amendment on all businesses will range between $1,100 and $135,025. Once again, the total cost will fall toward the lower end of the spectrum because of the size of the businesses and the likelihood that large businesses are already complying with the rule. These figures represent the continuing annual cost to businesses. There are no one-time costs associated with the rule amendment. V. DEPARTMENT HEAD’S COMMENTS ON THE ANALYSIS: The above analysis represents DAQ’s best estimate as to the fiscal impact this rule amendment will have on businesses. If a company uses a greater quantity of product, then the rule amendment will cause a more
significant fiscal impact. The EPA has estimated the total cost of this type of regulation to be $3,658 per ton of VOC emissions removed from the atmosphere. The EPA considers this cost to be reasonable in the context of implementing Best Available Control Measures (BACM), as required by the Clean Air Act for Serious nonattainment areas.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director

R307-345. Fabric and Vinyl Coatings.

R307-345-1. Purpose.

The purpose of this rule is to limit volatile organic compound (VOC) emissions from fabric and vinyl coating operations[that use roll, knife, or rotogravure coaters and drying ovens].


R307-345 applies to [sources]vinyl coating operations and related cleaning activities that use a combined 20 gallons or more of coating products and associated solvents per year and are located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties[that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities].


The following additional definitions apply to R307-345:

"As applied" means the VOC and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Coating" means a protective, functional, or decorative film applied in a thin layer to a surface.

"Fabric coating" means the coating or saturation of a textile substrate with a knife, roll or rotogravure coater to impart characteristics that are not initially present, such as strength, stability, water or acid repellency, or appearance. Fabric coatings can include, but are not limited to, industrial and electrical tapes, tie cord, utility meter seals, imitation leathers, tarpaulins, shoe material, and upholstery fabrics.

"Knife coating" means the application of a coating material to a substrate by means of drawing the substrate beneath a blade that spreads the coating evenly over the width of the substrate.

"Roller coating" the coating material is applied to the moving fabric, in a direction opposite to the movement of the substrate, by hard rubber or steel rolls.

"Rotogravure coating" means the application of a uniform layer of material across the entire width of the web to substrate by means of a roll coating technique in which the pattern to be applied is etched on the coating roll. The coating material is picked up in these recessed areas and is transferred to the substrate.

R307-345-4. VOC Content Limits.

(1) [Rash]No owner or operator shall [not] apply fabric or vinyl coatings with a VOC content [in excess of the amounts] specified in Table 1 or shall use an add-on control device as specified in R307-345-6 in excess of 2.2 pounds of VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied, unless the owner or operator uses an add-on device as specified in R307-345-6.

| TABLE 1 |
| Fabric and Vinyl Coating Limitations |
| Values in pounds VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC), as applied |

<table>
<thead>
<tr>
<th>COATING CATEGORY</th>
<th>VOC CONTENT LIMITS</th>
<th>VOC CONTENT LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Effective Through</td>
<td>Effective Beginning</td>
</tr>
<tr>
<td></td>
<td>December 31, 2014</td>
<td>January 1, 2015</td>
</tr>
<tr>
<td>Fabric</td>
<td>2.2</td>
<td>2.2</td>
</tr>
<tr>
<td>Vinyl</td>
<td>3.8</td>
<td>2.2</td>
</tr>
</tbody>
</table>

(2) Organosol and plastisol coatings shall not be used to bubble emissions from vinyl printing and top coating.


(1) Control techniques and work practices are to be implemented at all times to reduce VOC emissions. Control techniques and work practices include:

(a) Tight fitting covers for open tanks or drums;

(b) Covered containers for solvent wiping cloths;

(c) Collection hoods for areas where solvent is used for cleanup;

(d) Covered mixing tanks; and

(e) Covered hoods and oven routed to add-on control devices, which may include, but are not limited to, after burners, thermal incinerators, catalytic oxidation, or carbon adsorption.

(2) No person shall apply any coating unless the coating application method achieves a demonstrated 63% transfer efficiency.
The following applications achieve a minimum of 65% transfer efficiency and must be operated in accordance with the manufacturer's specifications:

(a) Foam coat;
(b) Flow coat;
(c) Roll coat;
(d) Dip coat;
(e) Die coat;
(f) High-volume, low-pressure (HVLP) spray;
(g) Hand application methods; or
(h) Other application method capable of achieving at least 65% or greater transfer efficiency, as certified by the manufacturer.

3. [All persons shall perform] Solvent cleaning operations [with] shall be performed using cleaning materials having a VOC [content (excluding compounds not classified as VOC) of 0.21 pounds per gallon or less] composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-345-6.

4. All sources subject to R307-345 shall maintain records demonstrating compliance with R307-345-4 and R307-345-5.

(a) Records shall include, but not be limited to, inventory and product data sheets of all coatings and solvents subject to R307-345.

(b) These records shall be available to the director upon request.


1. If an add-on control system is used, the owner or operator shall install and maintain an [incinerator, carbon adsorption, or any other] add-on emission control system, provided that the emission control system is operated and maintained in accordance with the manufacturer's recommendations [in order to] and maintain at least 90% or greater capture and control efficiency. The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

2. The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-345-6(1).

3. The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-345-6. Key system parameters may include, but are not limited to, temperature, pressure, and flow rates. Operator inspection schedule, monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.


1. The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-345.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-345-6.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

2. All records shall be maintained for a minimum of 2 years.

3. Records shall be made available to the director upon request.

KEY: air pollution, emission controls, fabric coating, vinyl coating

Date of Enactment or Last Substantive Amendment: December 1, 2014

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

Environmental Quality, Air Quality

R307-346

Metal Furniture Surface Coatings

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41818
FILED: 06/14/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments to this rule strengthen the area source coating rules. These amendments will help further reduce Volatile Organic Compound (VOC) emissions and will be part of the upcoming Serious PM2.5 State Implementation Plan (SIP).
SUMMARY OF THE RULE OR CHANGE: The applicability section is being amended from "potential to emit 2.7 tons per year or more of VOC" emissions to an application based threshold of "a combined 20 gallons or more of coating products and associated solvents per year." Other changes included added definitions and a new record keeping section.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will be no impact on the state budget because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The state would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.
♦ LOCAL GOVERNMENTS: There will be no impact on local governments because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The local governments would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.
♦ SMALL BUSINESSES: There will be an impact on small businesses because the new rule applicability threshold will cause several small businesses to be regulated by the rule that were not regulated previously. The cost to these businesses will depend on how much material is used. These businesses will pay an estimated $2,482 per ton of VOC emissions removed from the air. The Division of Air Quality (DAQ) has considered methods of reducing the negative fiscal impact of the rule on small businesses in accordance with Subsection 63G-3-301(6) but cannot establish less stringent requirements, schedules, or deadlines; simplify compliance or reporting requirements; replace design standards with performance standards; or exempt small businesses from the proposed rule. This is because the rule is required by federal law to satisfy the Clean Air Act requirement to implement Best Available Control Measures in the manner prescribed by the PM2.5 Implementation Rule, See 42 U.S.C. 7513a (b)(1) and 40 CFR 51.1010(a)(1) through (5). The rule also helps prevent future violations of federal air quality standards. Although the rule is required to help prevent future air quality violations and comply with federal law, DAQ has taken steps to reduce the negative fiscal impact the rule may have on small businesses. The rule provides regulated sources with flexibility and potential cost saving alternatives in regard to compliance. This includes a vapor pressure limit, instead of a density-based limit, for solvents. The vapor pressure limit gives businesses greater flexibility as to the types of solvents they may use. The rule also includes the option to use an add-on control device that can be used as an alternative to meeting the content limits in the rule. These provisions give businesses flexibility to comply with the rule in the way that makes the most sense for them.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses, or local government entities will not be impacted by this rule because the rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for people who are affected by the rule will be about $2,482 per ton of VOC removed from the air.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY: The proposed rule may result in a fiscal impact to some businesses because the rule amendment changes the applicability threshold. The threshold is being changed from the "potential to emit 2.7 tons or more of VOC" to the "use of a combined 20 gallons or more" of product. This new threshold is meant to ensure that all businesses that use metal furniture surface coatings are regulated by Rule R307-346. Businesses that already have the potential to emit 2.7 tons or more of VOC are not impacted by the rule amendment. Therefore, the businesses most likely impacted by this amendment are small businesses that did not previously meet the applicability threshold of the rule. II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The number of businesses that are impacted by this rule amendment is difficult to predict because there is no data on the quantity of regulated product used by each business in the relevant areas. The rule generally covers businesses that have the following NAICS Codes: 337121, Upholstered Household Furniture Manufacturing; 337124, Metal Household Furniture Manufacturing; and 337215 Showcase, Partition, Shelving, and Locker Manufacturing. The Division used data from Utah's FirmFind database to determine that there are 29 total businesses and 28 small businesses in the relevant counties that have these codes. Of those businesses, all 29 could possibly be impacted by the rule amendment. III. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The amendments to this rule will likely only have a fiscal impact on small businesses. Big businesses use more product and are already regulated under the current version of the rule. There are 28 small businesses that have been identified by DAQ as businesses that are likely to be fiscally impacted by this rule amendment. IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: The rule amendment potentially impacts businesses that apply between 20 and 1,543 gallons of regulated product annually. After speaking with industry experts, DAQ has determined that the source of the cost is an average $5 per gallon difference between compliant and non-compliant products. This means that businesses impacted by the rule will spend between $100
and $7,715 annually to comply with the rule. Most of the businesses impacted by the rule will be closer to the $100 amount on the spectrum. This is because most of the businesses that are impacted by the amendment are small businesses with between one and ten employees. They do not use large quantities of product. Large businesses that are closer to the 1,543 gallon threshold are likely not impacted by the rule because they may already be required to comply with it based on the fact that they have the potential to emit over 2.7 tons of VOC emissions. Some of the small businesses may also already be using compliant coatings and will not have any additional costs as a result of the rule amendment. Based on the 29 businesses identified by DAQ from the FirmFind database, the aggregate fiscal impact of the rule on all businesses in Utah will range between $2,900 and $223,735. Once again, the total cost will fall toward the lower end of the spectrum ($2,900) because of the size of the businesses and the likelihood that larger businesses are already complying with the rule. These figures represent the continuing annual cost to businesses. There are no one-time costs associated with the rule amendment. VI. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: The above analysis represents DAQ's best estimate as to the fiscal impact this rule amendment will have on businesses. If a company uses a greater quantity of product, then the rule amendment will cause a more significant fiscal impact. EPA has estimated the total cost of this type of removal to be $2,482 per ton of VOC emissions removed from the atmosphere. The EPA considers this cost to be reasonable in the context of implementing Best Available Control Measures (BACM), as required by the Clean Air Act for Serious nonattainment areas.


DIRECT QUESTIONS REGARDING THIS RULE TO: Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director

R307-346. Metal Furniture Surface Coatings.
R307-346-1. Purpose.
The purpose of this rule is to limit volatile organic compound (VOC) emissions from metal furniture surface coating operations in application areas, flash-off areas, and ovens of metal furniture coating lines involved in prime and top-coat or single coat operations.

R307-346 applies to metal furniture surface coating operations and related cleaning activities that use a combined 20 gallons or more of coating products and associated solvents per year and are located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.

1. The requirements of R307-346 do not apply to the following:
   a. Stencil coatings;
   b. Safety-indicating coatings;
   c. Solid-film lubricants;
   d. Electrical-insulating and thermal-conducting coatings;
   e. Touch-up and repair coatings; or
   f. Coating applications utilizing hand-held aerosol cans.

The following additional definitions apply to R307-346:
"Air dried coating" means coatings that are dried by the use of air or a forced warm air at temperatures up to 194 degrees Fahrenheit.
"Application area" means the area where the coating is applied by spraying, dipping, or flow coating techniques.
"As applied" means the VOC and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.
"Baked coating" means a coating that is cured at a temperature at or above 194 degrees Fahrenheit.
"Coating" means a protective, functional, or decorative film applied in a thin layer to a surface. This term applies to paints, sealants, caulks, inks, adhesives, and maskants.
"Extreme performance coatings" means coatings designed for harsh exposure or extreme environmental conditions.
"Maskants" means a material that protects a metal surface during the etching process.
"Metal furniture surface coating" means the surface coating of any furniture made of metal or any metal part that will be assembled with other metal, wood fabric, plastic, or glass parts to form a furniture piece.

R307-346-5. VOC Content Limits.
Each No owner or operator shall [not] apply coatings with a VOC content in excess of the amounts specified in Table I, unless the owner or operator uses an add-on control device as specified in R307-346-7.

(1) The owner or operator shall:
(a) Store all VOC-containing coatings, thinners, and cleaning materials in closed containers;
(b) Minimize spills of VOC-containing coatings, thinners, and cleaning materials;
(c) Clean up spills immediately;
(d) Convey any coatings, thinners, and cleaning materials in closed containers or pipes;
(e) Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and
(f) Minimize usage of solvents during cleaning of storage, mixing, and conveying equipment.

(2) No person shall apply any coating unless the coating application method achieves a demonstrated 65% transfer efficiency.

The following applications achieve a minimum of 65% transfer efficiency and shall be operated in accordance with the manufacturer's specifications:
(a) Electrostatic application;
(b) Electrodeposition;
(c) Brush coat;
(d) Flow coat;
(e) Roll coat;
(f) Dip coat;
(g) Continuous coating;
(h) High-volume, low-pressure (HVLP) spray; or
(i) Other application method capable of achieving at least 65% or greater transfer efficiency, as certified by the manufacturer.

(3) Solvent cleaning operations shall be performed using cleaning materials having a VOC content (excluding water and solvents exempt from the definition of volatile organic compounds found in R307-101-2) of 0.21 pounds per gallon or less.


(1) If an add-on control system is used, the owner or operator shall install and maintain an incinerator, carbon adsorption, or any other add-on emission control system—provided that the emission control system is operated and maintained in accordance with the manufacturer's recommendations, and as required to demonstrate operation and control efficiency. Determination of overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

(2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-346-7.

(3) The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-346-7. Key system parameters may include, but are not limited to, temperature, pressure and flow rates; Operator inspection schedule; monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(4) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.


(1) The owner or operator shall maintain records of the following:

---

TABLE 1

<table>
<thead>
<tr>
<th>Category</th>
<th>VOC Content (Lb/gal)</th>
<th>Limits</th>
<th>Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Baked</td>
<td>Air Dried</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General, One Component</td>
<td>2.3</td>
<td>2.3</td>
<td></td>
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<tr>
<td>General, Multi-Component</td>
<td>2.3</td>
<td>2.8</td>
<td></td>
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<tr>
<td>Extreme High Gloss</td>
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<td>2.8</td>
<td></td>
</tr>
<tr>
<td>Extreme Performance</td>
<td>3.0</td>
<td>3.5</td>
<td></td>
</tr>
<tr>
<td>Heat Resistant</td>
<td>3.0</td>
<td>3.5</td>
<td></td>
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<tr>
<td>Metallic</td>
<td>3.5</td>
<td>3.5</td>
<td></td>
</tr>
<tr>
<td>Pretreatment Coatings</td>
<td>3.5</td>
<td>3.5</td>
<td></td>
</tr>
<tr>
<td>Solar Absorbent</td>
<td>3.0</td>
<td>3.5</td>
<td></td>
</tr>
</tbody>
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Environmental Quality, Air Quality

R307-347

Large Appliance Surface Coatings

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41819

FILED: 06/14/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to reduce VOC emissions and comply with the EPA’s requirements for the PM2.5 Serious State Implementation Plan.

SUMMARY OF THE RULE OR CHANGE: The applicability section is being amended from "potential to emit 2.7 tons per year or more of VOC" emissions to an application based threshold of "a combined 20 gallons or more of coating products and associated solvents per year." Other changes include added definitions and a new record keeping section.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There will be no impact on the state budget because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The state would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.

♦ LOCAL GOVERNMENTS: There will be no impact on local governments because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The local governments would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.

♦ SMALL BUSINESSES: There will be an impact on small businesses because the new rule applicability threshold will cause several small businesses to be regulated by the rule that were not regulated previously. The cost to these businesses will depend on how much material is used. These businesses will pay an estimated $2,482 per ton of VOC emissions removed from the air. The Division of Air Quality (DAQ) has considered methods of reducing the negative fiscal impact of the rule on small businesses in accordance with Subsection 63G-3-301(6) but cannot establish less stringent requirements, schedules, or deadlines; simplify compliance or reporting requirements; replace design standards with performance standards; or exempt small businesses from the proposed rule. This is because the rule is required by federal law to satisfy the Clean Air Act requirement to implement Best Available Control Measures in the manner prescribed by the PM2.5 Implementation Rule, See 42 U.S.C. 7513a (b)(1) and 40 CFR 51.1010(a)(1) through (5). The rule also helps prevent future violations of federal air quality standards. Although the rule is required to help prevent future air quality violations and comply with federal law, DAQ has taken steps to reduce the negative fiscal impact the rule may have on small businesses. The rule provides regulated sources with flexibility and potential cost saving alternatives in regard to compliance. This includes a vapor pressure limit, instead of a density-based limit, for solvents. The vapor pressure limit gives businesses greater flexibility as to the types of solvents they may use. The rule also includes the option to use an add-on control device that can be used as an alternative to meeting the content limits in the rule. These provisions give businesses flexibility to comply with the rule in the way that makes the most sense for them.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses, or local government entities will not be impacted by this rule because the rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for people who are affected by the rule will be about $2,482 per ton of VOC removed from the air.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:

I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY: The proposed rule may result in a fiscal impact to some businesses because the rule...
amendment changes the applicability threshold. The threshold is being changed from the "potential to emit 2.7 tons or more of VOC" to the "use of a combined 20 gallons or more" of product. This new threshold is meant to ensure that all businesses that use coatings for large appliance surfaces are regulated by Rule R307-347. Businesses that already have the potential to emit 2.7 tons or more of VOC are not impacted by the rule amendment. Therefore, the businesses most likely impacted by this amendment are small businesses that did not previously meet the applicability threshold of the rule. II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The number of businesses that are impacted by this rule amendment is difficult to predict because there is no data on the quantity of regulated product used by each business in the relevant areas. The rule generally covers businesses that have the following NAICS Codes: 333414, Heating Equipment (except Warm Air Furnaces) Manufacturing and 335210, Small Electrical Appliance Manufacturing. The Division used data from Utah’s FirmFind database to determine that there are six total businesses and five small businesses in the relevant counties that have these codes. Of those businesses, five could possibly be impacted by the rule amendment. III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The amendments to this rule will likely only have a fiscal impact on small businesses. Big businesses use more product and are already regulated under the current version of the rule. There are five small businesses that have been identified by DAQ as businesses that are likely to be fiscally impacted by this rule amendment. IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: The rule amendment potentially impacts businesses that apply between 20 and approximately 1,763 gallons of regulated product annually. After speaking with industry experts, DAQ has determined that the source of the cost is an average $5 per gallon difference between compliant and non-compliant products. This means that businesses impacted by the rule will spend between $100 and $8,815 annually to comply with the rule. Most of the businesses impacted by the rule will be closer to the $100 amount on the spectrum. This is because most of the businesses that are impacted by the amendment are small businesses with between 1 to 10 employees. They do not use large quantities of product. Large businesses that are closer to the 1,763 gallon threshold are likely not impacted by the rule because they may already be required to comply with it based on the fact that they have the potential to emit over 2.7 tons of VOC emissions. Some of the small businesses may also already be using compliant coatings and will not have any additional costs as a result of the rule amendment. Based on the five businesses identified by DAQ from the FirmFind database, the aggregate fiscal impact of the rule on all businesses in Utah will range between $500 and $44,075. Once again, the total cost will fall toward the lower end of the spectrum ($500) because of the size of the businesses and the likelihood that large businesses are already complying with the rule. These figures represent the continuing annual costs to businesses. There are no one-time costs associated with the rule amendment. V. DEPARTMENT HEAD’S COMMENTS ON THE ANALYSIS: The above analysis represents DAQ’s best estimate as to the fiscal impact this rule amendment will have on businesses. If a company uses a greater quantity of product, then the rule amendment will cause a more significant fiscal impact. EPA has estimated the total cost of this type of regulation to be $2,482 per ton of VOC emissions removed from the atmosphere. The EPA considers this cost to be reasonable in the context of implementing Best Available Control Measures (BACM), as required by the Clean Air Act for Serious nonattainment areas.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director

R307-347. Large Appliance Surface Coatings.
R307-347-1. Purpose.
The purpose of this rule is to reduce volatile organic compound (VOC) emissions from large appliance surface coating operations.

(1) _R307-347 applies to [sources] large appliance surface coating operations and related cleaning activities that use a combined 20 gallons or more of coating products and associated solvents per year and are located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties[that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities].

NOTICES OF PROPOSED RULES

(1) The requirements of R307-347 do not apply to the following:
(a) Stencil coatings;
(b) Safety-indicating coatings;
(c) Solid-film lubricants;
(d) Electric-insulating and thermal-conducting coatings;
(e) Touch-up and repair coatings; or
(f) Coating application utilizing hand-held aerosol cans.

The following additional definitions apply to R307-347:
"Air dried coating" means coatings that are dried by the use of air or a forced warm air at temperatures up to 194 degrees Fahrenheit.
"As applied" means the VOC and solids content of the film applied in a thin layer to a surface. This term often applies to interior support parts of residential and commercial washers, dryers, for harsh exposure or extreme environmental conditions.
"Coating" means a protective, functional, or decorative finishing material.
"Baked coating" means a coating that is cured at a temperature at or above 198 degrees Fahrenheit.
"Category" means doors, cases, lids, panels, and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, and other similar products.
"Category (values in pounds VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)"

<table>
<thead>
<tr>
<th>Category</th>
<th>VOC Content Limits (lb/gal)</th>
</tr>
</thead>
<tbody>
<tr>
<td>General, one component</td>
<td>2.3</td>
</tr>
<tr>
<td>General, multi-component</td>
<td>2.3</td>
</tr>
<tr>
<td>Extreme high gloss</td>
<td>3.0</td>
</tr>
<tr>
<td>Extreme performance</td>
<td>3.0</td>
</tr>
<tr>
<td>Heat resistance</td>
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<tr>
<td>Solar absorbent</td>
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<tr>
<td>Metallic</td>
<td>3.5</td>
</tr>
<tr>
<td>Pretreatment coatings</td>
<td>3.5</td>
</tr>
</tbody>
</table>

R307-347-5. VOC Content Limits.
(1) No owner or operator shall [not] apply coatings with a VOC content [in excess of] greater than the amounts specified in Table 1 [or shall use], unless the owner or operator uses an add-on control device as specified in R307-347-7.

(1) The owner or operator shall:
(a) Store all VOC-containing coatings, thinners, and cleaning materials in closed containers;
(b) Minimize spills of VOC-containing coatings, thinners, and cleaning materials;
(c) Clean up spills immediately;
(d) Convey any coatings, thinners, and cleaning materials in closed containers or pipes;
(e) Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and
(f) Minimize usage of solvents during cleaning of storage, mixing, and conveying equipment.
(a) Records shall include, but not be limited to, inventory and product data sheets of all coatings and solvents subject to R307-347.
(b) These records shall be made available to the director upon request.
(1) No person shall apply any coating unless the coating application method achieves a [demonstrated] 65% or greater transfer efficiency. The following applications achieve a minimum of 65% transfer efficiency and shall be operated in accordance with the manufacturer specifications:
(a) Electrostatic application;
(b) Electrodeposition;
(c) Brush coat;
(d) Flow coat;
(e) Roll coat;
(f) Dip coat;
(g) High-volume, low-pressure (HVLP) spray; or
(h) Other application method capable of achieving [at least] 65% or greater transfer efficiency, as certified by the manufacturer.
(1) All persons shall perform solvent-cleaning operations [with] shall be performed using cleaning materials having a VOC [content (excluding water and solvents exempt from the definition of volatile organic compounds found in R307-101-2)] of 0.21 pounds per gallon or less [composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-347-7].

(1) If an add-on control system is used, [the] the owner or operator shall install and maintain [an incinerator, carbon adsorption, or any other] the add-on emission control system, provided that the emission control system is operated and maintained in accordance with the manufacturer recommendations in order to and maintain at least 90% or greater capture and control efficiency. [Determination of] The overall capture and control efficiency shall be determined using EPA approved methods, as follows.
(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.
(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

(2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-347-7(1).

(3) The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-347-7. Key system parameters may include, but are not limited to, temperature, pressure and flow rates. Operator inspection schedule, monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(4) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.


(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-347. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-347.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-347-7.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

KEY: air pollution, emission controls, large appliances, surface coating

Date of Enactment or Last Substantive Amendment: [December 4, 2014]

Authorizing, and Implemented or Interpreted Law: 19-2-104(1)
businesses. This is because the amendments to the rule did not bring in any new sources that were not already regulated by Rule R307-348, and the VOC content limits did not change.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
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195 N 1950 W
SALT LAKE CITY, UT 84116-3085
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INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director


R307-348-1. Purpose.
The purpose of this rule is to limit volatile organic compound (VOC) emissions from [ovens of] magnet wire coating operations.

R307-348 applies to sources that emit 2 tons per year or more of VOC emissions, including related cleaning activities, that are located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah [and] Weber counties [that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities].

The following additional definition applies to R307-348: “Magnet wire coating” means the process of applying coating of electrical insulating varnish or enamel to aluminum or copper wire for use in electrical machinery.

R307-348-4. VOC Content Limit.
[4.0] No owner or operator [of a magnet wire coating oven may cause, allow or permit discharge into the atmosphere of any VOC in excess of 0.20 kilograms] shall apply coatings with a VOC content greater than 200 grams VOC per liter [of coating] (1.7 pounds per gallon), excluding water, and exempt solvents (compounds not classified as VOCs as defined in R307-101-2) delivered to the coating applicator from magnet wire coating operations, unless the owner or operator uses an add-on control device as specified in R307-348-6.

(a) Equivalency calculations for coatings shall be performed in units of pounds VOCs per gallon of solid rather than pounds VOCs per gallon of coating when determining compliance.

(b) The equivalent emission limit is 2.2 pounds VOCs per gallon solids.

(2) The emission limitations specified above shall be achieved by:

(a) The application of low solvent content coating technology, or

(b) The use of an on control device on magnet wire coating ovens as specified in R307-348-6.

(1) The owner or operator shall:
(a) Store all VOC-containing coatings and cleaning materials in closed containers;
(b) Minimize spills of VOC-containing coatings and cleaning materials;
(c) Clean up spills immediately;
(d) Convey any coatings, thinners, and cleaning materials in closed containers or pipes;
(e) Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and
(f) Minimize usage of solvents during cleaning of storage, mixing, and conveying equipment.

(2) All sources subject to R307-348 shall maintain records demonstrating compliance with R307-348-4, and these records shall be available to the director upon request.

[4.0] (1) The owner or operator shall install and maintain an incinerator, carbon adsorption, or any other add-on emission control system, provided that the emission control system is operated and maintained in accordance with the manufacturer recommendations in order to maintain at least 90% capture and control efficiency. Determination of overall capture and control efficiency shall be determined using EPA approved methods, as follows:

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(1) If an add-on control system is used it must be installed, operated, and maintained in accordance with manufacturer recommendations.

(a) An add-on control device must have a 90% or greater capture and control efficiency rating. Efficiency must be determined using EPA approved methods as follows:
Environmental Quality, Air Quality

R307-349
Flat Wood Panel Coatings

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41820
FILED: 06/14/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments to this rule strengthen the area source coating rules. These amendments will help further reduce Volatile Organic Compound (VOC) emissions and will be part of the upcoming Serious PM2.5 State Implementation Plan (SIP).

SUMMARY OF THE RULE OR CHANGE: The applicability section is being amended from "potential to emit 2.7 tons per year or more of VOC" emissions to an application-based threshold of "a combined 20 gallons or more of coating products and associated solvents per year." Other changes included added definitions and a new recordkeeping section.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will be no impact on the state budget because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. Therefore, there are no added costs.
♦ LOCAL GOVERNMENTS: There will be no impact on local governments because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The local governments would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.
♦ SMALL BUSINESSES: There will be an impact on small businesses because the new rule applicability threshold will cause several small businesses to be regulated by the rule that were not regulated previously. The cost to these businesses will depend on how much material is used. These businesses will pay an estimated $2,680 per ton of VOC emissions removed from the air. The Division of Air Quality (DAQ) has considered methods of reducing the negative fiscal impact of the rule on small businesses in accordance with Subsection 63G-3-301(6) but cannot establish less stringent requirements, schedules, or deadlines; simplify compliance or reporting requirements; replace design standards with performance standards; or exempt small businesses from the proposed rule. This is because the rule


(1) The owner or operator shall maintain records of the following:
   (a) Records that demonstrate compliance with R307-348.

(ii) Key system parameters include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(iii) Key inspection parameters must be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records must be maintained for a minimum of two years.

(3) Records must be made available to the director upon request.

KEY: air pollution, emission controls, surface coatings, magnet wires

Date of Enactment or Last Substantive Amendment: [October 7, 2014]

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

(i) Capture efficiency must be determined according to EPA's "Guidelines for Determining Capture Efficiency." January 9, 1995 and 40 C.F.R. Parts 51, Appendix M, Methods 204-204F, as applicable.

(ii) Control efficiency must be determined using test methods in Appendices A-1, A-6, and A-7 to 40 C.F.R. Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

[*][**][***] An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

(2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-348-6(1).

(3) The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-348-6. Key system parameters may include, but are not limited to, temperature, pressure and flow rates. Operator inspection schedule, monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(4) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.]
is required by federal law to satisfy the Clean Air Act requirement to implement Best Available Control Measures in the manner prescribed by the PM2.5 Implementation Rule, See 42 U.S.C. 7513a (b)(1) and 40 CFR 51.1010(a)(1) through (5). The rule also helps prevent future violations of federal air quality standards. Although the rule is required to help prevent future air quality violations and comply with federal law, DAQ has taken steps to reduce the negative fiscal impact the rule may have on small businesses. The rule provides regulated sources with flexibility and potential cost saving alternatives in regard to compliance. This includes a vapor pressure limit, instead of a density-based limit, for solvents. The vapor pressure limit gives businesses greater flexibility as to the types of solvents they may use. The rule also includes the option to use an add-on control device that can be used as an alternative to meeting the content limits in the rule. These provisions give businesses flexibility to comply with the rule in the way that makes the most sense for them.

 PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses, or local government entities will not be impacted by this rule because the rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for people who are affected by the rule will be about $2,680 per ton of VOC emissions removed from the air.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY: The proposed rule may result in a fiscal impact to some businesses because the rule amendment changes the applicability threshold. The threshold is being changed from the "potential to emit 2.7 tons or more of VOC" to the "use of a combined 20 gallons or more" of product. This new threshold is meant to ensure that all businesses that use coatings for flat wood paneling are regulated by Rule R307-349. Businesses that already have the potential to emit 2.7 tons or more of VOC are not impacted by the rule amendment. Therefore, the businesses most likely impacted by this amendment are small businesses that did not previously meet the applicability threshold of the rule. II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The number of businesses that are impacted by this rule amendment is difficult to predict because there is no data on the quantity of regulated product used by each business in the relevant areas. The rule generally covers businesses that have the following NAICS Codes: 321113, Sawmills; 321912, Cut Stock, Resawing Lumber, and Planing; 321918, Other Millwork (including Flooring); and 337215, Showcase, Partition, Shelving, and Locker Manufacturing. The Division used data from Utah's FirmFind database to determine that there are 42 total businesses and 40 small businesses in the relevant counties that have these codes. Of those businesses, 40 could possibly be impacted by the rule amendment. III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The amendments to this rule will likely only have a fiscal impact on small businesses. Big businesses use more product and are already regulated under the current version of the rule. There are 40 small businesses that have been identified by DAQ as businesses that are likely to be fiscally impacted by this rule amendment. IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: The rule amendment potentially impacts businesses that apply between 20 and approximately 2,571 gallons of regulated product annually. After speaking with industry experts, DAQ has determined that the source of the cost is an average $5 per gallon difference between compliant and non-compliant products. This means that businesses impacted by the rule will spend between $100 and $12,855 annually to comply with the rule. Most of the businesses impacted by the rule will be closer to the $100 amount on the spectrum. This is because most of the businesses that are impacted by the amendment are small businesses with between 1 and 10 employees. They do not use large quantities of product. It is important to note that many large businesses that are closer to the 2,571 gallon threshold will likely not be impacted by the rule because they may already be required to comply with it based on the fact that they have the potential to emit over 2.7 tons of VOC emissions. Some of the small businesses may also already be using compliant coatings and will not have any additional costs as a result of the rule amendment. Based on the 40 businesses identified by DAQ from the FirmFind database, the aggregate annual fiscal impact of the rule on all businesses in Utah will range between 4,000 and 514,200 dollars. Once again, the total cost will fall toward the lower end of the spectrum ($4000) because of the size of the businesses and the likelihood that large businesses are already complying with the rule. These figures represent the continuing annual costs to businesses. There are no onetime costs associated with the rule amendment. V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: The above analysis represents DAQ's best estimate as to the fiscal impact this rule amendment will have on businesses. If a company uses a greater quantity of product, then the rule amendment will cause a more significant fiscal impact. EPA has estimated the total cost of this type of regulation to be $2,680 per ton of VOC emissions removed from the atmosphere. The EPA considers this cost to be reasonable in the context of implementing Best Available Control Measures (BACM), as required by the Clean Air Act for Serious nonattainment areas.
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♦ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director

R307-349. Flat Wood Paneling Coatings.
R307-349-1. Purpose.
The purpose of R307-349 is to limit volatile organic compound (VOC) emissions from flat wood paneling coating sources.

R307-349 applies to [sources] flat wood panel coating operations and related cleaning activities that use a combined 20 gallons or more of coating products and associated solvents per year and are located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties [that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities].

The following additional definitions apply to R307-349:
• "Coating" means a protective, decorative, or functional material applied in a thin layer to a surface. Such materials may include paints, topcoats, varnishes, sealers, stains, washcoats, basecoats, inks, and temporary protective coatings.
• "As applied" means the VOC and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.
• "Finishing material" means a coating used in the flat wood panel industry, including basecoats, stains, washcoats, sealers, and topcoats.
• "Flat wood paneling" means wood paneling products that are any decorative interior, exterior or tileboard (class I hardboard) panel to which a protective, decorative, or functional material or layer has been applied.
• "Sealer" means a finishing material used to seal the pores of a wood substrate before additional coats of finishing material are applied. A washcoat used to optimize aesthetics is not a sealer.
• "Strippable booth coating" means a coating that is applied to a booth wall to provide a protective film to receive overspray during finishing and that is subsequently peeled and disposed. Strippable booth coatings are intended to reduce or eliminate the need to use organic solvents to clean booth walls.
• "Tileboard" means a premium interior wall paneling product made of hardboard that meets the specifications for Class I given by the standard ANSI/AHA A135.1-1995.

R307-349-4. VOC Content Limit.
(1) [Each] No owner or operator shall [not] apply coatings with a VOC content [in excess of] greater than 2.1 pounds of VOC per gallon, excluding water and exempt solvents (compounds not classified as VOC as defined in R307-101-2). The equivalent emission limit shall be 2.9 pounds VOC per gallon solids coating; or, unless an add-on control device is used as specified in R307-349-6.
(2) [Each] owner or operator shall use an add-on control device as specified in R307-349-6. [No owner or operator shall use a strippable booth coating with a VOC content greater than 3.8 pounds VOC per gallon, excluding water and exempt solvents (compounds that are not defined as VOC), unless an add-on control device is used as specified in R307-349-6.]

R307-349-5. Work Practice [and Recordkeeping].
(1) The owner or operator shall:
(a) Store all VOC-containing coatings, thinners, and cleaning materials in closed containers;
(b) Minimize spills of VOC-containing coatings, thinners, and cleaning materials;
(c) Clean up spills immediately;
(d) Convey any coatings, thinners, and cleaning materials in closed containers or pipes;
(e) Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and
(f) Minimize usage of solvents during cleaning of storage, mixing, and conveying of equipment.
(2) No person shall apply any coating unless the coating application method achieves a demonstrated 65% transfer efficiency.

The following applications achieve a minimum of 65% transfer efficiency and shall be operated in accordance with the manufacturers specifications:
(a) Paint brush;
(b) Flow coat;
(c) Roll coat;
(d) Dip coat;
(e) Detailing or touch-up guns;
(f) High-volume, low-pressure (HVLP) spray;
(g) Other application method capable of achieving [at least] 65% [or greater] transfer efficiency, as certified by the manufacturer.

(1) If an add-on control system is used, the owner or operator shall install and maintain [an incinerator, carbon adsorption, or any other] the add-on emission control system[—provided that the emission control system is operated and maintained] in accordance with the manufacturer recommendations [in order to] and maintain [at least] 90% or greater capture and control efficiency. [Determination of] the overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

(2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-349-6(1).

(3) The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-349-6. Key system parameters may include, but are not limited to, temperature, pressure, and flow rates. Operator inspection schedule, monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(4) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.


(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-349.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-349-6.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

KEY: air pollution, emission controls, flat wood paneling, coatings

Date of Enactment or Last Substantive Amendment: December 1, 2014

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

Environmental Quality, Air Quality

R307-350

Miscellaneous Metal Parts and Products Coatings

NOTICE OF PROPOSED RULE
( Amendment)
DAR FILE NO.: 41821
FILED: 06/14/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments to this rule strengthen the area source coating rules. These amendments will help further reduce Volatile Organic Compound (VOC) emissions and will be part of the upcoming Serious PM2.5 State Implementation Plan (SIP).

SUMMARY OF THE RULE OR CHANGE: The applicability section is being amended from "potential to emit 2.7 tons per year or more of VOC" emissions to an application-based threshold of "a combined 20 gallons or more of coating products and associated solvents per year." Other changes included added definitions and a new recordkeeping section.
STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will be no impact on the state budget because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The state would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.
♦ LOCAL GOVERNMENTS: There will be no impact on local governments because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The local governments would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.
♦ SMALL BUSINESSES: There will be an impact on small businesses because the new rule applicability threshold will cause several small businesses to be regulated by the rule that were not regulated previously. The cost to these businesses will depend on how much material is used. These businesses will pay an estimated $2,111 per ton of VOC emissions removed from the air. The Division of Air Quality (DAQ) has considered methods of reducing the negative fiscal impact of the rule on small businesses in accordance with Subsection 63G-3-301(6) but cannot establish less stringent requirements, schedules, or deadlines; simplify compliance or reporting requirements; replace design standards with performance standards; or exempt small businesses from the proposed rule. This is because the rule is required by federal law to satisfy the Clean Air Act requirement to implement Best Available Control Measures in the manner prescribed by the PM2.5 Implementation Rule, See 42 U.S.C. 7513a (b)(1) and 40 CFR 51.1010(a)(1) through (5). The rule also helps prevent future violations of federal air quality standards. Although the rule is required to help prevent future air quality violations and comply with federal law, DAQ has taken steps to reduce the negative fiscal impact the rule may have on small businesses. The rule provides regulated sources with flexibility and potential cost saving alternatives in regard to compliance. This includes a vapor pressure limit, instead of a density-based limit, for solvents. The vapor pressure limit gives businesses greater flexibility as to the types of solvents they may use. The rule also includes the option to use an add-on control device that can be used as an alternative to meeting the content limits in the rule. These provisions give businesses flexibility to comply with the rule in the way that makes the most sense for them.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses, or local government entities will not be impacted by this rule because the rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for people who are affected by the rule will be about $2,111 per ton of VOC removed from the air.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY: The proposed rule may result in a fiscal impact to some businesses because the rule amendment changes the applicability threshold. The threshold is being changed from the "potential to emit 2.7 tons or more of VOC" to the "use of a combined 20 gallons or more" of product. This new threshold is meant to ensure that all businesses that use coatings for miscellaneous metal parts and products are regulated by Rule R307-350. Businesses that already have the potential to emit 2.7 tons or more of VOC are not impacted by the rule amendment. Therefore, the businesses most likely impacted by this amendment are small businesses that did not previously meet the applicability threshold of the rule. II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The number of businesses that are impacted by this rule amendment is difficult to predict because there is no data on the quantity of regulated product used by each business in the relevant areas. The rule generally covers businesses that have the following NAICS Codes: 333618, Other Engine Equipment Manufacturing; 336390, Other Motor Vehicle Parts Manufacturing; 332216, Saw Blade and Handtool Manufacturing; 332323, Ornamental and Architectural Metal Work Manufacturing, 333111, Farm Machinery and Equipment Manufacturing; 333922, Conveyor and Conveying Equipment Manufacturing; 333112, Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing; 333120, Construction Machinery Manufacturing; 333923, Overhead Traveling Crane, Hoist, and Monorail System; 336510, Railroad Rolling Stock Manufacturing; 333131, Mining Machinery and Equipment Manufacturing; 333132, Oil and Gas Field Machinery and Equipment; 333921, Elevator and Moving Stairway Manufacturing; 332439, Other Metal Container Manufacturing; 332999, All Other Miscellaneous Fabricated Metal Product; 333517, Machine Tool Manufacturing; 333511, Industrial Mold Manufacturing; 333514, Special Die and Tool, Die Set, Jig, and Fixture; 333515, Cutting Tool and Machine Tool Accessory; 333991, Power-Driven Handtool Manufacturing; 333519, Rolling Mill and Other Metalworking Machinery Manufacturing; 333992, Welding and Soldering Equipment Manufacturing; and 335311, Power, Distribution, and Specialty Transformer. The Division used data from Utah's FirmFind database to determine that there are 288 total businesses and 232 small businesses that have these codes. Of those businesses, 232 businesses may be impacted by the rule amendment. III. AN ESTIMATE OF
THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The amendments to this rule will likely only have a fiscal impact on small businesses. Big businesses use more product and are already regulated under the current version of the rule. There are 232 small businesses that have been identified by DAQ as businesses that may be fiscally impacted by this rule amendment.

IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: The rule amendment potentially impacts businesses that apply between 20 and approximately 1,543 gallons of regulated product annually. After speaking with industry experts, DAQ has determined that the source of the cost is an average $5 per gallon difference between compliant and non-compliant products. This means that businesses impacted by the rule will spend between $100 and $7,715 annually to comply with the rule. Most of the businesses impacted by the rule will be closer to the $100 amount on the spectrum. This is because most of the businesses that are impacted by the amendment are small businesses with between 1 and 10 employees. They do not use large quantities of product. It is important to note that many large businesses that are closer to the 1,543 gallon threshold will likely not be impacted by the rule. This is because they may already be required to comply with the rule based on the fact that they have the potential to emit over 2.7 tons of VOC emissions. Some of the small businesses may also already be using compliant coatings and will not have any additional costs as a result of the rule amendment. Based on the 232 businesses identified by DAQ from the FirmFind database, the aggregate annual fiscal impact of the rule on all businesses in Utah will range between $23,200 and $1,789,880. Once again, the total cost will fall toward the lower end of the spectrum ($23,200) because of the size of the businesses and the likelihood that large businesses are already complying with the rule. These figures represent the continuing annual costs to businesses. There are no onetime costs associated with the rule amendment.

V. DEPARTMENT HEAD’S COMMENTS ON THE ANALYSIS: The above analysis represents DAQ’s best estimate as to the fiscal impact this rule amendment will have on businesses. If a company uses a greater quantity of product, then the rule amendment will cause a more significant fiscal impact. The EPA has estimated the total cost of this type of regulation to be $2,111 per ton of VOC emissions removed from the atmosphere. The EPA considers this cost to be reasonable in the context of implementing Best Available Control Measures (BACM), as required by the Clean Air Act for Serious nonattainment areas.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT: ENVIRONMENTAL QUALITY AIR QUALITY FOURTH FLOOR 195 N 1950 W

SALT LAKE CITY, UT 84116-3085 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director


R307-350-2. Applicability. (1) R307-350 applies to [source][miscellaneous metal parts and products coating operations and related cleaning activities that use a combined 20 gallons or more of coating products and associated solvents per year and are located in Box Elder, Cache, Davis, Salt Lake, Tooele and Weber counties—where the potential to emit VOC emissions from all miscellaneous metal product parts surface coating operations, including related cleaning activities, is 2.7 tons per year or more].

(2) R307-350 applies to, but is not limited to, the following industries:
(a) Large farm machinery (harvesting, fertilizing, planting, tractors, combines, etc.);
(b) Small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.);
(c) Small appliance (fans, mixers, blenders, crock pots, vacuum cleaners, etc.);
(d) Commercial machinery (computers, typewriters, calculators, vending machines, etc.);
(e) Industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);
(f) Fabricated metal products (metal covered doors, frames, trailer frames, etc.); and
(g) Any other industrial category that coats metal parts or products under the standard Industrial Classification Code of major group 33 (primary metal industries), major group 34 (fabricated metal products), major group 35 (nonelectric machinery), major group 36 (electrical machinery), major group 37 (transportation equipment) major group 38 (miscellaneous instruments), and major group 39 (miscellaneous manufacturing industries).

(1) The requirements of R307-350 do not apply to the following:
(a) The surface coating of automobiles regulated under R307-354 and light-duty trucks;
(b) Flat metal sheets and strips in the form of rolls or coils;
(c) Surface coating of aerospace vehicles and components regulated under R307-355:
   (d) Automobile refinishing;
      (i) The exterior of marine vessels;
      (f) Customized top coating of automobiles and trucks if production is less than 35 vehicles per day;
      (g) Military munitions manufactured by or for the Armed Forces of the United States;
   (h) Operations that are exclusively covered by Department of Defense military technical data and performed by a Department of Defense contractor and/or on site at installations owned and/or operated by the United States Armed Forces; or
   (i) Canned aerosol coating products up to 22 fl. oz. used exclusively for touch-up and repairs.

(2) The requirements of R307-350-5 do not apply to the following:
(a) Stencil and hand lettering coatings;
(b) Safety-indicating coatings;
(c) Solid-film lubricants;
(d) Electric-insulating and thermal-conducting coatings;
(e) Magnetic data storage disk coatings; or
(f) Plastic extruded onto metal parts to form a coating.

(3) The requirements of R307-350-6 do not apply to the following:
(a) Touch-up coatings;
(b) Repair coatings; or
(c) Textured finishes.


The following additional definitions apply to R307-350:
"Aerospace vehicles and components" means any fabricated part, processed part, assembly of parts, or completed unit, with the exception of electronic components, of any aircraft including but not limited to airplanes, helicopters, missiles, rockets and space vehicles.
"Air dried coating" means coatings that are dried by the use of air or [forced warm air] at temperatures up to 194 degrees Fahrenheit.
"As applied" means the VOC and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.
"Baked coating" means coatings that are cured at a temperature at or above 194 degrees Fahrenheit.
"Camouflage coating" means coatings that are used, principally by the military, to conceal equipment from detection.
"Coating" means a material applied to a substrate for decorative, protective, or functional purposes.
"Coating application system" means all operations and equipment that applies, conveys, and dries a surface coating, including, but not limited to, spray booths, flow coaters, flash-off areas, air dryers and ovens.
"Cured coating or adhesive" means a coating or adhesive, which is dry to the touch.
"Department of Defense military technical data" means a specification that specifies design requirements, such as materials to be used, how a requirement is to be achieved, or how an item is to be fabricated or constructed.
"Dip coating" means a method of applying coatings to a substrate by submersion into and removal from a coating bath.
"Electric-insulating varnish" means a non-convertible-type coating applied to electric motors, components of electric motors, or power transformers, to provide electrical, mechanical, and environmental protection or resistance.
"Electric-insulating and thermal-conducting" means a coating that [is characterized as having an electrical insulation of at least 1000 volts DC per mil on a flat test plate and an average thermal conductivity of at least 0.27 BTU per hour-foot-degree-Fahrenheit.
"Electrostatic application" means a method of applying coating particles or coating droplets to a grounded substrate by electrically charging them.
"Etching filler" mean a coating that contains less than 23% solids by weight and at least 0.5% acid by weight, and is used instead of applying a pretreatment coating followed by a primer.
"Extreme high-gloss coating" means a coating which, when tested by the American Society for Testing Material (ASTM) Test Method D-523 adopted in 1980, shows a reflectance of 75 or more on a 60 degree meter.
"Extreme performance coatings" means coatings designed for harsh exposure or extreme environmental conditions.
"Flow coat" means a non-atomized technique of applying coatings to a substrate with a fluid nozzle in a fan pattern with no air supplied to the nozzle.
"Heat-resistant coating" means a coating that must withstand a temperature of at least 400 degrees Fahrenheit during normal use.
"High-performance architectural coating" means a coating used to protect architectural subsections and which meets the requirements of the Architectural Aluminum Manufacturer Association's publication number AAMA 605.2-1980.
"High-temperature coating" means a coating that is certified to withstand a temperature of 1,000 degrees Fahrenheit for 24 hours.
"High-volume, low-pressure (HVLP) spray" means a coating application system which is designed to be operated and which is operated between 0.1 and 10 pounds per square inch gauge (psig) air pressure, measured dynamically at the center of the air cap and the air horns.
"Magnetic data storage disk coating" means a coating used on a metal disk which stores data magnetically.
"Metallic coating" means a coating which contains more than 5 grams of metal particles per liter of coating, as applied.

"Military specification coating" means a coating applied to metal parts and products which has a formulation approved by a United States military agency for use on military equipment.

"Mold-seal coating" means the initial coating applied to a new mold or repaired mold to provide a smooth surface which, when coated with a mold release coating, prevents products from sticking to the mold.

"Multi-component coating" means a coating requiring the addition of a separate reactive resin, commonly known as a catalyst or hardener, before application to form an acceptable dry film.

"One-component coating" means a coating that is ready for application as it comes out of its container to form an acceptable dry film. A thinner, necessary to reduce the viscosity of the coating, is not considered a component.

"Pan backing coating" means a coating applied to the surface of pots, pans, or other cooking implements that are exposed directly to a flame or other heating elements.

"Prefabricated architectural component coatings" means coatings applied to metal parts and products that are to be used as an architectural structure or their appurtenances including, but not limited to, hand railings, cabinets, bathroom and kitchen fixtures, fences, rain-gutters and down-spouts, window screens, lamp-posts, heating and air conditioning equipment, other mechanical equipment, and large fixed stationary tools.

"Pretreatment coating" means a coating which contains no more than 12% solids by weight, and at least 0.5% acid, by weight, is used to provide surface etching, and is applied directly to metal surfaces to provide corrosion resistance, adhesion, and ease of stripping.

"Primer" means a coating applied to a surface to provide a firm bond between the substrate and subsequent coats.

"Repair coating" means a coating used to recoat portions of a part or product which has sustained mechanical damage to the coating.

"Safety-indicating coating" means a coating which changes physical characteristics, such as color, to indicate unsafe condition.

"Silicone release coating" means any coating which contains silicone resin and is intended to prevent food from sticking to metal surfaces.

"Solar-absorbent coating" means a coating which has as its prime purpose the absorption of solar radiation.

"Solid-film lubricant" means a very thin coating consisting of a binder system containing as its chief pigment material one or more of molybdenum disulfide, graphite, polytetrafluoroethylene (PTFE) or other solids that act as a dry lubricant between faying surfaces.

"Stencil and hand lettering coating" means an ink or a coating which is rolled or brushed onto a template or stamp in order to add identifying letters or numbers to metal parts and products.

"Textured finish" means a rough surface produced by spraying and splattering large drops of coating onto a previously applied coating. The coatings used to form the appearance of the textured finish are referred to as textured coatings.

"Repair and touch-up coating" means a coating used to cover minor coating imperfections appearing after the main coating operation.

"Vacuum-metalizing coating" means the undercoat applied to the substrate on which the metal is deposited or the overcoat applied directly to the metal film.

R307-35O-5. VOC Content Limits.

(1) [Repealed] No owner or operator shall apply coatings with a VOC content in excess of greater than the amounts specified in Table 1, unless the owner or operator uses an add-on control device as specified in R307-350-8.

<table>
<thead>
<tr>
<th>Category</th>
<th>Coating</th>
<th>VOC Limits</th>
<th>VOC Content (lb/gal)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air Dried</td>
<td>General One Component</td>
<td>2.8</td>
<td>3.5</td>
</tr>
<tr>
<td>Baked</td>
<td>General Multi Component</td>
<td>2.8</td>
<td>3.5</td>
</tr>
<tr>
<td></td>
<td>Camouflage</td>
<td>3.5</td>
<td>3.5</td>
</tr>
<tr>
<td></td>
<td>Electric-Insulating varnish</td>
<td>3.5</td>
<td>3.5</td>
</tr>
<tr>
<td></td>
<td>Etching Filler</td>
<td>3.5</td>
<td>3.5</td>
</tr>
<tr>
<td></td>
<td>Extreme High-Gloss</td>
<td>3.5</td>
<td>3.5</td>
</tr>
<tr>
<td></td>
<td>Extreme Performance</td>
<td>3.5</td>
<td>3.5</td>
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<tr>
<td></td>
<td>Heat-Resistant</td>
<td>3.5</td>
<td>3.5</td>
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<tr>
<td></td>
<td>High Performance architectural</td>
<td>6.2</td>
<td>6.2</td>
</tr>
<tr>
<td></td>
<td>High Temperature</td>
<td>3.5</td>
<td>3.5</td>
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<tr>
<td></td>
<td>Metallic</td>
<td>3.5</td>
<td>3.5</td>
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<tr>
<td></td>
<td>Military Specification</td>
<td>2.8</td>
<td>2.3</td>
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<tr>
<td></td>
<td>Mold-Seal</td>
<td>3.5</td>
<td>3.5</td>
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<tr>
<td></td>
<td>Pan Backing</td>
<td>3.5</td>
<td>3.5</td>
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<tr>
<td></td>
<td>Prefabricated Architectural Multi-Component</td>
<td>3.5</td>
<td>2.3</td>
</tr>
<tr>
<td></td>
<td>Prefabricated Architectural One-Component</td>
<td>3.5</td>
<td>2.3</td>
</tr>
<tr>
<td></td>
<td>Pretreatment Coatings</td>
<td>3.5</td>
<td>3.5</td>
</tr>
<tr>
<td></td>
<td>Repair and Touch Up</td>
<td>3.5</td>
<td>3.5</td>
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<tr>
<td></td>
<td>Silicone Release</td>
<td>3.5</td>
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<td></td>
<td>Solar-Absorbent</td>
<td>3.5</td>
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<tr>
<td></td>
<td>Vacuum-Metalizing</td>
<td>3.5</td>
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</tr>
<tr>
<td></td>
<td>Drum Coating, New, Exterior</td>
<td>2.8</td>
<td>2.8</td>
</tr>
<tr>
<td></td>
<td>Drum Coating, New, Interior</td>
<td>3.5</td>
<td>3.5</td>
</tr>
</tbody>
</table>
Drum Coating, Reconditioned, Exterior 3.5 3.5
Drum Coating, Reconditioned, Interior 4.2 4.2

(2) If more than one content limit indicated in this section applies to a specific coating, then the most stringent content limit shall apply.


No owner or operator of a facility shall apply VOC containing coatings to metal parts and products unless the coating is applied with equipment operated according to the equipment manufacturer specifications, and by the use of one of the following methods:

(1) Electrostatic application;
(2) Flow coat;
(3) Dip/electrodeposition coat;
(4) Roll coat;
(5) Hand Application Methods:
   (a) High-volume, low-pressure (HVLP) spray; or
   (b) Airless or air-assisted airless spray may also be used for metal coatings with a viscosity of 15,000 centipoise or greater, as supplied, or
   (c) Another application method capable of achieving 65% or greater transfer efficiency equivalent or better to HVLP spray, as certified by the manufacturer.


(1) Control techniques and work practices shall be implemented at all times to reduce VOC emissions. Control techniques and work practices shall include, but are not limited to:
   (a) Storing all VOC-containing coatings, thinners, and coating-related waste materials in closed containers;
   (b) Ensuring that mixing and storage containers used for VOC-containing coatings, thinners, and coating-related waste material are kept closed at all times except when depositing or removing these materials;
   (c) Minimizing spills of VOC-containing coatings, thinners, and coating-related waste materials;
   (d) Conveying VOC-containing coatings, thinners, and coating-related waste materials from one location to another in closed container or pipes; and
   (e) Minimizing VOC emission from cleaning of application, storage, mixing, and conveying equipment by ensuring that equipment cleaning is performed without atomizing the cleaning solvent and all spent solvent is captured in closed containers.

(2) All persons shall perform solvent cleaning operations with cleaning materials having VOC content (excluding water) consistent with any VOC collection device specified in R307-101-2 of 0.21 pounds per gallon or less. Solvent cleaning operations shall be performed using cleaning materials, having a VOC composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-350-8.


(a) Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-350.

(b) These records shall be available to the director upon request.


(1) If an add-on control system is used, the owner or operator shall install and maintain an incinerator, carbon adsorption, or any other add-on emission control system, provided that the emission control system is operated and maintained in accordance with the manufacturer recommendations, in order to and maintain at least 90% or greater capture and control efficiency. The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.


(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-350. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-350.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-350-8.
(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

**KEY:** air pollution, emission controls, coatings, miscellaneous metal parts

**Date of Enactment or Last Substantive Amendment:** [December 1, 2014] [2017]

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

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**Environmental Quality, Air Quality**

**R307-351**

**Graphic Arts**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 41825

FILED: 06/14/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The amendments to this rule strengthen the area source coating rules. These amendments will help further reduce Volatile Organic Compound (VOC) emissions and will be part of the upcoming Serious PM2.5 State Implementation Plan (SIP).

**SUMMARY OF THE RULE OR CHANGE:** The applicability threshold is being changed from a "potential to emit" to an application based threshold. This amendment reduces the exemption for solvent cleaners that do not meet the VOC vapor pressure or density requirements from 110 gallons to 55 gallons/yr. The definition section has also been amended to clarify the meaning of several terms used in the rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-104

**ANTICIPATED COST OR SAVINGS TO:**

♦ **SMALL BUSINESSES:** There will be an impact on small businesses because the new rule applicability threshold will cause several small businesses to be regulated by the rule that were not regulated previously. The cost to these businesses will depend on how much material is used. These businesses will pay an estimated $4,000 to $5,000 per ton of VOC emissions removed from the air. The Division of Air Quality (DAQ) has considered methods of reducing the negative fiscal impact of the rule on small businesses in accordance with Subsection 63G-3-301(6) but cannot establish less stringent requirements, schedules, or deadlines; simplify compliance or reporting requirements; replace design standards with performance standards; or exempt small businesses from the proposed rule. This is because the rule is required by federal law to satisfy the Clean Air Act requirement to implement Best Available Control Measures in the manner prescribed by the PM2.5 Implementation Rule, See 42 U.S.C. 7513a (b)(1) and 40 CFR 51.1010(a)(1) through (5). The rule also helps prevent future violations of federal air quality standards. Although the rule is required to help prevent future air quality violations and comply with federal law, DAQ has taken steps to reduce the negative fiscal impact the rule may have on small businesses. The rule provides regulated sources with flexibility and potential cost saving alternatives in regard to compliance. This includes a vapor pressure limit, instead of a density-based limit, for solvents. The vapor pressure limit gives businesses greater flexibility as to the types of solvents they may use. The rule also includes the option to use an add-on control device that can be used as an alternative to meeting the content limits in the rule. These provisions give businesses flexibility to comply with the rule in the way that makes the most sense for them.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities will not be impacted by this rule because the rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The compliance cost for people who are affected by the rule will be about $4,000 to $5,000 per ton of VOC removed from the air.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:**

I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY: The proposed rule may result in a fiscal impact to some businesses because the rule amendment changes the applicability threshold. The threshold is being changed from the 25 tons of VOC emissions on a per press basis to the "use of a combined 450 gallons or more" of product. Some larger businesses that use presses that use enough product to emit 25 tons of VOC annually are not impacted by this rule amendment.

**NOTICES OF PROPOSED RULES**
Therefore, the businesses most likely impacted by this amendment are smaller businesses that did not previously meet the applicability threshold of the rule. II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The number of businesses that are impacted by this rule amendment is difficult to predict because there is no data on the quantity of regulated product used by each business in the relevant areas. The rule generally covers businesses that have the following NAICS Code: 541430, Graphic Design Services. The Division used data from Utah's FirmFind database to determine that there are 258 total businesses and 258 small businesses that have this code. DAQ estimates that 100 of the 258 businesses may be impacted by the rule amendment. III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The amendments to this rule will likely only have a fiscal impact on small businesses. Big businesses use more product and are already regulated under the current version of the rule. There are 100 small businesses that have been identified by DAQ as businesses that may be fiscally impacted by this rule amendment. IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: After speaking with industry experts, DAQ has determined that the source of the cost is an average $5 per gallon difference between compliant and non-compliant products. This means that businesses impacted by the rule will spend at least $2,250 annually to comply with the rule. The cost will increase at a rate of $5 for each additional gallon used. Most of the businesses that are impacted by the amendment are small businesses with between 1 and 10 employees. They do not use large quantities of product and their costs will be close to the $2,250 estimate. Some of the small businesses may also already be using compliant coatings and will not have any additional costs as a result of the rule amendment. Based on the 100 businesses identified by DAQ, the aggregate annual fiscal impact of the rule on all businesses in Utah will be at least $225,000. This figure represents the continuing annual costs to businesses. There are no one-time costs associated with the rule amendment. V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: The above analysis represents DAQ’s best estimate as to the fiscal impact this rule amendment will have on businesses. If a company uses a greater quantity of product, then the rule amendment will cause a more significant fiscal impact. The total cost of this type of regulation has been estimated to be $4,000 - $5,000 per ton of VOC emissions removed from the atmosphere. The EPA considers this cost to be reasonable in the context of implementing Best Available Control Measures (BACM), as required by the Clean Air Act for Serious nonattainment areas.
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“Control device efficiency” means the ratio of VOC emissions recovered or destroyed by a control device to the total VOC emissions that are introduced into the control device, expressed as a percentage.

“Overall control efficiency” means the total efficiency of a control system, determined either by:

(1) The product of the capture efficiency and the control device efficiency; or

(2) A liquid-liquid material balance.

“Fountain solution” means a mixture of water and other volatile and non-volatile chemicals and additives that wet the nonimage area of a lithographic printing plate so that the ink is maintained within the image areas.

“Non-heatec”, also called coldset, means an offset lithographic printing or letterpress printing operation in which the ink solvents are vaporized by passing the printed surface through a dryer.

“Offset lithographic printing” means the application of words, designs, or pictures to substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.

“Alcohol” means any of the following compounds, when used as a fountain solution additive for offset lithographic printing: ethanol, n-propanol, and isopropanol.

“Control device” means a device such as a carbon adsorber or oxidizer which reduces the VOC in an exhaust gas by recovery or by destruction.

“Capture system” means the equipment (including hoods, ducts, fans, etc.) used to collect, capture, or transport a pollutant to a control device.

“Coating” means material applied onto or impregnated into a substrate. Such materials include, but are not limited to, solvent-borne and waterborne coatings.

“Composite partial vapor pressure” means the sum of the partial pressure of the compounds defined as VOCs.

“Control device efficiency” means the ratio of VOC emissions recovered or destroyed by a control device to the total VOC emissions that are introduced into the control device, expressed as a percentage.

“Flexible packaging” means any package or part of a package the shape of which can be readily changed. Flexible packaging includes, but is not limited to, bags, pouches, liners and wraps, utilizing paper, plastic, film, aluminum foil, metallized or coated paper or film, or any combination of these materials.

“ Lithographic printing” means the application of words, designs, or pictures on a substrate. All units in a machine which

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(1) R307-351-6(4) applies to offset lithographic printing operations that emit at least 2.7 tons per year actual emissions of VOC, or an equivalent level, before consideration of controls. Any press with total fountain solution reservoir of less than one gallon and sheet-fed presses with maximum sheet size of 11 inches by 17 inches or smaller are exempt from R307-351-6(4).

(5) R307-351-6(5) applies to offset lithographic printing and letterpress printing operations that emit at least 2.7 tons per year actual emissions of VOC, or an equivalent level, before consideration of controls. Cleaners used on electronic components of a press, pre press cleaning operations (e.g., platemaking), post-press cleaning operations (e.g., binding), cleaning supplies (e.g., detergents) used to clean the floor (other than dried ink) in the area around a press, or cleaning performed in parts washers or cold cleaners are exempt from R307-351-6(5).

(6) R307-351-7 applies to all graphic arts printing operations that emit at least 2.7 tons per year actual emissions of VOC, or an equivalent level, before consideration of controls.


The following additional definitions apply to R307-351:

“Composite partial vapor pressure” means the sum of the partial pressures of the compounds defined as VOCs.

“Capture efficiency” means the fraction of all VOC emissions generated by a process that are delivered to a control device, expressed as a percentage.

“Automatic Blanket Wash System” means equipment used to clean lithographic blankets which can include, but is not limited to those utilizing a cloth and expandable bladder, brush, spray, or impregnated cloth system.

“Coating” means material applied onto or impregnated into a substrate. Such materials include, but are not limited to, solvent-borne and waterborne coatings.

“Non-heatset”, also called coldset, means an offset lithographic printing or letterpress printing operation in which the ink solvents are vaporized by passing the printed surface through a dryer.

“Letterpress printing” means a method where the image area is raised relative to the non-image area and the ink is transferred to the substrate directly from the image surface.

“Flexographic printing” means the application of words, designs, or pictures to substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.

“Fountain solution” means a mixture of water and other volatile and non volatile chemicals and additives that wet the nonimage area of a lithographic printing plate so that the ink is maintained within the image areas.

“Heatset” means an offset lithographic printing or letterpress printing operation in which the ink solvents are vaporized by passing the printed surface through a dryer.

“Non-heatec”, also called coldset, means an offset lithographic printing or letterpress printing operation in which the ink solvents are vaporized by passing the printed surface through a dryer.

“Offset lithographic printing” means a plane onographic method in which the image and non image areas are on the same plane and the ink is offset from a plate to a rubber blanket, and then from the blanket to the substrate.

“Overall control efficiency” means the total efficiency of a control system, determined either by:

(1) The product of the capture efficiency and the control device efficiency; or

(2) A liquid-liquid material balance.

“Packaging printing” means rotogravure or flexographic printing, not otherwise defined as publication printing, upon paper, paperboard, metal foil, plastic film, and other substrates, which are in subsequent operations, formed into packaging products and labels. This includes, but is not limited to, folding cartons, flexible packaging, labels and wrapping.

“Printing operation” means the application of words, designs, or pictures on a substrate. All units in a machine which
have both coating and printing units shall be considered as performing a printing operation:

(c) The owner or operator installs and operates either a carbon adsorption system as described in R307-351-4(1)(c)(i) or an incineration system as described in R307-351-4(1)(c)(ii).

(i) A carbon adsorption system shall reduce the volatile organic emissions from the capture system by a minimum of 90.0% by weight.

(ii) An incineration system shall oxidize, from the capture system, a minimum of 90.0% of the non-methane VOCs measured as total combustible carbon to carbon dioxide and water.

(c) The VOC content limits can be met by averaging the VOC content of materials used on a single press, i.e., within a line.

(b) The use of averaging to meet the VOC content limits is not allowed for cross-line, i.e., across multiple lines.


(1) Presse used for flexible packaging printing shall comply with an 80% overall emission control efficiency.

(a) The owner or operator of an emission control device shall provide documentation that the emissions control system will attain the requirements of R307-351-5.

(b) The Emission control system shall be operated and maintained in accordance with the manufacturer recommendations.

(c) The design and operation of a capture system must be consistent with good engineering practices and shall be required to provide for an overall reduction in VOC emissions of at least:

(A) 75.0% where a publication rotogravure process is employed;

(B) 65.0% where a packaging rotogravure process is employed;

(C) 60.0% where a flexographic printing process is employed.

(2) The owner or operator of an emission control device shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.


(1) No owner or operator of a packaging and publication rotogravure, packaging and publication flexographic, and specialty printing operations employing VOC-containing ink may operate a facility unless:

(a) The volatile fraction of ink as it is applied to the substrate, contains 25.0% by volume of VOC and 75.0% by volume of water; or

(b) The ink as it is applied to the substrate, less water, contains 60.0% by volume or more nonvolatile material; or

(ii) As an alternative to the overall control efficiency, the following two equivalent VOC content limits may be met by use of low VOC content materials or combinations of materials and controls as follows:

(a) 0.8 kg VOC/kg solids applied; or

(b) 0.16 kg VOC/kg materials applied.

(c) The VOC content limits can be met by averaging the VOC content of materials used on a single press, i.e., within a line. The use of averaging to meet the VOC content limits is not allowed for cross-line, i.e., across multiple lines.

(1) Requirements for heatset web offset lithographic and heatset letterpress inks and dryers:

(a) Individual heatset web offset lithographic printing presses and individual heatset letterpress printing presses shall comply with 90% control efficiency for the control device on-heatset dryers.

(b) The owner or operator of an emission control device shall provide documentation that the emissions control system will attain the requirements of R307-351-6.

(c) The Emission control system shall be operated and maintained in accordance with the manufacturer recommendations.

(2) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.

(3) As an alternative to the control efficiency, the control device outlet concentration may be reduced to 20 ppmv as hexane on a dry basis to accommodate situations where the inlet VOC-concentration is low or there is no identifiable measurable inlet.

(4) Requirements for fountain solution:

(a) For heatset web offset lithographic printing, the level of control for VOC emissions from on-press (as-applied) fountain solution shall meet one of the following:

(i) 1.6% alcohol or less (by weight) in the fountain;

(ii) 2.0% alcohol or less (by weight) in the fountain solution if the fountain solution is refrigerated to below 60 degrees Fahrenheit;

(iii) 5.0% alcohol substitute or less (by weight) and no alcohol in the fountain solution.

(b) For sheet fed offset lithographic printing, the level of control for VOC emissions from on-press (as-applied) fountain solution shall meet one of the following:

(i) 5.0% alcohol or less (by weight) in the fountain;

(ii) 8.5% alcohol or less (by weight) in the fountain solution provided the fountain solution is refrigerated to below 60 degrees Fahrenheit;

(iii) 5.0% alcohol substitute or less (by weight) and no alcohol in the fountain solution.

(c) For non-heatset web offset lithographic printing, the level of control for VOC emissions shall be 5.0% alcohol substitute or less (by weight) on press (as-applied) and no alcohol in the fountain solution.

(5) Requirements for cleaning materials:

(a) For blanket washing, roller washing, plate cleaners, metering roller cleaners, impression cylinder cleaners, rubber rejuvenators, and other cleaners used for cleaning a press, press parts, or to remove dried ink from areas around a press.

(b) Up to 110 gallons per year of cleaning materials which meet neither the VOC composite vapor pressure requirement nor the VOC content requirement may be used.

**R307-351-7. Work Practices and Recordkeeping.**

(1) Control techniques and work practices are to be implemented at all times to reduce VOC emissions from fugitive type sources. Control techniques and work practices include:

(a) Tight fitting covers for open tanks; and

(b) Keeping cleaning materials, used shop towels, and solvent wiping cloths in closed containers.

(2) Record keeping and reporting:

(a) The owner or operator of any source subject to R307-351-7 shall maintain:

(i) Records of the annual usage of all materials that may be a source of VOC emissions including, but not limited to, inks, coatings, adhesives, fountain solution, and cleaning materials.

(ii) All sources subject to R307-351 shall maintain records demonstrating compliance with all provisions of R307-351. These records shall be available to the director upon request.

**R307-351-8. Compliance Schedule.**

(1) All sources within Salt Lake and Davis counties shall be in compliance with this rule by the effective date of this rule.

(2) All sources within Box Elder, Cache, Utah, and Weber counties shall be in compliance with this rule by January 1, 2014.

**R307-351-1. Purpose.**

The purpose of R307-351 is to limit volatile organic compound (VOC) emissions from graphic arts printing operations.

**R307-351-2. Applicability.**

R307-351 applies to graphic arts printing operations that use a combined 450 gallons or more of all VOC-containing materials per year and are located in Box Elder, Cache, Davis, Salt Lake, Utah, Tooele, or Weber counties.

**R307-351-3. Exemptions.**

(1) The provisions of R307-351 shall not apply to graphic arts materials that have a VOC content of less than 25 g/L, minus water and exempt VOCs, as applied.

(2) A graphic arts printing operation may use up to 55 gallons of cleaning materials per year that do not comply with the VOC composite vapor pressure requirement or the VOC content requirement in R307-351-5(4).

**R307-351-4. Definitions.**

The following additional definitions apply to R307-351:

"Alcohol" means any of the following compounds, when used as a fountain solution additive for offset lithographic printing: ethanol, n-propanol, and isopropanol.

"Alcohol Substitute" means a non-alcohol additive that contains VOCs and is used in the fountain solution.

"Cleaning materials and solutions" means a liquid solvent or solution used to clean the operating surfaces of a printing press and its parts. Cleaning materials and solutions include, but are not limited to, blanket wash, roller wash, metering roller cleaner, plate cleaner, impression cylinder washes, rubber rejuvenators, and other cleaners used for cleaning a press, press parts, or to remove dried ink or coating from areas around the press.
"Blanket" means a synthetic rubber material that is wrapped around a cylinder used in offset lithography to transfer or "offset" an image from an image carrier.

"Control system" means the combination of capture and control devices used to reduce emissions to the atmosphere.

"Flexographic printing" means the application of words, designs, and pictures to substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.

"Fountain solution" means a mixture of water and other volatile and non-volatile chemicals and additives that wets the non-image area of a lithographic printing plate so that the ink is maintained within the image areas.

"Graphic arts materials" means any inks, coatings, or adhesives, including added thinners or retarders, used in printing or related coating or laminating processes.

"Graphic arts printing" means the application of words and images using the offset lithographic, letterpress, rotogravure, or flexographic printing process.

"Heatset" means an offset lithographic printing or letterpress printing operation in which the ink solvents are vaporized by passing the printed surface through a dryer.

"Letterpress printing" means a method where the image area is raised relative to the non-image area and the ink is transferred to the substrate directly from the image surface.

"Non-heatset", also called coldset, means an offset lithographic printing or letterpress printing operation in which the ink dries by oxidation and/or absorption into the substrate without use of heat from dryers. For the purposes of this rule, use of an infrared heater or printing conducted using ultraviolet-cured or electron beam-cured inks is considered non-heatset.

"Offset lithographic printing" means a plane-o-graphic method in which the image and non-image areas are on the same plane and the ink is offset from a plate to a rubber blanket, and then from the blanket to the substrate.

"Printing operation" means the application of words, designs, or pictures on a substrate. All units in a machine which have both coating and printing units shall be considered as performing a printing operation.

"Rotogravure printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique that involves a recessed image area in the form of cells.

"Web" means a continuous roll of substrate.

R307-351-5. VOC Content Limits.

(1) No owner or operator shall apply graphic arts materials with a VOC content greater than the amounts specified in Table 1 or Table 2, unless the owner or operator uses an add-on control device as specified in R307-351-6.

### Table 1

<table>
<thead>
<tr>
<th>Graphic Art Material</th>
<th>VOC Limit (g/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adhesive</td>
<td>150</td>
</tr>
<tr>
<td>Coating</td>
<td>300</td>
</tr>
<tr>
<td>Flexographic Fluorescent Ink</td>
<td>300</td>
</tr>
<tr>
<td>Flexographic Ink-Non-Porous Substrate</td>
<td>300</td>
</tr>
<tr>
<td>Flexographic Ink-Porous Substrate</td>
<td>225</td>
</tr>
<tr>
<td>Gravure Ink</td>
<td>300</td>
</tr>
<tr>
<td>Letterpress Ink</td>
<td>300</td>
</tr>
<tr>
<td>Offset Lithographic Ink</td>
<td>300</td>
</tr>
<tr>
<td>Heatset Web Offset Lithographic Ink</td>
<td>300</td>
</tr>
<tr>
<td>Used on Book Presses and Presses</td>
<td></td>
</tr>
<tr>
<td>Less Than 22 Inches in Diameter</td>
<td>400</td>
</tr>
<tr>
<td>Used on Presses With Potential to Emit Less Than 10 Tons/Year</td>
<td>400</td>
</tr>
</tbody>
</table>

(2) No owner or operator shall apply fountain solution, including additives with a VOC content greater than the amounts specified in Table 2, unless the owner or operator uses an add-on control device as specified in R307-351-6.

### Table 2

<table>
<thead>
<tr>
<th>Graphic Art Material</th>
<th>VOC Limit (g/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heatset Web-Fed</td>
<td></td>
</tr>
<tr>
<td>Alcohol without Refrigerated Chiller</td>
<td>16</td>
</tr>
<tr>
<td>Alcohol with Refrigerated Chiller</td>
<td>30</td>
</tr>
<tr>
<td>Alcohol Substitute</td>
<td>50</td>
</tr>
<tr>
<td>Sheet-Fed</td>
<td></td>
</tr>
<tr>
<td>Alcohol without Refrigerated Chiller</td>
<td>50</td>
</tr>
<tr>
<td>Alcohol with Refrigerated Chiller</td>
<td>65</td>
</tr>
<tr>
<td>Alcohol Substitute</td>
<td>50</td>
</tr>
<tr>
<td>Non-Heatset Web-Fed</td>
<td></td>
</tr>
<tr>
<td>All Alcohol Substitutes</td>
<td>50</td>
</tr>
</tbody>
</table>

(3) Alcohol containing fountain solutions shall not be used in non-heatset web-fed operations.

(4) Cleaning materials with a VOC composite vapor pressure of less than 10 mm Hg at 68 degrees Fahrenheit or cleaning materials containing less than 50 percent VOC by weight shall be used.


(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations.

(a) Control devices for individual heatset web offset lithographic printing presses and individual heatset web letterpress printing press dryers that were installed prior to January 1, 2017, must maintain a 90% or greater control efficiency. Similar control devices installed after January 1, 2017, must maintain a 95% or greater control efficiency.

(b) Control devices for individual flexographic printing presses and individual rotogravure printing presses shall comply with a 90% or greater overall control efficiency.
(c) As an alternative to the control efficiency, the control device outlet concentration may be reduced to 20 ppmv as hexane on a dry basis to accommodate situations where the inlet VOC concentration is low or there is no identifiable measurable inlet. The control outlet concentration shall be determined using EPA Method 25A.

(d) The capture efficiency of a VOC emission control system's VOC collection device for flexographic and rotogravure presses shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(e) The capture efficiency of a VOC emission control system's VOC collection device for a heatset web offset press shall be determined by demonstrating that the airflow in the dryer is negative to the surrounding pressroom during the initial test using an air flow direction indicator, such as a smoke stick or aluminum ribbons, or differential pressure gauge.

(f) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(g) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

(1) Control techniques and work practices shall be implemented at all times to reduce VOC emissions. Control techniques and work practices include:
    (a) Keeping cleaning materials, used shop towels, and solvent wiping cloths in closed containers; and
    (b) Minimizing spills of VOC-containing cleaning materials.

(1) The owner or operator shall maintain records of the following:
    (a) Records that demonstrate compliance with R307-351. Records must include, but are not limited to, inventory and product data sheets of all graphic arts materials and cleaning solutions subject to R307-351.
    (b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-351-6. Key system parameters include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule. Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate that operations provide continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

KEY: air pollution, graphic arts, VOC, printing operations

Date of Enactment or Last Substantive Amendment: [February 4, 2013] 2017

Environmental Quality, Air Quality
R307-352
Metal Container, Closure, and Coil Coatings

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41822
FILED: 06/14/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments to this rule strengthen the area source coating rules. These amendments will help further reduce Volatile Organic Compound (VOC) emissions and will be part of the upcoming Serious PM2.5 State Implementation Plan (SIP).

SUMMARY OF THE RULE OR CHANGE: The applicability section is being amended from "potential to emit 2.7 tons per year or more of VOC" emissions to an application-based threshold of "a combined 20 gallons or more of coating products and associated solvents per year." Other changes include added definitions and a new recordkeeping section.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will be no impact on the state budget because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The state would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.
♦ LOCAL GOVERNMENTS: There will be no impact on local governments because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The local governments would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.
♦ SMALL BUSINESSES: There will be an impact on small businesses because the new rule applicability threshold will cause several small businesses to be regulated by the rule that were not regulated previously. The cost to these businesses will depend on how much material is used. These businesses will pay an estimated $3,369 per ton of VOC emissions removed from the air. The Division of Air Quality (DAQ) has considered methods of reducing the negative fiscal impact of the rule on small businesses in accordance with Subsection 63G-3-301(6) but cannot establish less
stringent requirements, schedules, or deadlines; simplify compliance or reporting requirements; replace design standards with performance standards; or exempt small businesses from the proposed rule. This is because the rule is required by federal law to satisfy the Clean Air Act requirement to implement Best Available Control Measures in the manner prescribed by the PM2.5 Implementation Rule, See 42 U.S.C. 7513a (b)(1) and 40 CFR 51.1010(a)(1) through (5). The rule also helps prevent future violations of federal air quality standards. Although the rule is required to help prevent future air quality violations and comply with federal law, DAQ has taken steps to reduce the negative fiscal impact the rule may have on small businesses. The rule provides regulated sources with flexibility and potential cost saving alternatives in regard to compliance. This includes a vapor pressure limit, instead of a density-based limit, for solvents. The vapor pressure limit gives businesses greater flexibility as to the types of solvents they may use. The rule also includes the option to use an add-on control device that can be used as an alternative to meeting the content limits in the rule. These provisions give businesses flexibility to comply with the rule in the way that makes the most sense for them.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses, or local government entities will not be impacted by this rule because the rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for people who are affected by the rule will be about $3,369 per ton of VOC removed from the air.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY: The proposed rule may result in a fiscal impact to some businesses because the rule amendment changes the applicability threshold. The threshold is being changed from the "potential to emit 2.7 tons or more of VOC" to the "use of a combined 20 gallons or more" of product. This new threshold is meant to ensure that all businesses that use coatings for metal containers, closures, and coils are regulated by Rule R307-352. Businesses that already have the potential to emit 2.7 tons or more of VOC are not impacted by the rule amendment. Therefore, the businesses most likely impacted by this amendment are small businesses that did not previously meet the applicability threshold of the rule. II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The number of businesses that are impacted by this rule amendment is difficult to predict because there is no data on the quantity of regulated product used by each business in the relevant areas. The rule generally covers businesses that have the following NAICS Codes: 332996, Fabricated Pipe and Pipe Fitting Manufacturing and 332439, Other Metal Container Manufacturing. The Division used data from Utah's FirmFind database to determine that there are 18 total businesses and 16 small businesses that have these codes. Of those businesses, 15 may be impacted by the rule amendment. III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The amendments to this rule will likely only have a fiscal impact on small businesses. Big businesses use more product and are already regulated under the current version of the rule. There are 15 small businesses that have been identified by DAQ as businesses that may be fiscally impacted by this rule amendment. IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: The rule amendment potentially impacts businesses that apply between 20 and approximately 1,543 gallons of regulated product annually. After speaking with industry experts, DAQ has determined that the source of the cost is an average $5 per gallon difference between compliant and non-compliant products. This means that businesses impacted by the rule will spend between $100 and $7,715 annually to comply with the rule. Most of the businesses impacted by the rule will be closer to the 100 dollar amount on the spectrum. This is because most of the businesses that are impacted by the amendment are small businesses with between 1 and 10 employees. They do not use large quantities of product. It is important to note that many large businesses that are closer to the 1,543 gallon threshold will likely not be impacted by the rule. This is because they may already be required to comply with the rule based on the fact that they have the potential to emit over 2.7 tons of VOC emissions. Some of the small businesses may also already be using compliant coatings and will not have any additional costs as a result of the rule amendment. Based on the 15 businesses identified by DAQ from the FirmFind database, the aggregate annual fiscal impact of the rule on all businesses in Utah will range between $1,500 and $115,725. Once again, the total cost will fall toward the lower end of the spectrum ($1,500) because of the size of the businesses and the likelihood that large businesses are already complying with the rule. These figures represent the continuing annual costs to businesses. There are no one-time costs associated with the rule amendment. V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: The above analysis represents DAQ's best estimate as to the fiscal impact this rule amendment will have on businesses. If a company uses a greater quantity of product, then the rule amendment will cause a more significant fiscal impact. EPA has estimated the total cost of this type of regulation to be $3,369 per ton of VOC emissions removed from the atmosphere. The EPA considers this cost to be reasonable in the context of implementing Best Available Control Measures (BACM), as required by the Clean Air Act for Serious nonattainment areas.
R307-352. Metal Container, Closure, and Coil Coatings.

R307-352-1. Purpose.

The purpose of this rule is to reduce volatile organic compound (VOC) emissions from the coating of metal containers, closures and coils [cans, pails, and lids] in the manufacturing or reconditioning process.


R307-352 applies to [sources]; metal container, closure and coil coating operations and related cleaning activities that use a combined 20 gallons or more of coating products and associated solvents per year and are located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties [that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities].


The following additional definitions apply to R307-352:

"Coating" means a protective, functional or decorative film applied in a thin layer to a surface. "As applied" means the volatile organic compound and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"End sealing compound" means a compound which is coated onto can ends and which functions as a gasket when the end is assembled onto the can.

"Exterior body spray" means a coating sprayed on the exterior of the container body to provide a decorative or protective finish.

"Interior body spray" means a coating sprayed on the interior of the container body to provide a protective film between the product and the can.

"Metal container or closure coating" means any coating applied to either the interior or exterior of formed metal cans, pails, lids or crowns or flat metal sheets which are intended to be formed into cans, pails, lids or crowns.

"Overvarnish" means a coating applied directly over a design coating to reduce the coefficient of friction, to provide gloss and to protect the finish against abrasion and corrosion.

"Reconditioned [pails or lids]" means any metal container which is reused, recycled or remanufactured.

"Three-piece can [side-seam] coating" means a coating sprayed on the exterior and/or interior of a welded, cemented or soldered seam to protect the exposed metal.

"Two-piece can exterior[...-end] coating" means a coating applied to the exterior bottom end of a can to reduce the coefficient of friction and to provide protection to the metal.

R307-352-4. VOC Content Limits.

[Each] No owner or operator shall [not] apply coatings with a VOC content [in excess of] greater than the amounts specified in Table 1 [or shall], unless the owner or operator uses an add-on control device as specified in R307-352-6.

<table>
<thead>
<tr>
<th>Category</th>
<th>VOC Content [lb/gal]</th>
</tr>
</thead>
<tbody>
<tr>
<td>CANS</td>
<td></td>
</tr>
<tr>
<td>Sheet basecoat (interior and exterior) and overvarnish</td>
<td>1.9</td>
</tr>
<tr>
<td>Two-piece can exterior basecoat, overvarnish, and end coating</td>
<td>2.1</td>
</tr>
<tr>
<td>Interior body spray</td>
<td></td>
</tr>
<tr>
<td>Two-piece cans</td>
<td>3.5</td>
</tr>
<tr>
<td>Three-piece cans</td>
<td>3.0</td>
</tr>
<tr>
<td>Three-piece can side seam spray</td>
<td>5.5</td>
</tr>
<tr>
<td>End sealing compound: Food cans, non-food cans, and beverage cans</td>
<td>0.1</td>
</tr>
<tr>
<td>Exterior body spray</td>
<td>3.5</td>
</tr>
<tr>
<td>PAILS AND LIDS</td>
<td></td>
</tr>
<tr>
<td>Body spray</td>
<td></td>
</tr>
<tr>
<td>Reconditioned interior</td>
<td>4.2</td>
</tr>
<tr>
<td>Reconditioned exterior</td>
<td>3.5</td>
</tr>
<tr>
<td>New interior</td>
<td>3.5</td>
</tr>
<tr>
<td>New exterior</td>
<td>2.8</td>
</tr>
</tbody>
</table>
NOTICES OF PROPOSED RULES


(1) The owner or operator shall:
(a) Store all VOC-containing coatings, thinners, and cleaning materials in closed containers;
(b) Minimize spills of VOC-containing coatings, thinners, and cleaning materials;
(c) Clean up spills immediately;
(d) Convey any coatings, thinners, and cleaning materials in closed containers or pipes;
(e) Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and
(f) Minimize usage of solvents during cleaning of storage, mixing, and conveying equipment.

(2) No person shall apply any coating unless the coating application method has a transfer efficiency of at least 65%.

The following applications achieve a minimum of 65% transfer efficiency and shall be operated in accordance with the manufacturer's specifications:
(a) Electrostatic application;
(b) Flow coat;
(c) Roll coat;
(d) Dip coat;
(e) High-volume, low-pressure (HVLP) spray;
(f) Hand application methods;
(g) Printing techniques; or
(h) Other application method capable of achieving at least 65% transfer efficiency, as certified by the manufacturer.

(3) All persons shall perform solvent cleaning operations with cleaning materials having VOC content (excluding water and solvents exempt from the definition of volatile organic compounds found in R307-101-2) of 0.21 lb/gallon or less. Solvent cleaning operations shall be performed using cleaning materials having a VOC composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-352-6.

(4) All sources subject to R307-352 shall maintain records demonstrating compliance with R307-352-4 and R307-352-5.

(a) Records shall include, but not be limited to, inventory and product data sheets of all coatings and solvents subject to R307-352.

(b) These records shall be made available to the director upon request.


(1) If an add-on control system is used, the owner or operator shall install and maintain an incinerator, carbon adsorption, or any other add-on emission control system, provided that the emission control system is operated and maintained in accordance with the manufacturer recommendations.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

(2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-352-6.

(3) The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-352-6. Key system parameters may include, but are not limited to, temperature, pressure and flow rates. Operator inspection schedule, monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(4) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.


(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-352. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-352.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-352-6.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.
Environmental Quality, Air Quality

R307-353

Plastic Parts Coatings

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41823

FILED: 06/14/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments to this rule strengthen the area source coating rules. These amendments will help further reduce Volatile Organic Compound (VOC) emissions and will be part of the upcoming Serious PM2.5 State Implementation Plan (SIP).

SUMMARY OF THE RULE OR CHANGE: The applicability section is being amended from "potential to emit 2.7 tons per year or more of VOC" emissions to an application-based threshold of "a combined 20 gallons or more of coating products and associated solvents per year." Other changes included added definitions and a new record keeping section.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There will be no impact on the state budget because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The state would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.

♦ LOCAL GOVERNMENTS: There will be no impact on local governments because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The local governments would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.

♦ SMALL BUSINESSES: There will be an impact on small businesses because the new rule applicability threshold will cause several small businesses to be regulated by the rule that were not regulated previously. The cost to these businesses will depend on how much material is used. These businesses will pay an estimated $2,111 per ton of VOC emissions removed from the air. The Division of Air Quality (DAQ) has considered methods of reducing the negative fiscal impact of the rule on small businesses in accordance with Subsection 63G-3-301(6) but cannot establish less stringent requirements, schedules, or deadlines; simplify compliance or reporting requirements; replace design standards with performance standards; or exempt small businesses from the proposed rule. This is because the rule is required by federal law to satisfy the Clean Air Act requirement to implement Best Available Control Measures in the manner prescribed by the PM2.5 Implementation Rule, See 42 U.S.C. 7513a (b)(1) and 40 CFR 51.1010(a)(1) through (5). The rule also helps prevent future violations of federal air quality standards. Although the rule is required to help prevent future air quality violations and comply with federal law, DAQ has taken steps to reduce the negative fiscal impact the rule may have on small businesses. The rule provides regulated sources with flexibility and potential cost saving alternatives in regard to compliance. This includes a vapor pressure limit, instead of a density-based limit, for solvents. The vapor pressure limit gives businesses greater flexibility as to the types of solvents they may use. The rule also includes the option to use an add-on control device that can be used as an alternative to meeting the content limits in the rule. These provisions give businesses flexibility to comply with the rule in the way that makes the most sense for them.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:

Persons other than small businesses, businesses, or local government entities will not be impacted by this rule because the rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for people who are affected by the rule will be about $2,111 per ton of VOC removed from the air.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:

I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY: The proposed rule may result in a fiscal impact to some businesses because the rule amendment changes the applicability threshold. The threshold is being changed from the "potential to emit 2.7 tons or more of VOC" to the "use of a combined 20 gallons or more" of product. This new threshold is meant to ensure that all businesses that use coatings for plastic parts are regulated by Rule R307-353. Businesses that already have the potential to emit 2.7 tons or more of VOC are not impacted by the rule amendment. Therefore, the businesses most likely impacted by this amendment are small businesses that did not previously meet the applicability threshold of the rule. II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The number of businesses that are impacted by this rule amendment is difficult to predict because there is no data on the quantity of regulated product used by each business in the relevant areas. The rule generally covers businesses that have the following NAICS Codes: 326160,
Plastics Bottle Manufacturing; 326191, Plastics Plumbing Fixture Manufacturing; 325211, Plastics Material and Resin Manufacturing; 326111, Plastics Bag and Pouch Manufacturing; 326112, Plastics Packaging Film and Sheet (including Laminated) Manufacturing; 326113, Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing; 326121, Unlaminated Plastics Profile Shape Manufacturing; 326122, Plastics Pipe and Pipe Fitting Manufacturing; and 326130 Laminated Plastics Plate, Sheet (except Packaging), and Shape Manufacturing. DAQ used data from Utah's FirmFind database to determine that there are 57 total businesses and 45 small businesses that have these codes. Of those businesses, 32 may be impacted by the rule amendment. III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The amendments to this rule will likely only have a fiscal impact on small businesses. Big businesses use more product and are already regulated under the current version of the rule. There are 32 small businesses that have been identified by DAQ as businesses that may be fiscally impacted by this rule amendment. IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: The rule amendment potentially impacts businesses that apply between 20 and approximately 1,080 gallons of regulated product annually. After speaking with industry experts, DAQ has determined that the source of the cost is an average $5 per gallon difference between compliant and non-compliant products. This means that businesses impacted by the rule will spend between $100 and $5,400 annually to comply with the rule. Most of the businesses impacted by the rule will be closer to the $100 amount on the spectrum. This is because most of the businesses that are impacted by the amendment are small businesses with between 1 and 10 employees. They do not use large quantities of product. It is important to note that many large businesses that are closer to the 1,080 gallon threshold will likely not be impacted by the rule. This is because they may already be required to comply with the rule based on the fact that they have the potential to emit over 2.7 tons of VOC emissions. Some of the small businesses may also already be using compliant coatings and will not have any additional costs as a result of the rule amendment. Based on the 32 businesses identified by DAQ from the FirmFind database, the aggregate annual fiscal impact of the rule on all businesses in Utah will range between $3,200 and $172,800. Once again, the total cost will fall toward the lower end of the spectrum ($3,200) because of the size of the businesses and the likelihood that large businesses are already complying with the rule. These figures represent the continuing annual costs to businesses. There are no one-time costs associated with the rule amendment. V. DEPARTMENT HEAD’S COMMENTS ON THE ANALYSIS: The above analysis represents DAQ's best estimate as to the fiscal impact this rule amendment will have on businesses. If a company uses a greater quantity of product, then the rule amendment will cause a more significant fiscal impact. EPA has estimated the total cost of this type of regulation to be $2,111 per ton of VOC emissions removed from the atmosphere. The EPA considers this cost to be reasonable in the context of implementing Best Available Control Measures (BACM), as required by the Clean Air Act for Serious nonattainment areas.
(f) Textured finishes.

(2) If a coating line is subject to the requirements for existing automobile, light-duty truck, and other product and material coatings or for existing metallic surface coating lines, the coating line shall be exempt from this rule.

(3) Canned aerosol coating products up to 22 fl. oz. that are used exclusively for touch-up and repairs.


The following additional definitions apply to R307-353:

"Air dried coating" means coatings that are dried by the use of air or a forced warm air at temperatures up to 194 degrees Fahrenheit.

"As applied" means the volatile organic compound and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Baked coating" means coatings that are cured at a temperature at or above 194 degrees Fahrenheit.

"Coating" means a protective, functional, or decorative film applied in a thin layer to a surface. This term often applies to paints, such as lacquers or enamels. It is also used to refer to films applied to paper, plastics, or foil.

"Electric-insulating and thermal-conducting" means a coating that displays an electrical insulation of at least 1000 volts DC per mil on a flat test plate and an average thermal conductivity of at least 0.27 BTU per hour-foot-degree-Fahrenheit.

"Magnetic data storage disk coating" means a coating used on a metal disk which stores data magnetically.

"Metallic coating" means a coating which contains more than 5 grams of metal particles per liter of coating as applied.

"Military specification coating" means a coating which has a formulation approved by a United States military agency for use on military equipment.

"Mirror backing" means the coating applied over the silvered surface of a mirror.

"Mold-seal coating" means the initial coating applied to a new mold or a repaired mold to provide a smooth surface which, when coated with a mold release coating, prevents products from sticking to the mold.

"Multi-colored coating" means a coating which exhibits more than one color when applied, and which is packaged in a single container and applied in a single coat.

"Multi-component coating" means a coating requiring the addition of a separate reactive resin, commonly known as a catalyst, before application to form an acceptable dry film.

"Optical coating" means a coating applied to an optical lens.

"Plastic" means a substrate containing one or more resins that may be solid, porous, flexible, or rigid, and includes fiber reinforced plastic composites.

"Primer" means a coating applied to a surface to provide a firm bond between the substrate and subsequent coats.

"Repair coating" means a coating used to recoat portions of a part or product which has sustained mechanical damage to the coating.

"Roller Coated" means a type of coating application equipment that utilizes a series of mechanical rollers to form a thin coating film on the surface of a roller, which is then applied to a substrate by moving the substrate underneath the roller.

"Safety-indicating coating" means a coating which changes physical characteristics, such as color, to indicate unsafe condition.

"Stencil coating" means an ink or a coating which is rolled or brushed onto a template or stamp in order to add identifying letters or numbers to metal parts and products.

"Textured finish" means a rough surface produced by spraying and splattering large drops of coating onto a previously applied coating. The coatings used to form the appearance of the textured finish are referred to as textured coatings.

"Touch-up coating" means a coating used to cover minor coating imperfections appearing after the main coating operation.

"Topcoat" means the last film-building finishing material applied in a finishing system. Non-permanent final finishes are not topcoats.

R307-353-5. VOC Content Limits.

(1) For automobile and truck plastic parts coating lines:

(a) [Exempt] No owner or operator shall apply coatings with a VOC content [in excess of] greater than the amounts specified in Table 1 [or shall], unless the owner or operator uses an add-on control device as specified in R307-353-8.

(b) For red and black coatings, the [emission] content limitation shall be determined by multiplying the appropriate limit in Table 1 by 1.15.

(c) When EPA Method 24 is used to determine the VOC content of a high bake coating, the applicable [emission] content limitation shall be determined by adding 0.5 to the appropriate limit in Table 1.

(d) When EPA Method 24 is used to determine the VOC content of an air-dried coating, the applicable [emission] content limitation shall be determined by adding 0.1 to the appropriate limit in Table 1.

TABLE 1

<table>
<thead>
<tr>
<th>TYPE OF COATING</th>
<th>VOC LIMITS [lb/gal]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prime</td>
<td>4.3</td>
</tr>
<tr>
<td>Flexible coating</td>
<td>4.5</td>
</tr>
<tr>
<td>Nonflexible coating</td>
<td>3.5</td>
</tr>
<tr>
<td>Topcoat</td>
<td>4.3</td>
</tr>
<tr>
<td>Basecoat</td>
<td>4.3</td>
</tr>
</tbody>
</table>

AUTOMOBILE AND TRUCK PLASTIC PARTS COATING LINES
(values in pounds of VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)
(2) [Each] No owner or operator of a business machine plastic parts coating line shall [not] apply coatings with a VOC content [in excess of] greater than the amounts specified in Table 2, unless the owner or operator uses an add-on control device as specified in R307-353-8.

<table>
<thead>
<tr>
<th>COATING</th>
<th>VOC CONTENT (lb/gal)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air-dried coating - exterior parts</td>
<td></td>
</tr>
<tr>
<td>Prime</td>
<td>4.8</td>
</tr>
<tr>
<td>Topcoat</td>
<td></td>
</tr>
<tr>
<td>Basecoat</td>
<td></td>
</tr>
<tr>
<td>Clearcoat</td>
<td></td>
</tr>
<tr>
<td>Non-basecoat/clearcoat</td>
<td></td>
</tr>
<tr>
<td>Air-dried coating - interior parts</td>
<td>5.0</td>
</tr>
<tr>
<td>Touch-up and repair</td>
<td>5.2</td>
</tr>
</tbody>
</table>

(3) [Each] No owner or operator engaged in the other plastic product coating operations listed in Table 3 shall [not] apply coatings with a VOC content [in excess of] greater than the amounts specified in Table 3, unless the owner or operator uses an add-on control device as specified in R307-353-8.

<table>
<thead>
<tr>
<th>COATING</th>
<th>VOC CONTENT (lb/gal)</th>
</tr>
</thead>
<tbody>
<tr>
<td>General One-Component</td>
<td>2.3</td>
</tr>
<tr>
<td>General Multi-Component</td>
<td>3.5</td>
</tr>
<tr>
<td>Electric Dissipating Coatings And Shock-Free Coatings</td>
<td>3.0</td>
</tr>
<tr>
<td>Extreme Performance</td>
<td>3.5 (2-pack coatings)</td>
</tr>
</tbody>
</table>

(4) If a part consists of both plastic and metal surfaces [and is exempted from the requirements for existing metallic coating lines], then the [part] shall be subject to coatings applied to the part must comply with the content limits of this rule.

No person shall apply VOC containing coatings unless the coating is applied with equipment operated according to the manufacturer specifications, and by use of one of the following methods:
(1) Electrostatic application;
(2) Flow coat;
(3) Roller coat;
(4) Dip/electrodeposition coat;
(5) Airless Spray;
(6) High-volume, low-pressure (HVLP) spray; or
(7) Other application method equal to or better than HVLP, as certified by the manufacturer.

(1) The owner or operator shall:
(a) Store all VOC-containing coatings, thinners, and cleaning materials in closed containers;
(b) Minimize spills of VOC-containing coatings, thinners, and cleaning materials;
(c) Clean up spills immediately;
(d) Convey any coatings, thinners, and cleaning materials in closed containers or pipes;
(e) Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and
(f) Minimize usage of solvents during cleaning of storage, mixing, and conveying equipment.

(2) All persons shall perform solvent cleaning operations [with] shall be performed using cleaning material having a VOC content (excluding water and solvents exempt from the definition of volatile organic compounds found in R307-101-2) of 0.21 pounds per gallon or less, composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-353-8.
(2) All persons subject to R307-352 shall maintain records demonstrating compliance with R307-353-6 and R307-353-7(2).
(a) Records shall include, but not be limited to, inventory and product data sheets of all coatings and solvents subject to R307-350.
(b) These records shall be made available to the director upon request.


(1) If an add-on control system is used, the owner or operator shall install and maintain an incinerator, carbon adsorption, or any other add on emission control system, provided that the emission control system is operated and maintained in accordance with the manufacturer's recommendations. The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

KEY: air pollution, emission controls, coatings, plastic parts

NOTICE OF PROPOSED RULE

Automotive Refinishing Coatings

R307-354

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments to this rule strengthen the area source coating rules. These amendments will help further reduce Volatile Organic Compound (VOC) emissions and will be part of the upcoming Serious PM2.5 State Implementation Plan (SIP).

SUMMARY OF THE RULE OR CHANGE: The applicability section is being amended from "potential to emit 2.7 tons per year or more of VOC" emissions to an application-based threshold of "a combined 20 gallons or more of coating products and associated solvents per year." Other changes included added definitions and a new recordkeeping section.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There will be no impact on the state budget because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. This change does not impact the state. Therefore, there is no cost or savings for the state.

♦ LOCAL GOVERNMENTS: There will be no impact on local government because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. This change does not impact local government. Therefore, there is no cost or savings for local governments.

♦ SMALL BUSINESSES: There will be no impact on small businesses because the new rule applicability threshold will cause several small businesses to be regulated by the rule...
that were not regulated previously. The cost to these businesses will depend on how much material is used. These businesses will pay an estimated $2,864 per ton of VOC emissions removed from the air. The Division of Air Quality (DAQ) has considered methods of reducing the negative fiscal impact of the rule on small businesses in accordance with Subsection 63G-3-301(6) but cannot establish less stringent requirements, schedules, or deadlines; simplify compliance or reporting requirements; replace design standards with performance standards; or exempt small businesses from the proposed rule. This is because the rule is required by federal law to satisfy the Clean Air Act requirement to implement Best Available Control Measures in the manner prescribed by the PM2.5 Implementation Rule, See 42 U.S.C. 7513a (b)(1) and 40 CFR 51.1010(a)(1) through (5). The rule also helps prevent future violations of federal air quality standards. Although the rule is required to help prevent future air quality violations and comply with federal law, DAQ has taken steps to reduce the negative fiscal impact the rule may have on small businesses. The rule provides regulated sources with flexibility and potential cost saving alternatives in regard to compliance. This includes a vapor pressure limit, instead of a density-based limit, for solvents. The vapor pressure limit gives businesses greater flexibility as to the types of solvents they may use. The rule also includes the option to use an add-on control device that can be used as an alternative to meeting the content limits in the rule. These provisions give businesses flexibility to comply with the rule in the way that makes the most sense for them.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses, or local government entities will not be impacted by this rule because the rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for people who are affected by the rule will be about $2,864 per ton of VOC removed from the air.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY: The proposed rule may result in a fiscal impact to some businesses because the rule amendment changes the applicability threshold. The threshold is being changed from the "potential to emit 2.7 tons or more of VOC" to the "use of a combined 20 gallons or more" of product. This new threshold is meant to ensure that all businesses that use automotive refinishing coatings are regulated by Rule R307-354. Businesses that already have the potential to emit 2.7 tons or more of VOC are not impacted by the rule amendment. Therefore, the businesses most likely impacted by this amendment are small businesses that did not previously meet the applicability threshold of the rule. II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The number of businesses that are impacted by this rule amendment is difficult to predict because there is no data on the quantity of regulated product used by each business in the relevant areas. The rule generally covers businesses that have the following NAICS Code: 811121, Automotive Body, Paint, and Interior Repair and Maintenance. The Division used data from Utah's FirmFind database to determine that there are 324 total businesses and 324 small businesses that have these codes. Of those businesses, 268 may be impacted by the rule amendment.

III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The amendments to this rule will likely only have a fiscal impact on small businesses. There are 268 small businesses that have been identified by DAQ as businesses that may be fiscally impacted by this rule amendment. IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD.

IDENTIFYING ONE-TIME AND ONGOING COSTS: The rule amendment potentially impacts businesses that apply between 20 and approximately 1,688 gallons of regulated product annually. After speaking with industry experts, DAQ has determined that the source of the cost is an average $5 per gallon difference between compliant and non-compliant products. This means that businesses impacted by the rule will spend between $100 and $8,440 dollars to comply with the rule. Most of the businesses impacted by the rule will be closer to the $100 amount on the spectrum. This is because most of the businesses that are impacted by the amendment are small businesses with between 1 and 10 employees. They do not use large quantities of product. It is important to note that many of the larger businesses that are closer to the 1,688 gallon threshold will likely not be impacted by the rule. This is because they may already be required to comply with the rule based on the fact that they have the potential to emit over 2.7 tons of VOC emissions. Some of the small businesses may also already be using compliant coatings and will not have any additional costs as a result of the rule amendment. Based on the 268 potentially impacted businesses identified by DAQ from the FirmFind database, the aggregate annual fiscal impact of the rule on all businesses in Utah will range between $26,800 and $2,261,920. Once again, the total cost will fall toward the lower end of the spectrum ($26,800) because of the size of the businesses and the likelihood that larger businesses are already complying with the rule. These figures represent the continuing annual costs to businesses. There are no one-time costs associated with the rule amendment.

V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: The above analysis represents DAQ's best estimate as to the fiscal impact this rule amendment will have on businesses. If a company uses a greater quantity of product, then the rule amendment will cause a more significant fiscal impact. EPA has estimated the total cost of this type of regulation to be $2,864 per ton of VOC emissions removed from the
The solids content of the finishing material that is actually used for subsequent coating is applied. Facilitate bonding of subsequent coatings, and on which a pretreatment coating is used to provide surface etching, and is applied directly to bare metal surfaces to provide corrosion resistance and promote adhesion. The following additional definitions apply to R307-354:

"Adhesion promoter" means a coating which is labeled and formulated for application to a substrate to provide a bond between metal surfaces to provide corrosion resistance and promote adhesion. "As applied" means the volatile organic compound and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material. "Automotive" means passenger cars, vans, motorcycles, trucks, buses, golf carts and all other mobile equipment.

"Automotive refinishing" means the process of coating automobiles, after-market automobiles, motorcycles, light and medium-duty trucks and vans that are performed in auto body shops, auto repair shops, production paint shops, new car dealer repair and paint shops, fleet operation repair and paint shops, and any other facility which coats vehicles under the Standard Industrial Classification Code 7532 (Top, Body and Upholstery Repair Shops and Paint Shops). This includes dealer repair of vehicles damaged in transit. It does not include refinishing operations for other types of mobile equipment, such as farm machinery and construction equipment or their parts, including partial body collision repairs, that is subsequent to the original coating applied at an automobile original equipment manufacturing plant.

"Clear coating" means any coating that contains no pigments and is labeled and formulated for application over a color coating or clear coating. "Color coating" means any pigmented coating, excluding adhesion promoters, primers, and multi-color coatings, that requires a subsequent clear coating and which is applied over a primer, adhesion promoter, or color coating. Color coatings include metallic and iridescent color coatings.

"Enclosed paint gun cleaner" means a cleaner consisting of a closed container with a door or top that can be opened and closed and fitted with cleaning connections. The spray gun is attached to a connection, and solvent is pumped through the gun and onto the exterior of the gun. Cleaning solvent falls back into the cleaner's solvent reservoir for recirculation.

"Metallic/Iridescent color coating" means a coating which contains iridescent particles, composed of either metal as metallic particles or silicon as mica particles, in excess of 0.042 pounds per gallon as applied, where such particles are visible in the dried film. "Multi-color coating" means a coating which exhibits more than one color when applied, and which is packaged in a single container and applied in a single coat.

"Non-enclosed paint gun cleaner" means cleaner consisting of a basin similar to a sink in which the operator washes the outside of the gun under a solvent stream. The gun cup is filled with recirculated solvent, the gun tip is placed into a canister attached to the basin, and suction draws the solvent from the cup through the gun. The solvent gravitates to the bottom of the basin and drains through a small hole to a reservoir that supplies solvent to the recirculation pump.

"Pretreatment coating" means a coating which contains no more than 16% solids, by weight, and at least 0.5% acid, by weight, is used to provide surface etching, and is applied directly to bare metal surfaces to provide corrosion resistance and promote adhesion for subsequent coatings. "Primer" means any coating which is labeled and formulated for application to a substrate to provide a bond between the substrate and subsequent coats; corrosion resistance; a smooth atmosphere. The EPA considers this cost to be reasonable in the context of implementing Best Available Control Measures (BACM), as required by the Clean Air Act for Serious nonattainment areas.

R307-354-1. Purpose.  
The purpose of R307-354 is to limit volatile organic compound emissions (VOC) from automotive refinishing sources.

[1] R307-354 applies to [sources] automotive refinishing operations and related cleaning activities that use a combined 20 gallons or more of coating products and associated solvents per year and are located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah [and] Weber counties [that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities].


R307-354-3A. Definitions.  
The following additional definitions apply to R307-354:

"Adhesion promoter" means a coating which is labeled and formulated to be applied to uncoated plastic surfaces to facilitate bonding of subsequent coatings, and on which, a subsequent coating is applied.

"As applied" means the volatile organic compound and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material. "Automotive" means passenger cars, vans, motorcycles, trucks, buses, golf carts and all other mobile equipment. "Automotive refinishing" means the process of coating automobiles, after-market automobiles, motorcycles, light and medium-duty trucks and vans that are performed in auto body shops, auto repair shops, production paint shops, new car dealer repair and paint shops, fleet operation repair and paint shops, and any other facility which coats vehicles under the Standard Industrial Classification Code 7532 (Top, Body and Upholstery Repair Shops and Paint Shops). This includes dealer repair of vehicles damaged in transit. It does not include refinishing operations for other types of mobile equipment, such as farm machinery and construction equipment or their parts, including partial body collision repairs, that is subsequent to the original coating applied at an automobile original equipment manufacturing plant. "Clear coating" means any coating that contains no pigments and is labeled and formulated for application over a color coating or clear coating. "Color coating" means any pigmented coating, excluding adhesion promoters, primers, and multi-color coatings, that requires a subsequent clear coating and which is applied over a primer, adhesion promoter, or color coating. Color coatings include metallic and iridescent color coatings. "Enclosed paint gun cleaner" means a cleaner consisting of a closed container with a door or top that can be opened and closed and fitted with cleaning connections. The spray gun is attached to a connection, and solvent is pumped through the gun and onto the exterior of the gun. Cleaning solvent falls back into the cleaner's solvent reservoir for recirculation. "Metallic/Iridescent color coating" means a coating which contains iridescent particles, composed of either metal as metallic particles or silicon as mica particles, in excess of 0.042 pounds per gallon as applied, where such particles are visible in the dried film. "Multi-color coating" means a coating which exhibits more than one color when applied, and which is packaged in a single container and applied in a single coat. "Non-enclosed paint gun cleaner" means cleaner consisting of a basin similar to a sink in which the operator washes the outside of the gun under a solvent stream. The gun cup is filled with recirculated solvent, the gun tip is placed into a canister attached to the basin, and suction draws the solvent from the cup through the gun. The solvent gravitates to the bottom of the basin and drains through a small hole to a reservoir that supplies solvent to the recirculation pump. "Pretreatment coating" means a coating which contains no more than 16% solids, by weight, and at least 0.5% acid, by weight, is used to provide surface etching, and is applied directly to bare metal surfaces to provide corrosion resistance and promote adhesion for subsequent coatings. "Primer" means any coating which is labeled and formulated for application to a substrate to provide a bond between the substrate and subsequent coats; corrosion resistance; a smooth atmosphere. The EPA considers this cost to be reasonable in the context of implementing Best Available Control Measures (BACM), as required by the Clean Air Act for Serious nonattainment areas.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov  

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2017  

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:  
♦ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT  

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017  

AUTHORIZED BY: Bryce Bird, Director
substrate surface; or resistance to penetration of subsequent coats, and on which a subsequent coating is applied. Primers may be pigmented.

"Primer sealer" means any coating which is labeled and formulated for application prior to the application of a color coating for the purpose of color uniformity, or to promote the ability of the underlying coating to resist penetration by the color coating.

"Single-stage coating" means any pigmented coating, excluding primers and multi-color coatings, labeled and formulated for application without a subsequent clear coat. Single-stage coatings include single-stage metallic/iridescent coatings.

"Solids" means the part of the coating that remains after the coating is dried or cured; solids content is determined using data from EPA Method 24.

"Temporary protective coating" means any coating which is labeled and formulated for the purpose of temporarily protecting areas form overspray or mechanical damage.

"Topcoat" means any coating or series of coatings applied over a primer or an existing finish for the purpose of protection or beautification.

"Truck bed liner coating" means any coating, excluding clear, color, multi-color, and single-stage coatings, labeled and formulated for application to a truck bed to protect it from surface abrasion.

"Underbody coating" means any coating labeled and formulated for application to wheel wells, the inside of door panels or fenders, the underside of a trunk or hood, or the underside of [the]a motor vehicle.

"Uniform finish coating" means any coating labeled and formulated for application to the area around a spot repair for the purpose of blending a repaired area's color or clear coat to match the appearance of an adjacent area's existing coating.[ Prior to May 1, 2013, this coating category may be referred to as uniform finish blenders.]

"Uniform finish blender" means a coating designed to blend a repaired topcoat into an existing topcoat.

R307-354-5. VOC Content Limits.

[Except] No owner or operator shall [not] apply coatings with a VOC content in excess of greater than the amounts specified in Table 1 [or shall], unless the owner or operator uses an add-on control device as specified in R307-354-6.[7]

<table>
<thead>
<tr>
<th>Category</th>
<th>VOC Limits (lb/gal)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adhesion Promoter</td>
<td>4.5</td>
</tr>
<tr>
<td>Clear Coating</td>
<td>2.1</td>
</tr>
<tr>
<td>Color Coating</td>
<td>3.5</td>
</tr>
<tr>
<td>Multi-color Coating</td>
<td>5.7</td>
</tr>
<tr>
<td>Pretreatment Coating</td>
<td>5.5</td>
</tr>
</tbody>
</table>


(1) Control techniques and work practices are to be implemented at all times to reduce VOC emissions. Control techniques and work practices include:

(a) Tight fitting covers for open tanks;

(b) [Covered] Closed containers shall be used for the disposal of solvent wiping cloths;

(c) Collection hoods for areas where solvent is used for cleaning;

(d) Minimizing spills of VOC-containing cleaning materials;

(e) Conveying VOC-containing materials from one location to another in closed containers or pipes; and

(f) Cleaning spray guns in enclosed systems or in a non-enclosed paint gun cleaning process may be used if the vapor pressure of the cleaning solvent (excluding water and solvents exempt from the definition of [volatile organic compounds found in R307-101-2] VOCs) is less than 100 mm Hg at 68 degrees Fahrenheit and the solvent is directed towards a drain that leads directly to an enclosed remote reservoir. Automotive spray gun solvent cleaning materials that are defined as a "consumer product" under R307-357 are exempt from the vapor pressure requirement and are regulated under the requirements in R307-357.

(2) Application equipment requirements:

(a) A person shall not apply any coating to an automotive part or component unless the coating application method achieves a [demonstrated] minimum 65% transfer efficiency.

(b) The following coating application methods have been demonstrated to achieve a minimum of 65% transfer efficiency:

(i) Brush, dip or roll coating operated in accordance with the manufacturers specifications;

(ii) Electrostatic application equipment operated in accordance with the manufacturers specifications; and

(iii) High Volume, Low Pressure spray equipment operated in accordance with the manufacturers specifications.

(2) All sources subject to R307-351 shall maintain records demonstrating compliance with R307-354-4 and R307-354-5.

(a) Records shall include, but not be limited to, inventory and product data sheets of all coatings and solvents subject to R307-354.

(1) If an add-on control system is used, the owner or operator shall install and maintain an emission control system in accordance with the manufacturer's recommendations, provided that the emission control system is operated and maintained in accordance with the manufacturer's recommendations in order to maintain an overall capture and control efficiency of at least 90% or greater capture and control efficiency. [Determination of] The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

(2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-354-6(1).

(3) The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-354-6. Key system parameters may include, but are not limited to, temperature, pressure and flow rates. Operator inspection schedule, monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(4) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.


(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-354. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-354.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-354-7.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records must be maintained for a minimum of 2 years.

(3) Records must be made available to the director upon request.

KEY: air pollution, automotive refinishing, VOC, coatings

Date of Enactment or Last Substantive Amendment: [December 1, 2014][2017]

AUTHORIZING, AND IMPLEMENTED OR INTERPRETED LAW: 19-2-104(1)

(a)
could not identify a single small business that meets the applicability threshold of the rule.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses, or local government entities will not be impacted by this rule because the rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for people who are affected by the rule will be about $3,672 per ton of VOC removed from the air.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY: The proposed rule may result in a fiscal impact to some businesses because the rule amendment changes the applicability threshold. The threshold is being changed from the "potential to emit 10 tons or more of VOC" emissions to the use of "a combined 55 gallons or more" of product. This new threshold is meant to ensure that all businesses that use aerospace coatings are regulated by Rule R307-355. Businesses that already have the potential to emit 2.7 tons or more of VOC are not impacted by the rule amendment. Therefore, the businesses most likely impacted by this amendment are businesses that did not previously meet the applicability threshold of the rule. II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The Division estimates that there are four total businesses and zero small businesses that will be impacted by this rule amendment. III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: There are zero small businesses that will be impacted by this rule amendment. IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: The rule amendment potentially impacts businesses that apply between 55 and approximately 6,250 gallons of regulated product annually. After speaking with industry experts, DAQ has determined that the source of the cost is an average $5 per gallon difference between compliant and non-compliant products. This means that businesses impacted by the rule will spend between $275 and $31,250 annually to comply with the rule. Based on the four businesses identified by DAQ, the aggregate annual fiscal impact of the rule amendment on all businesses in Utah will range between and $1,100 and $125,000, depending on the quantity of regulated product used. These figures represent the continuing annual costs to businesses. There are no one-time costs associated with the rule amendment. V. DEPARTMENT HEAD’S COMMENTS ON THE ANALYSIS: The above analysis represents DAQ's best estimate as to the fiscal impact this rule amendment will have on businesses. If a company uses a greater quantity of product, then the rule amendment will cause a more significant fiscal impact. The EPA has estimated the total cost of this type of regulation to be $3,672 per ton of VOC emissions removed from the atmosphere. The EPA considers this cost to be reasonable in the context of implementing Best Available Control Measures (BACM), as required by the Clean Air Act for Serious nonattainment areas.

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or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

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THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director

R307-355. [Control of Emissions from] Aerospace Manufacture and Rework Facilities.
R307-355-1. Purpose.

The purpose of R307-355 is to limit the emissions of volatile organic compounds (VOCs) from aerospace coatings and adhesives, from organic solvent cleaning, and from the storage and disposal of solvents and waste solvent materials associated with the use of aerospace coatings and adhesives.


R307-355 applies to all aerospace manufacture and rework facilities that [have the potential to emit 10 tons or more per year of VOCs and that] are located in Box Elder, Cache, Davis, Salt Lake, Utah, Tooele [and]or Weber counties[.] and use a combined 55 gallons or more of coating products and associated solvents and adhesives per year.


(1) R307-355 does not apply to the following:
(a) [Where c]leaning and coating [takes place]activities in research and development, quality control[.], and laboratory
testing[ and electronic parts and assemblies, except for cleaning and coating of completed assemblies];

(b) [Text]

(c) [Text]

(d) Touchup and repair operations;

(e) Hand-held spray can application;

(f) Department of Defense classified coatings;

(g) Coatings or aerosols with separate formulations that are used in volumes of less than one 1 gallon on any day or 20 gallons in any calendar year;

(h) Adhesives with separate formulations that are used in volumes of less than 0.5 gallons on any day or 10 gallons in any calendar year;

(i) Airbrush application methods for stenciling, lettering, and other identification markings; and

(ii) Any situation that normally requires the use of an airbrush or an extension on the spray gun to properly reach limited access spaces.

The following additional definitions apply to R307-355:

"Ablative coating" means a coating applied to both new and rework aerospace components, which chars and becomes intumescent when exposed to open flame, such as would occur during the failure of an engine casing. The purpose of the coating is to act as an isolative barrier and protect adjacent metal parts from an open flame.

"Adhesion promoter" means a very thin coating applied to a substrate to promote wetting and form a chemical bond with the subsequently applied material.

"Adhesive bonding primer" means a primer applied in a thin film to aerospace components for the purpose of corrosion inhibition and increased adhesive bond strength by attachment. There are two categories of adhesive bonding primers: primers with a design cure at 250 degrees Fahrenheit or below and primers with a design cure above 250 degrees Fahrenheit.

"Aerospace manufacture[1] and [2]rework facility" means any installation that produces, reworks, or repairs in any amount any commercial, civil, or military aerospace vehicle or component.

"Antique aerospace vehicle or component" means an aircraft or component thereof that was built [at least 20 years] prior to 1970 and would not routinely be in commercial or military service in the capacity for which it was designed.

"Bearing coating" means a coating applied to an antifriction bearing, a bearing housing, or the area adjacent to such a bearing in order to facilitate bearing function or to protect base material from excessive wear. A material shall not be classified as a bearing coating if it can also be classified as a dry lubricative material or a solid film lubricant.

"Caulking and smoothing compounds" means semi-solid materials which are applied by hand application methods and are used to aerodynamically smooth exterior vehicle surfaces or fill cavities such as bolt hole accesses. A material shall not be classified as a caulking and smoothing compound if it can also be classified as a sealant.

"Chemical agent-resistant coating" means an exterior topcoat designed to withstand exposure to chemical warfare agents or the decontaminants used on those agents.

"Chemical milling maskants" means a coating that is applied directly to aluminum components to protect surface areas when chemical milling the component with a Type I or Type II etchant. Type I chemical milling maskants are used with a Type I etchant and Type II chemical milling maskants are used with a Type II etchant.

"Chemical agent-resistant coating" means an exterior topcoat designed to withstand exposure to chemical warfare agents or the decontaminants used on those agents.

"Chemical milling maskants" means a coating that is applied directly to aluminum components to protect surface areas when chemical milling the component with a Type I or Type II etchant. Type I chemical milling maskants are used with a Type I etchant and Type II chemical milling maskants are used with a Type II etchant.

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"Chemical agent-resistant coating" means an exterior topcoat designed to withstand exposure to chemical warfare agents or the decontaminants used on those agents.
maintain structural integrity of metallic structures during ascent or re-entry, and prevent ice formation.

"Electric or radiation-effect coating" means a coating or coating system engineered to interact, through absorption or reflection, with specific regions of the electromagnetic energy spectrum, such as the ultraviolet, visible, infrared, or microwave regions. Uses include, but are not limited to, lightning strike protection, electromagnetic pulse (EMP) protection, and radar avoidance. Coatings that have been designated as "classified" by the Department of Defense are exempt.

"Electrostatic discharge and electromagnetic interference (EMI) coating" means a coating applied primarily to commercial aircraft (or commercial aircraft adapted for military use) that must withstand immersion in phosphate-ester (PE) hydraulic fluid (Skydrol 500b A-9 or equivalent) at the elevated temperature of 150 degrees Fahrenheit for 1,000 hours.

"Epoxy polyamide topcoat" means a coating used where harder films are required or in some areas where engraving is accomplished in camouflage colors.

"Fire-resistant (interior) coating" means for civilian aircraft, fire-resistant interior coatings are used on passenger cabin interior parts that are subject to the FAA fireworthiness requirements. For military aircraft, fire-resistant interior coatings are used on parts that are subject to the flammability requirements of MIL-STD-1630A and MIL-A-87721. For space applications, these coatings are used on parts that are subject to the flammability requirements of SE-R-0006 and SSP 30233.

"Flexible primer" means a primer that meets flexibility requirements such as those needed for adhesive bond primed fastener heads or on surfaces expected to contain fuel. The flexible coating is required because it provides a compatible, flexible substrate over bonded sheet rubber and rubber-type coatings as well as a flexible bridge between the fasteners, skin, and skin-to-skin joints on outer aircraft skins. This flexible bridge allows more topcoat flexibility around fasteners and decreases the chance of the topcoat cracking around the fasteners. The result is better corrosion resistance.

"Flight test coating" means a coating applied to aircraft other than missiles or single-use aircraft prior to flight testing to protect the aircraft from corrosion and to provide required marking during flight test evaluation.

"Fuel tank coating" means a coating applied to fuel tank components for the purpose of corrosion and/or bacterial growth inhibition and to assure sealant adhesion in extreme environmental conditions.

"High-temperature coating" means a coating designed to withstand temperatures of more than 350 degrees Fahrenheit.

"Insulation covering" means material that is applied to foam insulation to protect the insulation from mechanical or environmental damage.

"Intermediate release coating" means a thin coating applied beneath topcoats to assist in removing the topcoat in depainting operations and generally to allow the use of less hazardous depainting methods.

"Lacquer" means a clear or pigmented coating formulated with nitrocellulose or synthetic resin to dry by evaporation without a chemical reaction. Lacquers are resoluble in their original solvent.

"Low vapor pressure hydrocarbon-based cleaning solvent" means a cleaning solvent that is composed of a mixture of photochemically reactive hydrocarbons and oxygenated hydrocarbons and has a maximum vapor pressure of 7 mm Hg at 68 degrees Fahrenheit. These cleaners must not contain hazardous air pollutants.

"Maskants" means a coating that is applied directly to aluminum components to protect surface areas when chemical milling the component with a Type I or Type II etchant. Type I chemical milling maskants are used with a Type I etchant and Type II chemical milling maskants are used with a Type II etchant.

"Metalized epoxy coating" means a coating that contains relatively large quantities of metallic pigmentation for appearance and/or added protection.

"Mold release" means a coating applied to a mold surface to prevent the molded piece from sticking to the mold as it is removed.

"Optical anti-reflection coating" means a coating with a low reflectance in the infrared and visible wavelength ranges that is used for antireflection on or near optical and laser hardware.

"Part marking coating" means coatings or inks used to make identifying markings on materials, components, and/or assemblies. These markings may be either permanent or temporary.

"Pretreatment coating" means an organic coating that contains at least 0.5 percent acids by weight and is applied directly to A-12 metal or composite surfaces to provide surface etching, corrosion resistance, adhesion, and ease of stripping.

"Rain erosion resistant coating" means a coating applied primarily to radomes, canopies, and leading edges of aircraft to provide protection from erosion due to rain, dust, and other airborne particles.

"Rocket motor nozzle coating" means a catalyzed epoxy coating system used in elevated temperature applications on rocket motor nozzles.

"Scale inhibitor" means a coating that is applied to the surface of a part prior to thermal processing to inhibit the formation of scale.

"Screen print ink" means an ink used in screen printing processes during fabrication of decorative laminates and decals.

"Sealant" means a material used to prevent the intrusion of water, fuel, air, or other liquids or solids from certain areas of aerospace vehicles or components. There are two categories of sealants: extrudable/rollable/brushable sealants and sprayable sealants.

"Silicone insulation material" means an insulating material applied to exterior metal surfaces for protection from high temperatures caused by atmospheric friction or engine exhaust. These materials differ from ablative coatings in that they are not "sacrificial."

"Solid film lubricant" means a dry lubricant coating used to reduce friction between faying metal surfaces. The coating consists of an organic binder system containing one or more of the following substances: molybdenum disulfide, graphite,
polytetrafluoroethylene (Teflon PTFE), other types of Teflon, lauric acid, cetyl alcohol, or waxes.

"Space vehicle" means a man-made device, either manned or unmanned, designed for operation beyond earth's atmosphere. This definition includes integral equipment such as models, mock-ups, prototypes, mold, jigs, tooling, hardware jackets and test coupons. Also included, auxiliary equipment associated with test, transport and storage that through contamination can compromise the space vehicle performance.

"Specialized function coating" means a coating that fulfills extremely specific engineering requirements that are limited in application and are characterized by low volume usage. This category excludes coatings covered in other Specialty Coating categories.

"Specialty coating" means a coating that, even though it meets the definition of a primer, topcoat, or self-priming topcoat, has additional performance criteria beyond those of primers, topcoats, and self-priming topcoats for specific applications.

(1) These performance criteria may include, but are not limited to, temperature or fire resistance, substrate compatibility, antireflection, temporary protection or marking, sealing, adhesively joining substrates, or enhanced corrosion protection.

(2) Individual specialty coatings are defined in Appendix A of 40 CFR 62 subpart GG, which is incorporated by reference.

"Temporary protective coating" means a coating applied to provide scratch or corrosion protection during manufacturing, storage, or transportation. Two types include peelable protective coatings and alkaline removable coatings. These materials are not intended to protect against strong acid or alkaline solutions. Coatings that provide this type of protection from chemical processing are not included in this category.

"Temperature control coating" means a coating formulated with specific thermal conductive or radiative properties to permit temperature control of the substrate.

"Topcoat" means a coating that is applied over a primer or component for appearance, identification, camouflage, or protection. Topcoats that are defined as specialty coatings are not included under this definition.

"Wet fastener installation coating" means a primer or sealer applied by dipping, brushing, or daubing to fasteners that are installed before the coating is cured.

"Wing coating" means a corrosion-resistant topcoat that is resilient enough to withstand the flexing of the wings.

R307-355-5. VOC Content Limits.

(4) The owner or operator shall not apply coatings to aerospace vehicles or components with a VOC content [in excess of] greater than the amounts specified in Table 1 unless the owner or operator uses an add-on control device as specified in R307-355-9.

(a) 2.9 pounds per gallon of coating, excluding water and exempt solvents, delivered to a coating applicator that applies topcoats, including self-priming topcoats;

(b) 3.5 pounds per gallon of coating, excluding water and exempt solvents, delivered to a coating applicator that applies topcoats (including self-priming topcoats). For general aviation rework facilities, the VOC limit shall be 1.5 pounds per gallon of coating, excluding water and exempt solvents, delivered to a coating applicator that applies topcoats (including self-priming topcoats);

(c) 5.2 pounds per gallon of coating, excluding water and exempt solvents, delivered to a coating applicator that applies Type I chemical milling maskants;

(d) 1.2 pounds per gallon of coating, excluding water and exempt solvents, delivered to a coating applicator that applies Type II chemical milling maskants; and


(2) The owner or operator may alternatively comply with R307-355-5(a) through (d) by using an add-on control device as specified in R307-355-9.

(3) The following coating applications are exempt from the VOC content limits in R307-355-5(a):

(a) Touchup and repair operations.

(b) Use of hand-held spray can application method.

(c) Department of Defense classified coatings.

(d) Coatings of space vehicles.

(e) Facilities that use separate formulations in volumes of less than 50 gallons per year subject to a maximum exemption of 200 gallons total for such formulations applied annually.

Table 1

<table>
<thead>
<tr>
<th>Coating type</th>
<th>VOC Content Limit (g/l)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ablative Coating</td>
<td>600</td>
</tr>
<tr>
<td>Adhesion Promoter</td>
<td>890</td>
</tr>
<tr>
<td>Adhesive Bonding Primers:</td>
<td></td>
</tr>
<tr>
<td>Cured at 250 degF or below</td>
<td>850</td>
</tr>
<tr>
<td>Cured above 250 degF</td>
<td>1030</td>
</tr>
<tr>
<td>Adhesives:</td>
<td></td>
</tr>
<tr>
<td>Commercial Interior Adhesive</td>
<td>760</td>
</tr>
<tr>
<td>Cyanocrylate Adhesive</td>
<td>1,000</td>
</tr>
<tr>
<td>Fuel Tank Adhesive</td>
<td>620</td>
</tr>
<tr>
<td>Nonstructural Adhesive</td>
<td>360</td>
</tr>
<tr>
<td>Rocket Motor Bonding Adhesive</td>
<td>890</td>
</tr>
<tr>
<td>Rubber-based Adhesive</td>
<td>850</td>
</tr>
<tr>
<td>Structural Nonadhesive Adhesive</td>
<td>850</td>
</tr>
<tr>
<td>Antichafe Coating</td>
<td>660</td>
</tr>
<tr>
<td>Bearing Coating</td>
<td>620</td>
</tr>
<tr>
<td>Caulking and Smoothing Compounds</td>
<td>850</td>
</tr>
<tr>
<td>Chemical Agent-Resistant Coating</td>
<td>550</td>
</tr>
<tr>
<td>Clear Coating</td>
<td>720</td>
</tr>
<tr>
<td>Commercial Exterior Aerodynamic</td>
<td></td>
</tr>
<tr>
<td>Structure Primer</td>
<td>650</td>
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<tr>
<td>Compatible Substrate Primer</td>
<td>780</td>
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<tr>
<td>Corrosion Prevention Compound</td>
<td>710</td>
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<tr>
<td>Cryogenic Flexible Primer</td>
<td>645</td>
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<tr>
<td>Dry Lubricative Material</td>
<td>880</td>
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<tr>
<td>Cryoprotective Coating</td>
<td>600</td>
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<tr>
<td>Electric or Radiation-Electrostatic Discharge and Eletromagnetic Interference (EMI) Coating</td>
<td>800</td>
</tr>
<tr>
<td>Elevated-Temperature Skydrol-Resistant Commercial Primer</td>
<td>740</td>
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<tr>
<td>Epoxy Polyamide Topcoat</td>
<td>660</td>
</tr>
<tr>
<td>Fire-Resistant (interior) Coating</td>
<td>800</td>
</tr>
<tr>
<td>Flexible Primer</td>
<td>640</td>
</tr>
</tbody>
</table>

(1) No owner or operator shall apply any [primer or topcoat] coating to aerospace vehicles or components unless the primer and topcoat is applied with equipment operated according to the equipment manufacturer specifications or by the use of one of the following methods: one of the following application methods is used:

(a) Electrostatic application;
(b) Flow/curtain coat;
(c) Dip/electrodeposition coat;
(d) Roll coat;
(e) Brush coating;
(f) Cotton-tipped swab application;
(g) High-Volume, Low-Pressure (HVLP) Spray;
(h) Hand Application Methods; or
(i) Other coating application methods that achieve emission reductions equivalent to HVLP or electrostatic spray application methods, as determined according to the requirements in 40 CFR 63.750(i).

(2) The following conditions are exempt from R307-355-6:

(a) Any situation that normally requires the use of an airbrush or an extension on the spray gun to properly reach limited access spaces;
(b) The application of coatings that contain fillers that adversely affect atomization with HVLP spray guns and that cannot be applied by any of the application methods specified in R307-355-6.
(c) The application of coatings that normally have dried film thickness of less than 0.0013 centimeters (0.0005 inches) and that cannot be applied by any of the application methods specified in R307-355-6.
(d) The use of airbrush application methods for stenciling, lettering, and other identification markings.
(e) The use of hand-held spray can application methods.
(f) Touch-up and repair operations.
(g) Application of specialty coatings.


(1) Control techniques and work practices shall be implemented at all times to reduce VOC emissions from coating and solvent cleaning operations on aerospace vehicles or components. Control techniques and work practices shall include, but are not limited to:

(a) Storing all VOC-containing coatings, adhesives, thinners, and coating-related waste materials in closed containers;
(b) Ensuring that mixing and storage containers used for VOC-containing coatings, adhesives, thinners, and coating-related waste material are kept closed at all times except when depositing or removing these materials;
(c) Minimizing spills of VOC-containing coatings, adhesives, thinners, and coating-related waste materials; and
(d) Conveying VOC-containing coatings, adhesives, thinners, and coating-related waste materials from one location to another in closed container or pipes.


(a) Records shall include, but not be limited to, inventory and product data sheets of all coatings and solvents subject to R307-355.

(b) These records shall be available to the Director upon request.


(1) Hand-wipe cleaning. Cleaning solvents (excluding water and exempt solvents) exempt from the definition of volatile organic compounds, found in R307-101-2) used in hand-wipe cleaning operations on aerospace vehicles or components shall meet one of the following requirements:

(a) Have a VOC composite vapor pressure less than or equal to 45 mm Hg at 68 degrees Fahrenheit;
(b) Have an aqueous cleaning solvent in which water is at least 80% of the solvent as applied; or
(c) Have a low vapor pressure hydrocarbon-based cleaning solvent.

(2) The following exemptions apply:

(a) Cleaning during the manufacture, assembly, installation, maintenance, or testing of components of breathing oxygen systems that are exposed to the breathing oxygen.
(b) Cleaning during the manufacture, assembly, installation, maintenance, or testing of parts, subassemblies, or assemblies that are exposed to strong oxidizers or reducers (e.g., nitrogen tetroxide, liquid oxygen, hydrazine).
(c) Cleaning and surface activation prior to adhesive bonding.
(d) Cleaning of electronics parts and assemblies containing electronics parts.

<table>
<thead>
<tr>
<th>Flight-Test Coatings:</th>
<th>Missiles or Single Use Aircraft</th>
<th>420</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Other</td>
<td></td>
<td>840</td>
</tr>
<tr>
<td>Fuel-Tank Coating</td>
<td></td>
<td>720</td>
</tr>
<tr>
<td>High-Temperature Coating</td>
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<td>850</td>
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<tr>
<td>Insulation Covering</td>
<td></td>
<td>740</td>
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<tr>
<td>Intermediate Release Coating</td>
<td></td>
<td>750</td>
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<tr>
<td>Lacquer</td>
<td></td>
<td>830</td>
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<tr>
<td>Masks:</td>
<td>Bonding Maskant</td>
<td>1,230</td>
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<tr>
<td></td>
<td>Critical Use and Line Sealer Maskant</td>
<td>1,020</td>
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<tr>
<td>Seal Coat Maskant</td>
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<td>1,230</td>
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<tr>
<td>Metallized Epoxy Coating</td>
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<td>740</td>
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<tr>
<td>Mold Release</td>
<td></td>
<td>700</td>
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<tr>
<td>Optical Anti-Reflective Coating</td>
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<td>750</td>
</tr>
<tr>
<td>Part Marking Coating</td>
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<tr>
<td>Pretreatment Coating</td>
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<td>760</td>
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<tr>
<td>Primer</td>
<td></td>
<td>350</td>
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<tr>
<td>Rain Erosion Resistant Coating</td>
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<td>850</td>
</tr>
<tr>
<td>Rocket Motor Nozzle Coating</td>
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<td>660</td>
</tr>
<tr>
<td>Scale Inhibitor</td>
<td></td>
<td>880</td>
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<tr>
<td>Screen Print Ink</td>
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<td>840</td>
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<tr>
<td>Sealants:</td>
<td>Extrudable/Rollable/Brushable Sealant</td>
<td>280</td>
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<td>Sprayable Sealant</td>
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<td>Silicone Insulation Material</td>
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<td></td>
<td>Solid Film Lubricant</td>
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<td></td>
<td>Specialized Function Coating</td>
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<td></td>
<td>Temporary Protective Coating</td>
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<td></td>
<td>Thermal Control Coating</td>
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<td>Topcoat</td>
<td>Type I chemical milling maskant</td>
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<td></td>
<td>Type II chemical milling maskants</td>
<td>160</td>
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<tr>
<td></td>
<td>Water Fastener Installation Coating</td>
<td>675</td>
</tr>
<tr>
<td></td>
<td>King Coating</td>
<td>850</td>
</tr>
</tbody>
</table>
NOTICES OF PROPOSED RULES

(e) Cleaning of aircraft and ground support equipment fluid systems that are exposed to the fluid, including air-to-air heat exchangers and hydraulic fluid systems.

(f) Cleaning of fuel cells, fuel tanks, and confined spaces.

(g) Surface cleaning of solar cells, coated optics, and thermal control surfaces.

(h) Cleaning during fabrication, assembly, installation, and maintenance of upholstery, curtains, carpet, and other textile materials used on the interior of the aircraft.

(i) Cleaning of metallic and nonmetallic materials used in honeycomb cores during the manufacture or maintenance of these cores, and cleaning of the completed cores used in the manufacture of aerospace vehicles or components.

(j) Cleaning of aircraft transparencies, polycarbonate, or glass substrates.

(k) Cleaning and solvent usage associated with research and development, quality control, or laboratory testing.

(l) Cleaning operations, using nonflammable liquids, conducted within five feet of energized electrical systems.

(3) Flush cleaning. Cleaning solvents used in flush cleaning of aerospace vehicle or component parts, assemblies and coating unit components must be emptied into an enclosed container or collection system that is kept closed when not in use.

(4) Spray gun cleaning. All spray guns used to apply coatings to aerospace vehicle or component shall be cleaned by one or more of the following methods:

   (a) Enclosed system that is closed at all times except when inserting or removing the spray gun. If leaks in the system are found, repairs shall be made as soon as practicable, but no later than 15 days after the leak was found. If the leak is not repaired by the 15th day, the cleaning solvent shall be removed and the enclosed cleaner shall be shut down until the leak is repaired or its use is permanently discontinued.

   (b) Nonatomized cleaning.

   (i) Spray guns shall be cleaned by placing cleaning solvent in the pressure pot and forcing it through the gun with the atomizing cap in place.

   (ii) No atomizing air is to be used.

   (iii) The cleaning solvent from the spray gun shall be directed into a vat, drum, or other waste container that is closed when not in use.

   (c) Disassembled spray gun cleaning.

   (i) Spray guns shall be cleaned by disassembling and cleaning the components by hand in a vat, which shall remain closed at all times except when in use.

   (ii) Spray gun components shall be soaked in a vat, which shall remain closed during the soaking period and when not inserting or removing components.

   (d) Atomizing spray into a waste container that is fitted with a device designed to capture atomized solvent emissions.

   (e) Cleaning of the nozzle tips of automated spray equipment systems, except for robotic systems that can be programmed to spray into a closed container, shall be exempt from these requirements.


(1) The owner or operator shall install and maintain an emissions control system, provided that the emission control system is operated and maintained in accordance with the manufacturer recommendations in order to maintain at least 81% capture and control efficiency. Determination of overall capture and control efficiency shall be determined using EPA approved methods as follows:

   (a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

   (b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

   (c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

(2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-355-W1.

(3) The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-355-9. Key system parameters may include, but are not limited to, temperature, pressure and flow rates. Operator inspection schedule, monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operation causes emissions from the source.

(4) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.

If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations and maintain 90% or greater capture and control efficiency. The overall capture and control efficiency shall be determined using EPA approved methods, as follows:

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

R307-355-10. Recordkeeping

(1) The owner or operator shall maintain records of the following:

   (a) Records that demonstrate compliance with R307-355. Records must include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-355.
(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-355-9.
   (i) Key system parameters must include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.
   (ii) Key inspection parameters must be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.
(2) All records shall be maintained for a minimum of 2 years.
(3) Records shall be made available to the director upon request.

KEY: air pollution, coatings, aerospace

Date of Enactment or Last Substantive Amendment: [December 1, 2014/2017]
Authorizing, and Implemented or Interpreted Law: 19-2-104(1)

Health, Disease Control and Prevention, Epidemiology
R386-703
Injury Reporting Rule

NOTICE OF PROPOSED RULE
( Amendment)
DAR FILE NO.: 41831
FILED: 06/15/2017

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule has been amended by adding the definition for laboratory and lowering the case definition of an elevated blood lead level from greater than or equal to 10 micrograms per deciliter to greater than or equal to 5 micrograms per deciliter. In 2012, the Centers for Disease Control and Prevention (CDC) lowered their level of concern for blood lead levels in children to greater than or equal to 5 micrograms per deciliter. This amendment will align Utah with CDC's guidelines to provide assistance and educate parents of children having a blood lead level lower than Utah's current guidelines. The amendment will help to alleviate any disparities between Utah's state and local health departments and the health care providers when assessing a child's exposure to lead in relation to Utah's Injury Reporting Rule and CDC's guidelines.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment defines the types of laboratories for reporting injuries and the lowering of the case definition from greater than or equal to 10 micrograms per deciliter to greater than or equal to 5 micrograms per deciliter at which intervention is determined for a child exposed to lead.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-30 and Section 26-6-3

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no anticipated costs or savings at the state level. Any costs will come out of existing budgets.
♦ LOCAL GOVERNMENTS: There will be anticipated costs to local government by adding this language to the rule. The lowering of the case definition will increase the number of cases being identified by the local health districts to provide case management. The anticipated cost throughout Utah's health districts is estimated to be $25,841 per year.
♦ SMALL BUSINESSES: There will be no anticipated costs or savings to small businesses by adding this language to the rule.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: As stated above, local government will have anticipated costs by adding this language to the rule. The lowering of the case definition will increase the number of cases being identified for the local health districts to provide case management. The anticipated cost throughout Utah's health districts is estimated to be $25,841 per year.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be anticipated costs to the local health districts adding this language to this rule. The anticipated cost throughout Utah's health districts is estimated to be $25,841 per year. In addition, the Utah Department of Health will need to change their reporting criteria in their reporting system to the local health districts.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses. No negative fiscal impacts are expected to result in this amendment.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
DISEASE CONTROL AND PREVENTION, EPIDEMIOLOGY
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:
♦ Sam LeFevre by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at slefevre@utah.gov or mail at PO Box 142104, Salt Lake City, UT 84114-2104
R386. Health, Disease Control and Prevention, Epidemiology.
R386-703. Injury Reporting Rule.
R386-703-1. Purpose Statement.
   (1) The Injury Reporting Rule is adopted under authority of Sections 26-1-30 and 26-6-3.
   (2) The Injury Reporting Rule establishes an injury surveillance and reporting system for major injuries occurring in Utah. Injuries constitute a leading cause of death and disability in Utah and, therefore, pose an important risk to public health.
   (3) Rule R386-703 is adopted with the intent of identifying causes of major injury which can be reduced or eliminated, thereby reducing morbidity and mortality.
   (1) "Injury" is defined as bodily damage resulting from exposure to physical agents such as mechanical energy, thermal energy, ionizing radiation, or chemicals, or resulting from the deprivation of basic environmental requirements such as oxygen or heat. Mechanical energy injuries include acceleration and deceleration injuries, blunt trauma, and penetrating wound injuries.
   (2) "Laboratory" is defined as any clinical laboratory, physician office, hospital, health clinic, reference laboratory or any facility that performs blood lead analysis.
R386-703-3. Reportable Injuries.
   (a) Acute traumatic brain injury. Reportable acute traumatic brain injuries include head injuries of sufficient severity to cause death or to require admission to a hospital. Acute traumatic brain injuries may be associated with transient or persistent neurological dysfunction, and may be diagnosed as brain concussions, brain contusions, or traumatic intracranial hemorrhages.
   (b) Acute spinal cord injury. Reportable acute spinal cord injuries include traumatic injuries to the contents of the spinal canal, spinal cord or cauda equina, which result in death or which result in transient or persistent neurological dysfunction of sufficient severity to require hospital admission.
   (c) Blunt force injury. Reportable injuries include all blunt force injuries which result in death or which are of sufficient severity to require hospital admission.
   (d) Drowning and near drowning. Reportable drownings and near drownings include all water immersion injuries resulting in death and other water immersion injuries of sufficient severity to require hospital admission.
   (e) Asphyxiation. Reportable asphyxiations include injuries which arise from atmospheric oxygen deprivation or from traumatic respiratory obstruction which result in death or which are of sufficient severity to require hospital admission.
   (f) Burns. Reportable burn injuries include injuries resulting from acute thermal exposure or exposure to fire which result in death or which are of sufficient severity to require hospital admission.
   (g) Electrocution. Reportable electrocution injuries include injuries arising from exposure to electricity which result in death or which are of sufficient severity to require hospital admission.
   (h) Blood Lead. All blood lead test results are reportable. Cases of elevated blood lead levels include all persons with [whole] blood lead concentrations equal to or greater than [40] micrograms per deciliter. All cases shall be confirmed by either a venous or capillary blood sample, if the first sample was a capillary blood sample.
   (i) Chemical Poisoning. Reportable cases of chemical poisoning include all persons with acute exposure to toxic chemical substances which result in death or which require hospital admission or hospital emergency department evaluation. Unintentional adverse health effects resulting from the use of pharmacological agents as prescribed by physicians do not require reporting under this rule.
   (j) Intentional Injuries. Reportable intentional injuries include all cases of suicide or attempted suicide resulting in hospital admission and all cases of homicide, attempted homicide, or battery resulting in hospitalization.
   (k) Injuries Related to Substance Abuse. Reportable injuries include all cases of injury resulting in death or hospitalization and associated with alcohol or drug intoxication of any person involved in the injury occurrence.
   (l) Traumatic Amputations. Reportable amputations include traumatic amputations of a limb or part of a limb which result in death or which require hospital admission or hospital emergency department treatment. Only amputations resulting in bone loss shall be reported.
   (1) Reporting blood lead testing results.
   (a) Non-Case Report Contents. Unless otherwise specified, each blood lead result shall provide at minimum the following: name, date of birth or age if date of birth is unknown, sex, zip code, and the individual or agency submitting the report.
   (b) Case Report Contents. Unless otherwise specified, each injury report shall provide the following information pertaining to the injured person: name, date of birth or age if date of birth is unknown, sex, address of residence, date of injury, type of injury, external cause of injury, locale of injury, intentionality, relation of injury to occupation, disposition of the injured person, and the individual or agency submitting the report. A standard report format has been adopted and shall be supplied to reporting sources by the Department of Health upon request.
   (2) Agencies or Individuals Required to Report Injuries. A reportable injury evaluated or treated at a hospital shall be reported by that hospital. Reportable injuries not evaluated at a hospital shall be reported by the involved physician, nurse, other health care practitioner, medical examiner, head start health coordinator or laboratory administrator.
(4) Time Requirements. Persons required to report shall submit their reports to the local health department or the Utah Department of Health within 60 days of the time of diagnosis or recognition of injury. In the event of an unusual or excessive occurrence of injuries which may arise from a continuing or immediate threat to the public's health, persons required to report shall immediately report by telephone to the local health officer or to the Utah Department of Health.

(5) Case Report Destinations. Each case of injury shall be reported to the Utah Department of Health or to the local health department responsible for the geographic area where the injury occurred.

(a) The local health officer shall forward all original reports to the Utah Department of Health. Local health departments may maintain copies of these reports.

(b) Except as noted in R386-703-4(d)(c), (d) and (e), case reports shall be sent to the Bureau of Epidemiology of the Utah Department of Health.

(c) In fatal cases, submission of completed death certificates to the Bureau of Vital Records fulfills reporting requirements.

(d) In cases evaluated in hospital emergency departments, submission of properly completed hospital emergency department logs to the Bureau of Emergency Medical Services will fulfill reporting requirements, provided that the records are submitted through an electronic medium in a computer database format acceptable to the Bureau of Emergency Medical Services.

(e) In cases where reportable injuries listed in R386-703-3 are reported under the requirements of the Utah Health Data Authority Act, 26-33a, the data supplier may notify the Utah Department of Health in writing that information relating to individuals with a reportable injury will be supplied to the Bureau of Epidemiology before the identifying information is removed from the data file. Any data provided in this manner fulfills reporting requirements. If permission is not granted by the data supplier, duplicate reporting is required.

R386-703-5. Special Investigations of Injury.

(1) The Utah Department of Health and local health departments may conduct epidemiologic investigations of injury occurrence. The Utah Department of Health and local health departments may collect additional information pertaining to risk factors, medical condition, and circumstances of injuries. Hospitals and other health care providers shall, upon request, provide authorized health personnel the occasion to inspect medical records of reportable injuries. The Utah Department of Transportation, Utah Industrial Commission, Utah Department of Public Safety, and local public safety agencies shall make available to authorized health personnel information on reportable injuries.

R386-703-6. Confidentiality of Reports.

(1) All reports herein required are confidential and are not open to public inspection. The confidentiality of personal information obtained under this rule shall be maintained according to the provisions of Sections 26-6-27 through 26-6-30. Nothing in this rule, however, precludes the discussion of case information with the attending physician or public health workers.

R386-703-7. Penalties.

(1) Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including this Injury Reporting Rule, are prescribed under Sections 26-23-3 through 26-23-6.

KEY: rules and procedures, injury
Date of Enactment or Last Substantive Amendment: [May 15, 2017]
Notice of Continuation: September 23, 2015
Authorizing, and Implemented or Interpreted Law: 26-1-30

Human Resource Management, Administration
R477-1
Definitions

NOTICE OF PROPOSED RULE
(Proposal)
DAR FILE NO.: 41805
FILED: 06/14/2017

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add definitions needed for amendments proposed in other rules regarding direct supervisor and employee's family member.

SUMMARY OF THE RULE OR CHANGE: This change adds a definition for direct supervisor in Subsection R477-1-1(36), renumbers definitions under Subsections R477-1-1(36) through (45), adds a definition for employee's family member in Subsection R477-1-1(46) and renumbers all subsequent subsections.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-15 and Section 67-19-18 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
♦ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local government.
♦ SMALL BUSINESSES: This rule only affects the executive branch of state government and will have no impact on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR Affected PERSONS: There is no direct compliance cost for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to business. Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT: HUMAN RESOURCE MANAGEMENT ADMINISTRATION ROOM 2120 STATE OFFICE BLDG 450 N MAIN ST SALT LAKE CITY, UT 84114-1201 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO: Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

AUTHORIZED BY: Debbie Cragun, Executive Director

R477-1. Definitions.
R477-1-1. Definitions.

The following definitions apply throughout these rules unless otherwise indicated within the text of each rule.

(1) Abandonment of Position: An act of resignation resulting when an employee is absent from work for three consecutive working days without approval.

(2) Actual FTE: The total number of full time equivalents based on actual hours paid in the state payroll system.

(3) Actual Hours Worked: Time spent performing duties and responsibilities associated with the employee's job assignments.

(4) Actual Wage: The employee's assigned wage rate in the central personnel record maintained by the Department of Human Resource Management.

(5) Administrative Leave: Leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.

(6) Administrative Adjustment: An adjustment to a salary range approved by DHRM that is not a Market Comparability Adjustment, a Structure Adjustment, or a Reclassification. It is for administrative purposes only. An Administrative Adjustment will result in an increase to incumbent pay only when necessary to bring salaries to the minimum of the salary range.

(7) Administrative Salary Decrease: A decrease in the current actual wage based on non-disciplinary administrative reasons determined by an agency head.

(8) Administrative Salary Increase: An increase in the current actual wage based on special circumstances determined by an agency head.

(9) Agency: An entity of state government that is:
   (a) directed by an executive director, elected official or commissioner defined in Title 67, Chapter 22 or in other sections of the code;
   (b) authorized to employ personnel; and
   (c) subject to Title 67, Chapter 19, Utah State Personnel Management Act.

(10) Agency Head: The executive director or commissioner of each agency or a designated appointee.


(12) Agency Management: The agency head and all other officers or employees who have responsibility and authority to establish, implement, and manage agency policies and programs.

(13) Alternative State Application Program (ASAP): A program designed to appoint a qualified person with a disability through an on the job examination period.

(14) Appeal: A formal request to a higher level for reconsideration of a grievance decision.

(15) Appointing Authority: The officer, board, commission, person or group of persons authorized to make appointments in their agencies.

(16) Break in Service: A point at which an individual has an official separation date and is no longer employed by the State of Utah.

(17) Budgeted FTE: The total number of full time equivalents budgeted by the Legislature and approved by the Governor.

(18) Bumping: A procedure that may be applied prior to a reduction in force action (RIF). It allows employees with higher retention points to bump other employees with lower retention points as identified in the work force adjustment plan, as long as employees meet the eligibility criteria outlined in interchangeability of skills.

(19) Career Mobility: A temporary assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs.

(20) Career Service Employee: An employee who has successfully completed a probationary period in a career service position.

(21) Career Service Exempt Employee: An employee appointed to work for a period of time, serving at the pleasure of the appointing authority, who may be separated from state employment at any time without just cause.
(22) Career Service Exempt Position: A position in state service exempted by law from provisions of career service under Section 67-19-15.

(23) Career Service Status: Status granted to employees who successfully complete a probationary period for career service positions.

(24) Category of Work: A job series within an agency designated by the agency head as having positions to be eliminated agency wide through a reduction in force. Category of work may be further reduced as follows:

(a) a unit smaller than the agency upon providing justification and rationale for approval, including:

(i) unit number;
(ii) cost centers;
(iii) geographic locations;
(iv) agency programs.

(b) positions identified by a set of essential functions, including:

(i) position analysis data;
(ii) certificates;
(iii) licenses;
(iv) special qualifications;
(v) degrees that are required or directly related to the position.

(25) Change of Workload: A change in position responsibilities and duties or a need to eliminate or create particular positions in an agency caused by legislative action, financial circumstances, or administrative reorganization.

(26) Classification Grievance: The approved procedure by which an agency or a career service employee may grieve a formal classification decision regarding the classification of a position.

(27) Classified Service: Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12.

(28) Classification Study: A Classification review conducted by DHRM under Section R477-3-4. A study may include single or multiple job or position reviews.

(29) Compensatory Time: Time off that is provided to an employee in lieu of monetary overtime compensation.

(30) Contractor: An individual who is contracted for a specified service for a designated fee within a specified time. The contractor shall be responsible for paying all taxes and FICA payments, and may not accrue benefits.

(31) Critical Incident Drug or Alcohol Test: A drug or alcohol test conducted on an employee as a result of the behavior, action, or inaction of an employee that is of such seriousness it requires an immediate intervention on the part of management.

(32) Demotion: A disciplinary action resulting in a reduction of an employee's current actual wage.

(33) Detailed Position Record Management Report: A document that lists an agency's authorized positions, incumbent's name and hourly rate, job identification number, salary range, and schedule.

(34) DHRM: The Department of Human Resource Management.

(35) DHRM Approved Recruitment and Selection System: The state's recruitment and selection system, which is a centralized and automated computer system administered by the Department of Human Resource Management.

(36) Direct Supervisor: An employee's primary supervisor who normally directs day to day job activity such as assigning work, approving time records, and considering leave requests.

(37) Disability: Disability shall have the same definition found in the Americans With Disabilities Act (ADA) of 1990, 42 USC 12101 (2008); Equal Employment Opportunity Commission regulation, 29 CFR 1630 (2008); including exclusions and modifications.


(39) Dismissal: A separation from state employment for cause under Section R477-11-2.

(40) Dual State Employment: Employees who work for more than one agency and meet the employee criteria which is located in the Division of Finance accounting policy 11-18.00.

(41) Drug-Free Workplace Act: A 1988 congressional act, 34 CFR 84 (2008), requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.

(42) Employee Personnel Files: For purposes of Title 67, Chapters 18 and 19, the files or records maintained by DHRM and agencies as required by Section R477-2-5. This does not include employee information maintained by supervisors.


(44) "Escalator" Principle: Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), returning veterans are entitled to return back onto their seniority escalator at the point they would have occupied had they not left state employment.

(45) Excess Hours: A category of compensable hours separate and apart from compensatory or overtime hours that accrue at straight time only when an employee's actual hours worked, plus additional hours paid, exceed an employee's normal work period.


(47) Fitness For Duty Evaluation: Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.

(48) FLSA Exempt: Employees who are exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(49) FLSA Nonexempt: Employees who are not exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(50) Follow Up Drug or Alcohol Test: Unannounced drug or alcohol tests conducted for up to five years on an employee who has previously tested positive or who has successfully completed a voluntary or required substance abuse treatment program.
(54)53 Grievance: A career service employee's claim or charge of the existence of injustice or oppression, including dismissal from employment resulting from an act, occurrence, omission, condition, discriminatory practice or unfair employment practice not including position classification or schedule assignment, or a complaint by a reporting employee as defined in Section 67-19a-101(4)(c).

(54)54 Grievance Procedures: The statutory process of grievances and appeals as set forth in Sections 67-19a-101 through 67-19a-406 and the rules promulgated by the Career Service Review Office.

(54)55 Gross Compensation: Employee's total earnings, taxable and nontaxable, as shown on the employee's pay statement.

(54)56 Highly Sensitive Position: A position approved by DHRM that includes the performance of:
(a) safety sensitive functions:
   (i) requiring an employee to operate a commercial motor vehicle under 49 CFR 383 (January 18, 2006);
   (ii) directly related to law enforcement;
   (iii) involving direct access or having control over direct access to controlled substances;
   (iv) directly impacting the safety or welfare of the general public;
(b) data sensitive functions permitting or requiring an employee to access an individual's highly sensitive, personally identifiable, private information, including:
   (i) financial assets, liabilities, and account information;
   (ii) social security numbers;
   (iii) wage information;
   (iv) medical history;
   (v) public assistance benefits; or
   (vi) driver license

(55)57 Hiring List: A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position created in the DHRM approved recruitment and selection system.

(56)58 HRE: Human Resource Enterprise; the state human resource management information system.

(57)59 Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

(58)60 Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

(58)61 Interchangeability of Skills: Employees are considered to have interchangeable skills only for those positions they have previously held successfully in Utah state government executive branch employment or for those positions which they have successfully supervised and for which they satisfy job requirements.

(60)62 Intern: An individual in a college degree or certification program assigned to work in an activity where on-the-job training or community service experience is accepted.

(61)53 Job: A group of positions similar in duties performed, in degree of supervision exercised or required, in requirements of training, experience, or skill and other characteristics. The same salary range is applied to each position in the group.

(62)64 Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

(63)65 Job Family: A group of jobs that have related or common work content, that require common skills, qualifications, licenses, etc., and that normally represents a general occupation area.

(64)66 Job Requirements: Skill requirements defined at the job level.

(65)67 Job Series: Two or more jobs in the same functional area having the same job title, but distinguished and defined by increasingly difficult levels of skills, responsibilities, knowledge and requirements; or two or more jobs with different titles working in the same functional area that have licensure, certification or other requirements with increasingly difficult levels of skills, responsibilities, knowledge and requirements.

(66)68 Leave Benefit: A benefit provided to an employee that includes: Annual leave, sick leave, converted sick leave, and holiday leave. These benefits are not provided to non-benefited employees.

(67)69 Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

(68)70 Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

(69)71 Market Based Bonus: One time lump sum monies given to a new hire or a current employee to encourage employment with the state.

(70)72 Market Comparability Adjustment: An adjustment to a salary range approved by the legislature that is based upon salary data and other relevant information from comparable jobs in the market that is collected by DHRM or from DHRM approved justifiable sources. The Market Comparability Adjustment may also change incumbent pay resulting in a budgetary impact for an agency.

(71)73 Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

(72)74 Misconduct: Wrongful, improper, unacceptable, or unlawful conduct or behavior that is inconsistent with prevailing agency practices or the best interest of the agency.

(73)75 Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

(74)76 Nonfeasance: Failure to perform either an official duty or legal requirement.

(75)77 Pay for Performance Award: A type of cash incentive award where an employee or group of employees may receive a cash award for meeting or exceeding well-defined annual production or performance standards, targets and measurements.

(76)78 Pay for Performance: A plan for incentivizing employees for meeting or exceeding production or performance goals, in which the plan is well-defined before work begins, eligible work groups are defined, specific goals and targets are determined,
measurement procedures are in place, and specific incentives are provided when goals and targets are met.


(78) Performance Improvement Plan: A documented administrative action to address substandard performance of an employee under Section R477-10-2.

(79) Performance Management: The ongoing process of communication between the supervisor and the employee which defines work standards and expectations, and assesses performance leading to a formal annual performance evaluation.

(80) Performance Plan: A written summary of the standards and expectations required for the successful performance of each job duty or task. These standards normally include completion dates and qualitative and quantitative levels of performance expectations.

(81) Performance Standard: Specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.

(82) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Section 63G-4-101 et seq, for all human resource policies and practices not covered by the state employees grievance procedure promulgated by the Career Service Review Office, or the classification appeals procedure.

(83) Phased Retirement: Employment on a half-time basis of a retiree with the same participating employer immediately following the retiree's retirement date. During phased retirement retiree will receive a reduced retirement allowance.

(84) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(85) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

(86) Position Identification Number: A unique number assigned to a position for FTE management.

(87) Post Accident Drug or Alcohol Test: A drug or alcohol test conducted on an employee who is involved in a vehicle accident while on duty or driving a state vehicle:

(a) where a fatality occurs;

(b) where there is sufficient information to conclude that the employee was a contributing cause to an accident that results in bodily injury or property damage; or

(c) where there is reasonable suspicion that the employee had been driving while under the influence of alcohol or a controlled substance.

(88) Preemployment Drug Test: A drug test conducted on:

(a) final applicants who are not current employees;

(b) final candidates for a highly sensitive position;

(c) employees who are final candidates for transfer or promotion from a non-highly sensitive position to a highly sensitive position; or

(d) employees who transfer or are promoted from one highly sensitive position to another highly sensitive position.

(89) Probationary Employee: An employee hired into a career service position who has not completed the required probationary period for that position.

(90) Probationary Period: A period of time considered part of the selection process, identified at the job level, the purpose of which is to allow management to evaluate an employee's ability to perform assigned duties and responsibilities and to determine if career service status should be granted.

(91) Proficiency: An employee's overall quality of work, productivity, skills demonstrated through work performance and other factors that relate to employee performance or conduct.

(92) Promotion: An action moving an employee from a position in one job to a position in another job having a higher salary range maximum.

(93) Protected Activity: Opposition to discrimination or participation in proceedings covered by the antidiscrimination statutes or the Utah State Grievance and Appeal Procedure. Harassment based on protected activity can constitute unlawful retaliation.

(94) Random Drug or Alcohol Test: Unannounced drug or alcohol testing of a sample of highly sensitive employees done in accordance with federal regulations or state rules, policies, and procedures, and conducted in a manner such that each highly sensitive employee has an equal chance of being selected for testing.

(95) Reappointment: Return to work of an individual from the reappointment register after separation from employment.

(96) Reappointment Register: A register of individuals who have prior to March 2, 2009:

(a) held career service status and been separated in a reduction in force;

(b) held career service status and accepted career service exempt positions without a break in service and were not retained, unless discharged for cause; or

(c) by Career Service Review Board decision been placed on the reappointment register.

(97) Reasonable Suspicion Drug or Alcohol Test: A drug or alcohol test conducted on an employee based on specific, contemporaneous, articulated observations concerning the appearance, behavior, speech or body odors of the employee.

(98) Reassignment: An action mandated by management moving an employee from one job or position to a different job or position with an equal or lesser salary range maximum for administrative reasons. A reassignment may not include a decrease in actual wage except as provided in federal or state law.

(99) Reclassification: A DHRM reallocation of a single position or multiple positions from one job to another job to reflect management initiated changes in duties and responsibilities.

(100) Rejection: Reduction in Force: (RIF) Abolishment of positions resulting in the termination of career service staff. RIFs can occur due to inadequate funds, a change of workload, or a lack of work.

(101) Reemployment: Return to work of an employee who resigned or took military leave of absence from state employment to serve in the uniformed services covered under USERRA.

(102) Requisition: An electronic document used for HRE Online recruitment, selection and tracking purposes that includes specific information for a particular position, job seekers' applications, and a hiring list.
Salary Range: Established minimum and maximum rates assigned to a job.

Schedule: The determination of whether a position meets criteria stipulated in the Utah Code Annotated to be career service (schedule B) or career service exempt (schedule A).

Separation: An employee's voluntary or involuntary departure from state employment.

Settling Period: A sufficient amount of time, determined by agency management, for an employee to fully assume new or higher level duties required of a position.

Structure Adjustment: An adjustment to a salary range approved by DHRM that is based upon salary data and other relevant information from comparable jobs in the market that is collected by DHRM or from DHRM approved justifiable sources. The salary range adjustment cannot have a budgetary impact on an agency unless additional approval is received from the Governor's Office.

Tangible Employment Action: A significant change in employment status, such as firing, demotion, failure to promote, work reassignment, or a decision which changes benefits.

Transfer: An action not mandated by management moving an employee from one job or position to another job or position with an equal or lesser salary range maximum for which the employee qualifies. A transfer may include a decrease in actual wage.

Uniformed Services: The United States Army, Navy, Marine Corps, Air Force, Coast Guard; Reserve units of the Army, Navy, Marine Corps, Air Force, or Coast Guard; Army National Guard or Air National Guard; Commissioned Corps of Public Health Service, National Oceanic and Atmospheric Administration (NOAA), National Disaster Medical Systems (NDMS) and any other category of persons designated by the President in time of war or emergency. Service in Uniformed Services includes: voluntary or involuntary duty, including active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; or absence from work for an examination to determine fitness for any of the above types of duty.

Unlawful Discrimination: An action against an employee or applicant based on race, religion, national origin, color, sex, age, disability, pregnancy, sexual orientation, gender identity, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation, or any other factor, as prohibited by law.

USERRA: Uniformed Services Employment and Reemployment Rights Act of 1994 (P.L. 103-353), requires state governments to re-employ eligible veterans who resigned or took a military leave of absence from state employment to serve in the uniformed services and who return to work within a specified time period after military discharge.

Veteran: An individual who has served on active duty in the armed forces for more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized. Individuals must have been separated or retired under honorable conditions.

Veteran Employment Opportunity Program (VEOP): A program designed to appoint a qualified veteran through an on the job examination period.

Volunteer: Any person who donates services to the state or its subdivisions without pay or other compensation except actual and reasonable expenses incurred, as approved by the supervising agency.

Wage: The fixed hourly rate paid to an employee.

Work Period: The maximum number of hours an employee may work prior to accruing overtime or compensatory hours based on variable payroll cycles outlined in 67-19-6.7 and 29 CFR 553.230.

KEY: personnel management, rules and procedures, definitions

Date of Enactment or Last Substantive Amendment: 2017

Notice of Continuation: February 2, 2012


Human Resource Management, Administration

R477-2

Administration

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 41806
FILED: 06/14/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to update and clarify expectations regarding supervisory relationships with family members.

SUMMARY OF THE RULE OR CHANGE: The changes modify Section R477-2-8 to clarify what public officials are prohibited from doing if the decision regards a family member.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-5-201 and Section 67-19-15 and Section 67-19-18 and Section 67-19-6 and Title 63G, Chapter 2 and Title 63G, Chapter 7

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.

♦ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local government.

♦ SMALL BUSINESSES: This rule only affects the executive branch of state government and will have no impact on small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule only affects the executive branch of state
government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments. This rule only effects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to business. Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

AUTHORIZED BY: Debbie Cragun, Executive Director

R477-2-1. Rules Applicability.

These rules apply to the executive branch of Utah State Government and its career service and career service exempt employees. Other entities may be covered in specific sections as determined by statute. Any inclusions or exceptions to these rules are specifically noted in applicable sections. Entities which are not bound by mandatory compliance with these rules include:

(1) members of the Legislature and legislative employees;
(2) members of the judiciary and judicial employees;
(3) officers, faculty, and other employees of state institutions of higher education;
(4) officers, faculty, and other employees of the public education system, other than those directly employed by the State Board of Education;
(5) employees of the Office of the Attorney General;
(6) elected members of the executive branch and their Schedule A employees;
(7) employees of independent entities, quasi-governmental agencies and special service districts;
(8) employees in any position that is determined by statute to be exempt from these rules.


Agencies shall comply with these rules.

(1) The Executive Director, DHRM, may authorize exceptions to these rules where allowed when:
(a) applying the rule prevents the achievement of legitimate government objectives; or
(b) applying the rule infringes on the legal rights of an employee.

(2) Agency personnel records, practices, policies and procedures, employment and actions, shall comply with these rules and are subject to compliance audits by DHRM.


All state personnel actions shall provide equal employment opportunity for all individuals.

(1) Employment actions including appointment, tenure or term, condition or privilege of employment shall be based on the ability to perform the essential duties, functions, and responsibilities assigned to a particular position.

(2) Employment actions may not be based on race, religion, national origin, color, sex, age, disability, pregnancy, sexual orientation, gender identity, or protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation or any other non-job related factor, except as provided under Subsection 67-19-15(2)(b)(ii).

(3) An employee who alleges unlawful discrimination may:
(a) submit a complaint to the agency head; and
(b) file a charge with the Utah Labor Commission Antidiscrimination and Labor Division within 180 days of the alleged harm, or directly with the EEOC within 300 days of the alleged harm.

(4) A state official may not impede any employee from the timely filing of a discrimination complaint in accordance with state and federal requirements.


(1) Statewide control of personal service expenditures shall be the shared responsibility of the employing agency, the Governor's Office of Management and Budget, the Department of Human Resource Management and the Division of Finance.

(2) Changes in job identification numbers, salary ranges, or number of positions listed in the Detailed Position Record Management Report shall be approved by the Executive Director, DHRM or designee.
R477-2-5. Records.

Access to and privacy of personnel records maintained by DHRM are governed by Title 63G, Chapter 2, the Government Records Access and Management Act (GRAMA) and applicable federal laws. DHRM shall designate and classify the records and record series it maintains under the GRAMA statute and respond to GRAMA requests for employee records.

(1) DHRM shall maintain an electronic record for each employee that contains the following, as appropriate:
(a) Social Security number, date of birth, home address, and private phone number.
(b) Performance ratings;
(c) Records of actions affecting employee salary history, classification history, title and salary range, employment status and other personal data.
(2) DHRM shall maintain, on behalf of agencies, personnel files.
(3) DHRM shall maintain, on behalf of agencies, a confidential medical file. Confidentiality shall be maintained in accordance with applicable regulations. Information in the medical file is private, controlled, or exempt in accordance with Title 63G-2.
(4) An employee has the right to review the employee's personnel file, upon request, in the presence of a DHRM representative.
(a) An employee may request corrections, amendments to, or challenge any information in the DHRM electronic or hard copy personnel file, through the following process:
(i) The employee shall request in writing to the appropriate agency human resource field office that changes occur.
(ii) The employing agency shall be given an opportunity to respond.
(iii) Disputes over information that are not resolved between the employing agency and the employee shall be decided by the Executive Director, DHRM. DHRM shall maintain a record of the employee's letter, the agency's response, and the DHRM Executive Director's decision.
(5) When a disciplinary action is rescinded or disapproved upon appeal, forms, documents and records pertaining to the case shall be removed from the personnel file.
(a) When the record in question is on microfilm, a seal will be placed on the record and a suitable notice placed on the carton or envelope. This notice shall indicate the limits of the sealed Title and the authority for the action.
(b) Upon employee separation, DHRM shall retain electronic records for thirty years. Agency hard copy records shall be retained at the agency for a minimum of two years, and then transferred to the State Record Center to be retained according to the record retention schedule.


Reference checks or inquiries made regarding current or former public employees, volunteers, independent contractors, and members of advisory boards or commissions can be released if the information is classified as public, or if the subject of the record has signed and provided a current reference release form for information authorized under Title 63G, Chapter 2, of the Government Records Access and Management Act.

(1) The employment record is the property of Utah State Government with all rights reserved to utilize, disseminate or dispose of in accordance with the Government Records Access and Management Act.
(2) Additional information may be provided if authorized by law.


Employees newly hired, rehired, or placed through reciprocity with or assimilation from another career service jurisdiction shall provide verifiable documentation of their identity and eligibility for employment in the United States by completing all sections of the Employment Eligibility Verification Form I-9 as required under the Immigration Reform and Control Act of 1986.


It is unlawful for a public officer [to] [may not appoint, directly supervise, or [to] [make salary [or]], performance [recommendations for relatives except as prescribed under Section 52-3-1], disciplinary, or other employment matter decisions regarding a family member.

(1) A public officer supervising a [relative] family member shall make a complete written disclosure of the relationship to the agency head [in accordance with Section 52-3-4] and be excused from any and all employment matter discussions or decisions relating to the family member.


An employee who becomes aware of any occurrence which may give rise to a lawsuit, who receives notice of claim, or is sued because of an incident related to state employment, shall give immediate notice to his supervisor and to the Department of Administrative Services, Division of Risk Management.
NOTICES OF PROPOSED RULES

1. In most cases, under Title 63G, Chapter 7, the Governmental Immunity Act, an employee shall receive defense and indemnification unless the case involves fraud, malice or the use of alcohol or drugs by the employee.

2. Before an agency may defend its employee against a claim, the employee shall make a written request for a defense to the agency head within ten calendar days, under Subsection 63G-7-902(2).

R477-2-10. Alternative Dispute Resolution.
Agency management may establish a voluntary alternative dispute resolution program under Chapter 63G, Chapter 5.

KEY: administrative responsibility, confidentiality of information, fair employment practices, public information
Date of Enactment or Last Substantive Amendment: 2017
Notice of Continuation: February 2, 2012
Authorizing, and Implemented or Interpreted Law: 52-3-1; 63G-2; 63G-5-201; 63G-7; 67-19-6; 67-19-15; 67-19-18

Human Resource Management, Administration
R477-6
Compensation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41807
FILED: 06/14/2017

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to update a single provision relating to severance benefits.

SUMMARY OF THE RULE OR CHANGE: This change alters Section R477-6-11 to double severance salary for employees leaving schedules AB and AC while leaving it the same for other eligible schedule codes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63F-1-106 and Section 67-19-12 and Section 67-19-12.5 and Section 67-19-6 and Subsection 67-19-15.1(4)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
♦ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local government.
♦ SMALL BUSINESSES: This rule only affects the executive branch of state government and will have no impact on small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to business. Rules published by the Department of Human Resource Management (DHRM) have no direct impact on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

AUTHORIZED BY: Debbie Cragun, Executive Director

R477-6-1. Pay Plans.
(1) With approval of the Governor, the Executive Director, DHRM, shall develop salary ranges for pay plans for each job.
   (a) Each job description shall include a salary range.
   (b) Agency approved wage increases within salary ranges shall be:
      (i) at least 1/2%, or

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R477-6-2. Allocation to the Pay Plans for Classified Employees.

(1) Each job in classified service shall be:
   (a) assigned to a salary range and job family.
   (b) surveyed in the market in accordance with the benchmark job(s).
   (c) included in a market comparability adjustment recommendation if warranted.

(2) Salary ranges can be adjusted through:
   (a) an administrative adjustment determined appropriate by DHRM for administrative purposes that is not based on a change in duties and responsibilities, nor based on a comparison to salary data in the market;
   (b) a structure adjustment that has no budgetary impact on all affected agencies; or
   (c) a market comparability adjustment to a job's salary range based upon salary data and other relevant information for similar jobs in the market through an annual compensation benchmark survey or other sources.

   (i) Market comparability adjustment recommendations shall be included in the annual compensation plan and are submitted to the Governor no later than October 31 of each year.
   (ii) Funding for market comparability adjustments shall be legislatively approved if the adjustment would cause a budgetary impact.

   (iii) If market comparability adjustments are funded and approved for benchmark jobs, salary ranges for other jobs in the same job family shall be adjusted by relative ranking with the benchmark job.

   (3) Salary ranges cannot be adjusted more frequently than on an annual basis without an exception by the Executive Director, DHRM.

R477-6-3. Pay Plans for Unclassified Employees Designated as Schedule AD and AR.

(1) Each job in an AD/AR pay plan shall be assigned to a salary range that is no more than 40% above and below the salary range midpoint.

(2) Salary ranges may be adjusted through:
   (a) An administrative adjustment determined appropriate by DHRM for administrative purposes.
   (b) A structure adjustment.
   (i) DHRM will consult with the Governor's Office of Management and Budget (GOMB) prior to making structure adjustments. GOMB approval is required for adjustments to the salary range of the Deputy Director or equivalent.
   (ii) Funding for structure adjustments shall be legislatively approved unless the adjustment has no budgetary impact.
   (iii) Structure adjustment recommendations that require funding may be included in the annual compensation plan.

(3) Longevity Salary Increase.

(ii) to the maximum wage within the salary range, if the difference between the current wage and the salary range maximum is less than 1/2%.

(c) Agency approved wage decreases within salary ranges shall be:
   (i) at least 1/2%, or
   (ii) to the minimum wage within the salary range, if the difference between the current wage and the salary range minimum is less than 1/2%.

(d) Salary increases and decreases shall not place an employee below the salary range minimum or above the salary range maximum unless the criteria for longevity increases has been met.

(iv) Structure adjustments may take place on an annual basis. Limited exceptions addressing a critical need may be granted upon request and approval of the Executive Director, DHRM.

(v) Structure adjustments shall not be approved for cross agency jobs unless the adjustment has no budgetary impact on all affected agencies.

R477-6-4. Pay Plans for Unclassified Employees Designated as Schedule AC, AG, AH, AS, AN, AO, AP, IN, TL, AU, AQ and all employees of the State Board of Education.

(1) Each job exempted from classified service that are identified in positions under R477-3-1(1) shall have a salary range with a beginning and ending salary of any amount determined appropriate by the affected agency.

R477-6-5. Appointments.

(1) All appointments shall be placed on the DHRM approved salary range for the job.

(2) Qualifying military service members returning to work under USERRA shall be placed in their previous position or a similar position. Reemployment shall include the same seniority status, wage, including any cost of living adjustments, general increase, reclassification of the service member preservice position, or market comparability adjustments that would have affected the service member's preservice position during the time spent by the affected service member in the uniformed services. Performance related salary increases are not included.


(1) Promotions.

   (a) An employee who is not in designated schedule IN or TL and is promoted to a job with a salary range maximum exceeding the employee's current salary range maximum shall receive a wage increase of at least 5%.

   (b) An employee who is promoted may not be placed higher than the minimum or lower than the maximum in the new salary range except as provided in subsection R477-6-6(3), governing longevity salary increases.

   (c) To be eligible for a promotion, an employee shall meet the requirements and skills specified in the job description and position specific criteria as determined by the agency for the position.

(2) Reclassifications.

   (a) At agency management's discretion, an employee reclassified to a job with a salary range maximum exceeding the employee's current salary range maximum may receive a wage increase of at least 1/2% or up to the salary range maximum. An employee shall be placed within the new salary range. An employee's eligibility for a longevity salary increase shall be consistent with Subsection R477-6-6(3).

   (b) An employee whose job is reclassified to a job with a lower salary range shall retain the current wage.

   (3) Longevity Salary Increase.
(a) An employee shall receive an initial longevity salary increase of 2.75% when:
   (i) the employee has been in state service for eight years or more. The employee may accrue years of service in more than one agency and such service is not required to be continuous.
   (ii) the employee has been at or above the maximum of the current salary range for at least one year; and
   (iii) received a passing performance appraisal rating within the 12-month period preceding the longevity increase.

(b) An employee who has received the initial longevity increase is then eligible for an additional 2.75% increase every three years. To be eligible for these additional increases, an employee shall receive a passing performance appraisal rating within the 12-month period preceding the longevity increase.

(c) An employee with a wage that is above the maximum salary range because of a longevity salary increase:
   (i) shall retain the current actual wage if receiving an administrative adjustment or is re assigned or reclassified to a job with a lower salary range maximum.
   (ii) who is reclassified to a job with a higher salary range maximum shall only receive a wage increase if the current actual wage is less than the salary range maximum of the new job. At the discretion of agency management the salary increase shall be at least 1/2% or up to the salary range maximum of the new job.
   (iii) who is promoted shall only receive a wage increase if the current actual wage is less than the salary range maximum of the new job. The wage increase shall be at least 5% or up to the salary range maximum of the new job.
   (iv) who is promoted, reclassified, transferred, reassigned or receives an administrative adjustment and remains at or above the salary range maximum, shall receive their next longevity salary increase three years from the date they received the most recent increase subject to (3)(a).

(d) An employee with a wage that is not at or above the salary range maximum who is reclassified, transferred, reassigned, or receives an administrative adjustment and has a current actual wage that is above the salary range maximum of the new job is considered to be above maximum and may be eligible for a longevity salary increase after meeting the requirements of (3)(a).

(h) An employee in Schedules AB, IN, or TL is not eligible for the longevity salary increase program.

(4) Administrative Adjustment.
   (a) An employee whose position has been allocated by DHRM from one job to another job or salary range for administrative purposes may not receive an adjustment in the current actual wage unless the employee is below the minimum of the new salary range.
   (b) An employee whose position is changed by administrative adjustment to a job with a lower salary range shall retain the current wage even if the current wage exceeds the new salary range maximum.

(5) Reassignment.
   An employee's current actual wage may not be decreased except as provided in federal or state law.

(6) Transfer.
   (a) Management may decrease the current actual wage of an employee who transfers to another job with the same or lower salary range maximum.
   (b) An employee who applies for a job with a lower salary range maximum shall be placed within the salary range of the new job.

(7) Demotion.
   An employee demoted consistent with Section R477-11-2 shall receive a reduction in the current actual wage of at least 1/2%, or down to the salary range minimum as determined by the agency head or designee. The agency head or designee may move an employee to a job with a lower salary range concurrent with the reduction in the current actual wage.

(8) Administrative Salary Increase.
   The agency head authorizes and approves administrative salary increases under the following parameters:
   (a) An employee shall receive an increase of at least 1/2% or up to the salary range maximum.
   (b) Administrative salary increases shall only be granted when the agency has sufficient funding within their annualized base budgets for the fiscal year in which the adjustment is given.
   (c) Justifications for administrative salary increases shall be:
      (i) in writing;
      (ii) approved by the agency head or designee;
      (iii) supported by unique situations or considerations in the agency.
   (d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary increase.

(9) Administrative Salary Decrease.
   The agency head authorizes and approves administrative salary decreases for nondisciplinary reasons according to the following:
   (a) The final wage may not be less than the salary range minimum.
   (b) Wage decreases shall be at least 1/2% or down to the salary range minimum.
   (c) Justification for administrative salary decreases shall be:
      (i) in writing;
      (ii) approved by the agency head; and
      (iii) supported by issues such as previous written agreements between the agency and the employee to include career mobility, reasonable accommodation, or other unique situations or considerations in the agency.
   (d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

(10) Career Mobility.
(a) Agencies may offer an employee on a career mobility assignment a wage increase or decrease of at least 1/2% within the new salary range.

(b) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position and shall receive, at a minimum, the same wage and the same or higher salary range that the employee would have received without the career mobility assignment.

(11) Exceptions.

The Executive Director, DHRM, may authorize exceptions for wage increases or decreases.

**R477-6-7. Incentive Awards.**

(1) Only agencies with written and published incentive award and bonus policies may reward employees with incentive awards or bonuses. Incentive awards and bonuses are discretionary, not an entitlement, and are subject to the availability of funds in the agency.

(a) Policies shall be approved annually by DHRM and be consistent with standards established in these rules and the Department of Administrative Services, Division of Finance, rules and procedures.

(b) Individual awards may not exceed $4,000 per pay period and $8,000 in a fiscal year, except when approved by DHRM and the governor.

(i) A request for a retirement incentive award shall be accompanied by documentation of the work units affected and any cost savings.

(ii) A single payment of up to $8,000 may be granted as a retirement incentive.

(c) All cash and cash equivalent incentive awards and bonuses shall be subject to payroll taxes.

(2) Performance Based Incentive Awards.

(a) Cash Incentive Awards

(i) An agency may grant a cash incentive award to an employee or group of employees that demonstrates exceptional effort or accomplishment beyond what is normally expected on the job for a unique event or over a sustained period of time.

(ii) Pay for Performance cash incentive award programs offered by an agency shall be included in the agency's incentive awards policy and reviewed annually by DHRM, in consultation with GOMB.

(A) The policy shall include information supporting the following:

(1) Sustainability of the funding for the cash incentive program;

(2) The positions eligible to participate in the Pay for Performance program;

(3) Goals of the program;

(4) Type of work to be incentivized; and

(5) Ability to track the effectiveness of the program.

(iii) All cash awards shall be approved by the agency head or designee. They shall be documented and a copy shall be maintained by the agency.

(b) Noncash Incentive Awards

(i) An agency may recognize an employee or group of employees with noncash incentive awards.

(ii) Individual noncash incentive awards may not exceed a value of $50 per occurrence and $200 for each fiscal year.

(iii) Noncash incentive awards may include cash equivalents such as gift certificates or tickets for admission. Cash equivalent incentive awards shall be subject to payroll taxes and shall follow standards and procedures established by the Department of Administrative Services, Division of Finance.

(3) Cost Savings Bonus

(a) An agency may establish a bonus policy to increase productivity, generate savings within the agency, or reward an employee who submits a cost savings proposal.

(i) The agency shall document the cost savings involved.

(4) Market Based Bonuses

An agency may award a cash bonus as an incentive to acquire or retain an employee with job skills that are critical to the state and difficult to recruit in the market.

(a) All market based bonuses shall be approved by DHRM.

(i) When requesting market based awards an agency shall submit documentation specifying how the agency will benefit by granting the bonus based on:

(A) budget;

(B) recruitment difficulties;

(C) a mission critical need to attract or retain unique or hard to find skills in the market; or

(D) other market based reasons.

(b) Retention Bonus

An agency may award a bonus to an employee who has unusually high or unique qualifications that are essential for the agency to retain.

(c) Recruitment or Signing Bonus

An agency may award a bonus to a qualified job candidate to incentivize the candidate to work for the state.

(d) Scarce Skills Bonus

An agency may award a bonus to a qualified job candidate that has the scarce skills required for the job.

(e) Relocation Bonus

An agency may award a bonus to a current employee who must relocate to accept a position in a different commuting area.

(f) Referral Bonus

An agency may award a bonus to a current employee who refers a job applicant who is subsequently selected.

(g) Geographic Job Market Bonus

An agency may award a bonus to incentivize an employee to accept and/or continue an assignment in a specific geographic area.

**R477-6-8. Employee Benefits.**

(1) An employee shall be eligible for benefits when:

(a) in a position designated by the agency as eligible for benefits; and

(b) in a position which normally requires working a minimum of 40 hours per pay period.

(2) An eligible employee has 30 days from the hire date to enroll in or decline one of the traditional medical insurance plans and 60 days from the hire date to enroll in or decline one of the HSA-qualified medical insurance plans or other tax-advantaged arrangement offered by PEHP and authorized under the Internal Revenue Code for the benefit of the employee.
An employee shall only be permitted to change medical plans during the annual open enrollment period for all state employees.

An eligible employee has 60 days from the hire date to enroll in dental, vision, and a flexible spending account.

An employee shall enroll in guaranteed issue life insurance within 60 days of the hire date to avoid having to provide proof of insurability.

An employee may enroll in additional life insurance and accidental death and dismemberment insurance at any time and may be required to provide proof of insurability.

An employee eligible for retirement benefits shall be electronically enrolled using the URS online certification process as follows:

An employee with any service time with Utah Retirement Systems prior to July 1, 2011, from any URS eligible employer, shall be automatically enrolled in the Tier I defined benefit plan and the Tier I defined contribution plan.

Eligibility for Tier I shall be determined by Utah Retirement Systems.

An employee eligible for Tier I shall remain in the Tier I system, even after a break in service.

An employee with no previous service time with Utah Retirement Systems in Tier I shall be enrolled in the Tier II retirement system.

An employee has one year from the date of eligibility to elect whether to participate in the Tier II hybrid retirement system or the Tier II defined contribution plan.

If no election is made the employee shall be automatically enrolled in the Tier II hybrid retirement system.

An employee eligible for the Tier II system has one year from the date of eligibility to change the election or it is irrevocable.

Changes in employee contributions, beneficiaries, and investment strategies shall be submitted electronically to URS through the URS website.

A reemployed veteran under USERRA shall be entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

All insurance coverage, excluding COBRA, shall end:

(a) at midnight on the last day of the pay period in which the employee receives a paycheck for employees hired prior to February 15, 2003; or
(b) at midnight on the last day of the pay period in which the employment termination date became effective for employees hired on February 15, 2003, or later.

An employee who is not eligible for benefits under R477-6-8(1) but does meet the minimum qualifications under the Affordable Care Act shall be eligible for medical insurance only.

(a) an administrative salary increase of at least 1/2% or up to the current salary range maximum. An employee at or above the current salary range maximum shall receive, in lieu of the salary adjustment, a one time bonus, as determined by the agency head or designee, not to exceed limits in Subsection R477-6-7(1)(b);
(b) state paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program, Public Employees Health Plan, as provided in Section R477-6-10.

An employee electing to convert to career service exempt after the 60 day election period may not be eligible for the wage increase, but shall be entitled to apply for the insurance coverage through the Group Insurance Office.

An employee electing not to convert to career service exemption shall retain career service status even though the position shall be designated as schedule AC, AD, AR or AS. When these career service employees vacate these positions, subsequent appointments shall be career service exempt.

An agency head may reorganize so that a current career service exempt position no longer meets the criteria for exemption. In this case, the employee shall be designated as career service if the employee had previously earned career service. However, the employee may not be eligible for a severance package, increased annual leave accrual, or exempt life insurance. In this situation, the agency and employee shall make arrangements through the Group Insurance Office to discontinue the exempt life insurance coverage.

A career service exempt employee without prior career service status shall remain exempt. When the employee leaves the position, subsequent appointments shall be consistent with R477-4.

Agencies shall communicate to all impacted and future eligible employees the conditions and limitations of this incentive program.

R477-6-10. State Paid Life Insurance.

A benefits eligible career service exempt employee on schedule AA, AB, AD, AR and AT shall be provided the following benefits if the employee is approved through underwriting:

(a) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program Public Employees Health Plan:
(i) Hourly wage $24.03 or less shall receive $125,000 of term life insurance;
(ii) Hourly wage between $24.04 and $28.84 shall receive $150,000 of term life insurance;
(iii) Hourly wage $28.85 or higher shall receive $200,000 of term life insurance.

An employee on schedule AC, AE, or AS may be provided these benefits at the discretion of the appointing authority.

R477-6-11. Severance Benefit.

At the discretion of the appointing authority a benefits eligible career service exempt employee on schedule AB, AC, AD, AE, AR, AS or AT who is separated from state service through an action initiated by management, to include resignation in lieu of termination, may receive at the time of separation a severance benefit equal to:
(a) salary at the rate of:
   (i) one week of salary, up to a maximum of 12 weeks, for each year of consecutive exempt service in the executive branch; and
   (ii) two weeks of salary, up to a maximum of 24 weeks, for each year of consecutive exempt service in the executive branch for schedule AB and AC employees; and
(b) if eligible for COBRA, the level of medical insurance coverage only at the time of severance shall be provided at the rate of two pay periods for each year of consecutive exempt service, up to a maximum of 13 pay periods.

The Executive Director, DHRM, shall publicize procedures for processing payroll and human resource transactions and documents.

KEY: wages, employee benefit plans, insurance, personnel management
Date of Enactment or Last Substantive Amendment: 2017
Notice of Continuation: February 2, 2012

Human Resource Management, Administration
R477-8
Working Conditions

NOTICE OF PROPOSED RULE (Amendment)
DAR FILE NO.: 41808
FILED: 06/14/2017

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to reorganize a rule section to avoid unintended application of provisions.

SUMMARY OF THE RULE OR CHANGE: This change reorganizes Section R477-8-17 by eliminating Subsection R477-8-1(3) and moving its content into Subsection R477-8-1(1) so that it does not also apply to Subsection R477-8-1(2).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 20A-3-103 and Section 67-19-6 and Section 67-19-6.7

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
♦ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local government.

♦ SMALL BUSINESSES: This rule only affects the executive branch of state government and will have no impact on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to business.

Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

AUTHORIZED BY: Debbie Cragun, Executive Director
(3) Agency management shall establish work schedules and may approve a flexible starting and ending time for an employee as long as scheduling is consistent with overtime provisions of Section R477-8-4.

(4) An employee is required to work the assigned schedule and be at work on time. An employee who is late, regardless of the reason including inclement weather, shall, with management approval, make up the lost time by using accrued leave, leave without pay or adjusting their work schedule.

(5) An employee's time worked shall be calculated in increments of 15 minutes. This rule incorporates by reference 29 CFR 785.48 (2012) for rounding practices when calculating time worked.

R477-8-2. Telecommuting.
(1) Telecommuting is an agency option, not a universal employee benefit. Agencies utilizing a telecommuting program shall:

(a) establish a written policy governing telecommuting;
(b) enter into a written contract with each participating employee to specify conditions, such as use of state or personal equipment, protecting confidential information, and results such as identifiable benefits to the state and how customer needs are being met;
(c) not allow participating employees to violate overtime rules;
(d) not compensate for normal commute time; and
(e) document telecommuting authorization in the Utah Performance Management system.

(1) Each full time work day may include a minimum of 30 minutes non-compensated lunch period, at the discretion of agency management.

(a) Lunch periods may not be used to shorten a work day.
(b) An employee may take a 15 minute compensated break period for every four hours worked.

(c) Break periods may not be accumulated to accommodate a shorter work day or longer lunch period.

(2) Compensated exercise release time may be allowed at agency discretion for up to three days per week for 30 minutes.

(a) Participating agencies shall have a written policy regarding exercise release time.
(b) Work time exercise that is a bona fide job requirement is not subject to this section.

(3) Authorization for exercise time and regular scheduled lunch breaks less than 30 minutes shall be documented in the Utah Performance Management system.

(4) As requested and after consultation with an employee, reasonable, daily break periods shall be granted for the first year following the birth of a child to allow an employee to express breast milk for her child.

(a) A private location, other than a restroom, shall be provided.
(b) Appropriate temporary storage shall be provided for expressed milk.

R477-8-4. Overtime Standards.
The state's policy for overtime is adopted and incorporated from the Fair Labor Standards Act, 29 CFR Parts 500 to 899(2002) and Section 67-19-6.7.

(1) Management may direct an employee to work overtime. Each agency shall develop internal rules and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:

(a) prior supervisory approval for all overtime worked;
(b) recordkeeping guidelines for all overtime worked;
(c) verification that there are sufficient funds in the budget to compensate for overtime worked.

(2) Overtime compensation designations are identified for each job title in HRE as either FLSA nonexempt, or FLSA exempt.

(a) An employee may appeal the FLSA designation to the agency human resource field office. Further appeals may be filed directly with the United States Department of Labor, Wage and Hour Division. Sections 67-19-31, 67-19a-301 and Title 63G, Chapter 4 may not be applied for FLSA appeals purposes.

(3) An FLSA nonexempt employee may not work more than 40 hours a week without management approval. Overtime shall accrue when the employee actually works more than 40 hours a week. Leave and holiday time taken within the work period may not be counted as hours worked when calculating overtime accrual. Hours worked over two or more weeks may not be averaged with the exception of certain types of law enforcement, fire protection, and correctional employees.

(4) Agency management shall arrange for an employee's use of compensatory time as soon as possible without unduly disrupting agency operations or endangering public health, safety or property.

R477-8-5. Compensatory Time for FLSA Nonexempt Employees.
(1) An FLSA nonexempt employee shall sign a prior overtime agreement authorizing management to compensate the employee for overtime worked by actual payment or accrual of compensatory time at time and one half.

(a) An FLSA nonexempt employee may receive compensatory time for overtime up to a maximum of 80 hours. Only with prior approval of the Executive Director, DHRM, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace or correctional officers, emergency or seasonal employees. Once an employee reaches the maximum, additional overtime shall be paid on the payday for the period in which it was earned.

(b) Compensatory time balances for an FLSA nonexempt employee shall be paid down to zero at the rate of pay in the old position in the same pay period that the employee is:

(i) transferred from one agency to a different agency; or
(ii) promoted, reclassified, reassigned or transferred to an FLSA exempt position.

R477-8-6. Compensatory Time for FLSA Exempt Employees.
(1) An FLSA exempt employee may not work more than 80 hours in a pay period without management approval.
Compensatory time shall accrue when the employee actually works more than 80 hours in a work period. Leave and holiday time taken within the work period may not count as hours worked when calculating compensatory time. Each agency shall compensate an FLSA exempt employee who works overtime by granting time off. For each hour of overtime worked, an FLSA exempt employee shall accrue an hour of compensatory time.

(a) Agencies shall establish in written policy a uniform overtime year either for the agency as a whole or by unit number and communicate it to employees. Overtime years shall be set at one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year. If an agency fails to establish a uniform overtime year, the Executive Director, DHRM, and the Director of Finance, Department of Administrative Services, will establish the date for the agency at the last pay period of the calendar year. An agency may change the established overtime year only after the current overtime year has lapsed, unless justifiable reasons exist and the Executive Director, DHRM, has granted a written exception.

(b) The limit on compensatory time accrued by an FLSA exempt employee may not be less than 80 hours.

(i) Any compensatory time earned by an FLSA exempt employee over the limit shall be paid out in the pay period it is earned.

(c) Any compensatory time earned by an FLSA exempt employee is not an entitlement, a benefit, nor a vested right.

(d) Any compensatory time earned by an FLSA exempt employee shall lapse upon occurrence of any one of the following events:

(i) at the end of the employee's established overtime year;

(ii) upon assignment to another agency;

(iii) changes FLSA status to nonexempt; or

(iv) when an employee terminates, retires, or otherwise does not return to work before the end of the overtime year.

(e) Schedule AB employees may not be compensated for compensatory time except with time off.


(1) To be considered for overtime compensation under this rule, a law enforcement or correctional officer shall meet the following criteria:

(a) be a uniformed or plain clothes sworn officer;
(b) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accidental or willful injury, and to prevent and detect crimes;
(c) have the power to arrest;
(d) be POST certified or scheduled for POST training; and
(e) perform over 80% law enforcement duties.

(2) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to law enforcement or correctional officers designated FLSA nonexempt and covered under this rule.

(a) 171 hours in a work period of 28 consecutive days; or
(b) 86 hours in a work period of 14 consecutive days.

(3) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to fire protection employees.

(a) 212 hours in a work period of 28 consecutive days; or
(b) 106 hours in a work period of 14 consecutive days.

(4) Agencies may designate a lesser threshold in a 14 day or 28 day consecutive work period as long as it conforms to the following:

(a) the Fair Labor Standards Act, Section 207(k);
(b) 29 CFR 553.230;
(c) the state's payroll period; and
(d) the approval of the Executive Director, DHRM.

R477-8-8. Time Reporting.

(1) Employees shall complete and submit a state approved biweekly time record that accurately reflects the hours actually worked, including:

(a) approved and unapproved overtime;
(b) on-call time;
(c) stand-by time;
(d) meal periods of public safety and correctional officers who are on duty more than 24 consecutive hours; and
(e) approved leave time.

(2) An employee who fails to accurately record time may be disciplined.

(3) Time records developed by the agency shall have the same elements of the state approved time record and be approved by the Department of Administrative Services, Division of Finance.

(4) A Supervisor who directs an employee to submit an inaccurate time record or knowingly approves an inaccurate time record may be disciplined.

(5) A Non-exempt employee who believes FLSA rights have been violated may submit a complaint directly to the Executive Director, DHRM or designee.

R477-8-9. Hours Worked.

(1) An FLSA nonexempt employee shall be compensated for all hours worked. An employee who works unauthorized overtime may be disciplined.

(a) All time that an FLSA nonexempt employee is required to wait for an assignment while on duty, before reporting to duty, or before performing activities is counted towards hours worked.

(b) Time spent waiting after being relieved from duty is not counted as hours worked if one or more of the following conditions apply:

(i) the employee arrives voluntarily before their scheduled shift and waits before starting duties;
(ii) the employee is completely relieved from duty and allowed to leave the job;
(iii) the employee is relieved until a definite specified time; or
(iv) the relief period is long enough for the employee to use as the employee sees fit.

R477-8-10. On-call Time.

(1) An FLSA nonexempt employee required by agency management to be available for on-call work shall be compensated for on-call time at a rate of one hour for every 12 hours the employee is on-call. A FLSA exempt employee required by agency management to be available for on-call work may be compensated
at agency discretion, not to exceed a rate of one hour for every 12 hours the employee is on-call.

(a) Time is considered on-call time when the employee has freedom of movement in personal matters as long as the employee is available for a call to duty. An employee may not be in on-call status while using leave or while otherwise unable to respond to a call to duty.

(b) Agencies who enter into on-call agreements with employees shall have an agency policy consistent with this rule and finance policy.

(c) On-call status shall be designated by a supervisor and shall be in writing and documented in the Utah Performance Management system on an annual basis. Carrying a pager or cell phone shall not constitute on-call time without this written agreement.

(d) The employee shall record the hours spent in on-call status, and any actual hours worked, on the official time record, for the specific date the hours were incurred, in order to be paid.

(e) An employee may not record on-call hours and actual hours worked for the same period of time. On-call hours, actual hours worked, and leave hours cannot exceed 24 hours in a day.

(f) An employee shall round on-call hours to the nearest two decimal places. Hours of on-call pay shall be calculated by subtracting the number of hours worked in the on-call period from the number of hours in the on-call period then dividing the result by 12.

**R477-8-11. Stand-by Time.**

(1) An employee restricted to stand-by at a specified location ready for work shall be paid full-time or overtime, as appropriate. An employee shall be paid for stand-by time if required to stand by the post ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shutdowns.

(2) The meal periods of police, and other public safety or correctional officers and firefighters who are on duty more than 24 consecutive hours shall be counted as working time, unless an express agreement excludes the time.

**R477-8-12. Commuting and Travel Time.**

(1) Normal commuting time from home to work and back may not count towards hours worked.

(2) Time an employee spends traveling from one job site to another during the normal work schedule shall count towards hours worked.

(3) Time an employee spends traveling on a special one day assignment shall count towards hours worked except meal time and ordinary home to work travel.

(4) Travel that keeps an employee away from home overnight does not count towards hours worked if it is time spent outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

(5) Travel as a passenger counts toward hours worked if it is time spent during regular working hours. This applies to nonworking days, as well as regular working days. However, regular meal period time is not counted.

**R477-8-13. Excess Hours.**

(1) An employee may use excess hours the same way as annual leave.

(a) An employee may not work hours which would lead to the accrual of excess hours without prior management approval.

(b) An employee may not use any leave time, other than holiday and jury leave, that results in the accrual of excess hours.

(c) An employee may not accumulate more than 80 excess hours.

(d) Agency management shall pay out excess hours:

(i) for all hours accrued above the limit set by DHRM;

(ii) when an employee is assigned from one agency to another; and

(iii) upon separation.

(e) Agency management may pay out excess hours:

(i) automatically in the same pay period accrued;

(ii) at any time during the year as determined appropriate by a state agency or division; or

(iii) upon request of the employee and approval by the agency head.

**R477-8-14. Dual State Employment.**

An employee who has more than one position within state government, regardless of schedule is considered to be in a dual employment situation. The following conditions apply to dual employment status.

(1) An employee may work in up to four different positions in state government.

(2) An employee's benefit status for any secondary position(s), regardless of schedule of any of the positions, shall be the same as the primary position.

(3) An employee's FLSA status (exempt or nonexempt) for any secondary position(s) shall be the same as the primary position.

(4) Leave accrual shall be based on all hours worked in all positions and may not exceed the maximum amount allowed in the primary position.

(5) As a condition of dual employment, an employee in dual employment status is prohibited from accruing excess hours in either the primary or secondary positions. All excess hours earned shall be paid at straight time in the pay period in which the excess hours are earned.

(6) As a condition of dual employment, the Overtime or Comp selection shall be as overtime paid regardless of FLSA status. An employee may not accrue comp hours while in dual employment status.

(7) Overtime shall be calculated at straight time or time and one half depending on the FLSA status of the primary position. Time and a half overtime rates shall be calculated based on the weighted average rate of the multiple positions. Refer to Division of Finance's payroll policies, dual employment section.

(8) The Accepting Terms of Dual Employment form shall be completed, signed by the employee and supervisor, and placed in the employee's personnel file with a copy sent to the Division of Finance.
(9) Secondary positions may not interfere with the efficient performance of the employee's primary position or create a conflict of interest. An employee in dual employment status shall comply with conditions under Subsection R477-9-2(1).


Employees and applicants seeking reasonable accommodation shall be evaluated under state and federal law. This shall be done in conjunction with the agency ADA coordinator. The ADA coordinator shall consult with the Division of Risk management prior to denying any accommodation request.

R477-8-16. Fitness For Duty Evaluations.

Fitness for duty medical evaluations may be performed under any of the following circumstances:

(1) return to work from injury or illness except as prohibited by federal law;
(2) when management determines that there is a direct threat to the health or safety of self or others;
(3) in conjunction with corrective action, performance or conduct issues, or discipline; or
(4) when a fitness for duty evaluation is a bona fide occupational qualification for selection, retention, or promotion.

R477-8-17. Temporary Transitional Assignment.

(1) Agency management may place an employee in a temporary transitional assignment when an employee is unable to perform essential job functions due to temporary health restrictions. Time spent on such an assignment may be counted as leave for purposes of R477-7-1(9).

(2) Temporary transitional assignments may also be part of any of the following:

(a) when management determines that there is a direct threat to the health or safety of self or others;
(b) in conjunction with an internal investigation, corrective action, performance or conduct issues, or discipline;
(c) where there is a bona fide occupational qualification for retention in a position;
(d) while an employee is being evaluated to determine if reasonable accommodation is appropriate.

(3) Time spent on a temporary transitional assignment may be counted as leave for purposes of R477-7-1(9).

R477-8-18. Change in Work Location.

(1) An involuntary change in work location shall not be permitted if this requires the employee to commute or relocate 50 miles or more, one way, beyond the current one way commute, unless:

(a) the change in work location is communicated to the employee at employment; or
(b) the agency either pays to move the employee consistent with Section R25-6-8 and Finance Policy FIACCT 05-03.03, or reimburses commuting expenses up to the cost of a move.


(1) Each agency may write its own policies for work schedules, overtime, leave usage, and other working conditions consistent with these rules.

R477-8-20. Background Checks.

In order to protect the citizens of the State of Utah and state resources and with the approval of the agency head, agencies may establish background check policies requiring specific employees to submit to a criminal background check through the Department of Public Safety, Bureau of Criminal Identification.

(1) Agencies who have statewide responsibility for confidential information, sensitive financial information, or handle state funds may require employees to submit to a background check, including employees who work in other state agencies.

(2) The cost of the background check will be the responsibility of the employing agency.


The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: breaks, telecommuting, overtime, dual employment

Date of Enactment or Last Substantive Amendment: 2017
Notice of Continuation: February 2, 2012
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-6.7; 20A-3-103
allowing the Division to provide services to those who have received it in the previous year, provided the Division has sufficient funds to do so. This change also eliminates form selection and enrollment process for short-term limited family skill building.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-5-102

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 rule changes time frames and selection process but does not impact funding for the Division, services providers, recipients, or the public.
♦ LOCAL GOVERNMENTS: Review of the amendments to this rule confirms that there is no additional anticipated cost or savings to local governments as a result of these changes. Local governments neither enforce nor are affected by the timeframes and selection process for short-term limited respite care services. Therefore, no cost or savings to local governments are anticipated.
♦ 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. Adjusting the timeframes and selection process does not affect small business because the number of people served by small or large provider agencies stay the same, as do the services provided.
♦ 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. Adjusting the timeframes and selection process does not affect small business because the total number of individuals served remains the same as do the services provided.

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 rule changes timeframes and the selection process but does not impact funding for the Division, services providers, recipients, or the public.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Human Services anticipates no financial impact on businesses. This rule changes timeframes and the selection process but does not impact funding for the Division, services providers, recipients, or the public. After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to 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 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

AUTHORIZED BY: Angella Pinna, Director

R539. Human Services, Services for People with Disabilities.
R539-10. Short-Term Limited Waiting List Services.
R539-10-1. Purpose and Authority.
(1) The purpose of this rule is to provide:
(a) procedures and standards for the determination of eligibility for persons on the waiting list to receive short-term, limited services from the Division.
(2) This rule is authorized by Subsections 62A-5-102(2); 62A-5-102(7)[(c)].

R539-10-2. Definitions.
(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-2.
(2) In addition:
(a) "Active Status" means a person has a current needs assessment score and is on the Division's waiting list.
(b) "Respite" is a service provided in a person's residence or other approved residential setting, designed to give relief to or during the temporary absence of a person's primary caregiver.

R539-10-3. Eligibility.
(1) A person is eligible for short-term limited waiting list services if:
[___(a) the person has met eligibility criteria for non-waiver services as set forth in R539-1;]
[[b]a] the person is not receiving ongoing services with the Division; and
[_[[e]b] the person is currently in active status on the Division's waiting list.

R539-10-4. Limitations.
(1) With the exception of Short-Term Limited Respite Care Services, [F]unds granted must be used during the fiscal year in which they are granted, beginning July 1st of the year granted and ending June 30th of the following year.
R539-10. Selection for Short-Term Limited Respite Care Services.

(1) Non-lapsing Funds may be available to provide short-term limited respite care services for persons determined eligible who are on the Division's waiting list.

(2) When the Division determines that sufficient funds are available to provide short-term limited respite care services, persons will be selected to receive short-term limited respite care according to the following method:

(3) If the Division determines that sufficient funds are available to provide additional short-term limited respite care services, after all persons who had not been selected to receive respite services during the previous selection period have been given an opportunity to receive short-term limited respite care services, the Division may use a random selection process to select persons to receive short-term limited respite care services from the remaining persons on the waiting list who have indicated that they are in need of respite services regardless of whether the person had been selected previously.

(d) A sibling of a person selected to receive short-term limited respite care services, at the discretion of the Division, may also be selected to receive short-term limited respite care services in the same selection period despite not being selected.

(3) Notwithstanding the foregoing, the Division Emergency Services Management Committee (ESMC) may select a person on the waiting list to receive short-term limited respite care services if the ESMC determines that short-term limited respite care services are appropriate to address the emergency circumstances faced by the person.

R539-10.6. Short-Term Limited Respite Care Provider Options.

(1) Short-term limited respite care services may be provided through either the Self-Administered Services Model or the traditional Agency-Based Provider Model or a combination of both.

(2) If the person elects the Self-Administered Services Model to provide short-term limited respite care, the following requirements must be met:

(a) The person must select a fiscal agent, through which all payments to employees must be made;

(b) The person must adhere to all additional requirements set forth in Section R539-5.
NOTICES OF PROPOSED RULES

(1) Non-lapsing Funds may be available to provide short-term limited service brokering services for persons determined eligible who are on the Division's waiting list.
(2) When the Division determines that sufficient funds are available to provide short-term limited service brokering services, persons will be selected to receive short-term limited service brokering services according to need as determined from information supplied to the Division.

KEY: waiting lists, family preservation, respite, service brokering
Date of Enactment or Last Substantive Amendment: [December 30, 2013] 2017
Authorizing, and Implemented or Interpreted Law: 62A-5-102(7)

Natural Resources, Wildlife Resources
R657-6
Taking Upland Game

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41832
FILED: 06/15/2017

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the upland game program as approved by the Wildlife Board.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions: 1) clarify the definition of "Baiting"; 2) clarify possession of live protected wildlife; 3) clarify closures on all National Wildlife Refuges; and 4) make technical corrections.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This amendment clarifies existing rule language. It does not make any changes to the process or employee workload. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.
♦ LOCAL GOVERNMENTS: Since this amendment has minimal impact on individual hunters and no impact on the local governments, DWR finds that this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.
♦ SMALL BUSINESSES: This amendment clarifies existing rule language and therefore does not have the potential to generate a cost or savings impact to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This amendment clarifies existing rule language and therefore does not have the potential to generate a cost or savings impact to sportsmen or the other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that this amendment will not create additional costs for those who participate in wildlife-related activities in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

AUTHORIZED BY: Mike Fowlks, Deputy Director

R657. Natural Resources, Wildlife Resources.
R657-6. Taking Upland Game.
R657-6-1. Purpose and Authority.
(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking upland game.
(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the guidebook of the Wildlife Board for taking upland game and wild turkey.
R657-6-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.
(2) In addition:
(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices upland game.
(b) "Baiting" means the direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, or other feed that could serve as a lure or attraction for upland game to, on, or over any areas where hunters are attempting to take them.
(c) "CFR" means the Code of Federal Regulations.
(d) "Falconry" means the sport of taking quarry by means of a trained raptor.
(e) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on a contract for sale of eligible property.
(f) "Migratory game bird" means, for the purposes of this rule, American crow, mourning dove, white-winged dove, band-tailed pigeon, and Sandhill crane.
(g) "Falconry" means the sport of taking quarry by means of a trained raptor.
(h) "Transport" means to ship, carry, export, import, receive or deliver for shipment, conveyance, carriage, exportation or importation.
(i) "Upland game" means pheasant, quail, chukar partridge, gray partridge, greater sage-grouse, ruffed grouse, dusky grouse, sharp-tailed grouse, cottontail rabbit, snowshoe hare, white-tailed ptarmigan, and the following migratory game birds: American crow, mourning dove, white-winged dove, band-tailed pigeon, and Sandhill crane.


(1) A person may not hunt upland game by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. An area is considered baited for 10 days after bait is removed, or 10 days after bait in an area is eaten. This section does not prohibit:
(a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:
(i) standing crops or flooded standing crops (including aquaticus), standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;
(ii) from a blind or other place of concealment camouflaged with natural vegetation;
(iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or
(iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.
(b) The taking of any upland game, except Sandhill crane, on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.


(1) It is unlawful for any person to hold in captivity at any time any protected wildlife, except as provided by Title 23, Wildlife Resources Code or any rules and regulations of the Wildlife Board. Protected wildlife that is wounded must be immediately killed and shall be included in the hunter's bag limit.

R657-6-16. Tagging Requirements.

(1) The carcass of a Sandhill crane, Greater sage grouse, or Sharp-tailed grouse must be tagged in accordance with Section 23-20-30.
(2) A person may not hunt or pursue Sandhill crane, Greater sage grouse, or Sharp-tailed grouse after any of the notches have been removed from the tag or the tag has been detached from the permit.

R657-6-21. Closed Areas.

A person may not hunt upland game in any area posted closed by the Division or any of the following areas:
(1) Salt Lake International Airport boundaries as posted.
(2) Incorporated municipalities: Many incorporated municipalities prohibit the discharge of firearms and other weapons. Check with the respective city officials for specific boundaries and limitations.
(3) Wildlife Management Areas:
(a) Waterfowl management areas are open for hunting upland game only during designated waterfowl hunting seasons or as authorized by the Division, including: Blue Lake, Clear Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadows, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Scott M. Matheson Wetland Preserve, Stewart Lake, and Timpie Springs.
(b) Fish Springs National Wildlife Refuge is closed to upland game hunting. Refuges unless declared open by the managing authority.
(c) Goshen Warm Springs is closed to upland game hunting.
(4) Military installations, including Camp Williams, are closed to hunting and trespassing.

KEY: wildlife, birds, rabbits, game laws
Date of Enactment or Last Substantive Amendment: November 10, 2015
Notice of Continuation: June 8, 2015
Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19

Natural Resources, Wildlife Resources

R657-54
Taking Wild Turkey

NOTICE OF PROPOSED RULE
( Amendment)
DAR FILE NO.: 41833
FILED: 06/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the wild turkey program as approved by the Wildlife Board.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions clarify the definition of "Baiting".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This amendment clarifies existing rule language. It does not make any changes to the process or employee workload. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.
♦ LOCAL GOVERNMENTS: Since these amendments will impact only the individual sportsmen wishing to participate in turkey hunting and has no impact on the local governments, DWR finds that this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.
♦ SMALL BUSINESSES: This amendment clarifies existing rule language and therefore does not have the potential to generate a cost or savings impact to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This amendment clarifies existing rule language and therefore does not have the potential to generate a cost or savings impact to sportsmen or the other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that this amendment will not create additional costs for those who wish to participate in turkey hunts.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

AUTHORIZED BY: Mike Fowlks, Deputy Director

R657. Natural Resources, Wildlife Resources.
R657-54. Taking Wild Turkey.
R657-54-1. Purpose and Authority.
(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2003 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking wild turkey.
(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the guidebook of the Wildlife Board for taking upland game and wild turkey.

(1) Terms used in this rule are defined in Section 23-13-2.
(2) In addition:
(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices wild turkey.
(b) "Baiting" means the direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, or other feed that can serve as a lure or attraction for upland game to, on, or over any areas where hunters are attempting to take them.
(c) "CFR" means the Code of Federal Regulations.
(d) "Falconry" means the sport of taking quarry by means of a trained raptor.

(1) Permits for wild turkey will be issued pursuant to R657-62-25.

R657-54-4. Authorized Weapons.
(1) Wild turkey may be taken only with
(a) Archery equipment, including a draw-lock, or a crossbow using broadhead tipped arrows or bolts; or
(b) a shotgun no larger than 10 gauge and no smaller than 28 gauge, firing shot sizes ranging between BB and no. 8.

R657-54-5. Shooting Hours.
(1) Wild turkey may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

A person may not take a wild turkey by the use or aid of live decoys, [records or tapes of] recorded turkey calls or sounds, or electronically amplified imitations of turkey calls.
R657-54. Baiting.
A person may not hunt turkey using bait, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. An area is considered baited for 10 days after bait is removed, or 10 days after bait in an area is eaten.

KEY: wildlife, wild turkey, game laws

Date of Enactment or Last Substantive Amendment: [August 44, 2014]
Notice of Continuation: August 18, 2014
Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19

Science Technology and Research
Governing Authority, Administration

R856-1
USTAR Technology Acceleration
Program Grants

NOTICE OF PROPOSED RULE
(Repeal and Reenact)
DAR FILE NO.: 41804
FILED: 06/13/2017

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is a result of S.B. 166 from the 2016 General Session, now codified in Utah Code Title 63M, Chapter 2. Subsection 63M-2-503(2) requires the Utah Science Technology and Research (USTAR) Initiative to create rules governing all USTAR grant programs. This rule is for one of USTAR’s new grant programs, the USTAR Technology Acceleration Program (TAP) grants. This rule facilitates the grant under Section 63M-2-503 by establishing the eligibility and reporting criteria for an entity to receive a grant including: 1) the form and process of submitting a grant application; 2) a description of entities eligible to apply for a grant; 3) a description of specific categories of projects that are eligible for a grant; 4) the criteria that will be considered in evaluating and awarding grants; and 5) the contracting and reporting requirements of grant recipients. The change is to: 1) clarify the language in the administrative rules for the grant; 2) update terms and conditions for entities eligible to apply for the grant; 3) to make USTAR administrative rule language similar across grant programs.

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) a description of entities eligible to apply for a grant; 3) a description of specific categories of projects that are eligible for a grant; 4) the criteria that will be considered in evaluating and awarding grants; and 5) the contracting and reporting requirements of grant recipients. The change is to: 1) clarify the language in the administrative rules for the grant; 2) update terms and conditions for entities eligible to apply for the grant; 3) to make USTAR administrative rule language similar across grant programs.

USTAR Science Technology and Research
Governing Authority, Administration

R856-1
USTAR Technology Acceleration
Program Grants

NOTICE OF PROPOSED RULE
(Repeal and Reenact)
DAR FILE NO.: 41804
FILED: 06/13/2017

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is a result of S.B. 166 from the 2016 General Session, now codified in Utah Code Title 63M, Chapter 2. Subsection 63M-2-503(2) requires the Utah Science Technology and Research (USTAR) Initiative to create rules governing all USTAR grant programs. This rule is for one of USTAR’s new grant programs, the USTAR Technology Acceleration Program (TAP) grants. This rule facilitates the grant under Section 63M-2-503 by establishing the eligibility and reporting criteria for an entity to receive a grant including: 1) the form and process of submitting a grant application; 2) a description of entities eligible to apply for a grant; 3) a description of specific categories of projects that are eligible for a grant; 4) the criteria that will be considered in evaluating and awarding grants; and 5) the contracting and reporting requirements of grant recipients. The change is to: 1) clarify the language in the administrative rules for the grant; 2) update terms and conditions for entities eligible to apply for the grant; 3) to make USTAR administrative rule language similar across grant programs.

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) a description of entities eligible to apply for a grant; 3) a description of specific categories of projects that are eligible for a grant; 4) the criteria that will be considered in evaluating and awarding grants; and 5) the contracting and reporting requirements of grant recipients. The change is to: 1) clarify the language in the administrative rules for the grant; 2) update terms and conditions for entities eligible to apply for the grant; 3) to make USTAR administrative rule language similar across grant programs.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63M-2-302(1)(h)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None—It is funded by appropriations that have already been allocated to USTAR for these purposes.
♦ LOCAL GOVERNMENTS: None—It is funded by appropriations that have already been allocated to USTAR for these purposes.
♦ SMALL BUSINESSES: None—It is funded by appropriations that have already been allocated to USTAR for these purposes.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None—It is funded by appropriations that have already been allocated to USTAR for these purposes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If successful in winning a grant, awardees will be required to report data for at least five years subsequent at approximately an hour/year of effort. USTAR is unable to estimate the exact cost, since it will vary given the pay of the individual conducting the reporting.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY: After conducting a thorough analysis, it was determined that this proposed rule is expected to have a cost savings for business. It is a grant program that provides businesses with funding to develop new technologies, saving them some of the costs to develop those technologies. II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The aggregate funding for this particular grant is up to $4,500,000 per year. It is estimated to impact up to 40 companies that could be awarded funding per year. III. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The small business that could be impacted would be the estimated up to 40 companies that could be awarded funding. IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-
TIME AND ONGOING COSTS: The company and university would receive funding from USTAR to offset the company's research and development costs. The total aggregate savings for businesses could be up to $4,500,000 annually.

V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: Any potential costs on businesses would be limited to the time and materials spent to complete an application and will affect only those that choose to apply. Businesses that are awarded funding will be required to report data for at least five years subsequent at approximately an hour/year of effort. USTAR is unable to estimate the exact cost, since it will vary given the pay of the individual conducting the reporting.

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

SCIENCE TECHNOLOGY AND RESEARCH GOVERNING AUTHORITY
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:
♦ Peter Jay by phone at 801-372-3969, or by Internet E-mail at pjay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/14/2017

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.
(2) To be considered "Utah-based," a company must:
(a) be registered with the Utah Division of Corporations as an active, domestic, for-profit business entity, in good standing;
(b) maintain its principal place of business in Utah; and,
(c) not relocate the business or substantial portions of its employees, operations, or management outside of the State of Utah.
(3) 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 in 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.

NOTICES OF PROPOSED RULES
NOTICES OF PROPOSED RULES

(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 awarded selected via the criteria and method outlined in Sections R856-1-6 and R856-1-7 herein.


(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.


(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:
   (1) technical merit;
   (2) strength and maturity of company and management;
   (3) 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
   (4) projected time to revenue or job creation;
   (5) market need, technical and management experience and qualifications;
   (6) reasonableness of cost proposal (i.e., size and allocation of budget is appropriate for the work proposed and matching fund available);
   (7) reasonableness of proposed milestones and timelines; and
   (8) 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 and 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 disbursement 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.

   (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.
   (4) 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-2-793 for at least five (5) years following initial receipt of grant funds.

R856-1-1. Authority.
   (1) Subsection 63M-2-503(2) requires the USTAR governing authority to make rules describing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

R856-1-2. Purpose and Goals.
   (1) The Technology Acceleration Program (TAP) provides funding and other support to Utah companies to accelerate the research and development of new technologies that have a strong market potential.
   (2) The goals of TAP are to:
      (a) enhance Utah's innovation system by supporting the development, retention, and attraction of science and technology companies and;
(b) accelerate the growth of high-potential technology companies, leading to the creation of high-paying science and technology jobs in Utah.

(3) Proposals will be reviewed on a competitive basis.

All projects funded through TAP must have an identified market and/or commercialization path.

(4) Anticipated duration of projects will be 12-18 months. Funding must be budgeted by State fiscal year (July 1 - June 30) and funding will be dependent on meeting milestones and continued USTAR appropriation.

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" or "Companies" 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 grants awarded as part of the USTAR Technology Acceleration Program.
(7) "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(1), below.
(8) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual application, 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 characterization of the maturity of the technology used by the federal government (http://ustar.org/our-programs/tap-technology-acceleration-program/tap-technology-readiness-levels/).
(11) "USTAR" means the Utah Science, Technology and Research Initiative.

R856-1-4. Eligibility Criteria at Time of Application.
(1) 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 companies in the technology sector;
(E) the potential for the industry sector to develop new jobs and business opportunities in the state; and,
(2) The company must be developing a technology assessed to be between a TRL of 3-5.

R856-1-5. Eligibility Criteria at Time of Award and for Maintenance of Grant.
(1) Company must meet the following size, revenue, and funding criteria:
(a) have fewer than 50 employees;
(b) have less than one-million dollars in annual revenue; and
(c) not raised more than five-million dollars in private funding, excluding non-dilutive funding.
(2) 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, for-profit business entity, in good standing;
(ii) have a valid business license from the governing locality at the company's primary location;
(iii) have a substantial presence in the state of Utah;
(A) "substantial presence" means that at least 90% of company's employees are employed in the State of Utah;
(B) company must be approved by the USTAR governing authority according to R856-1-5(2) with consideration given at time of award.
(iv) maintain employees in Utah, which will require the company to provide a copy of its most recent reporting for unemployment insurance with the Utah Department of Workforce Services;
(v) maintain its principal place of business in Utah; and,
(vi) not relocate the company 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 R856-1-5(1), 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 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 substantial presence in the state of Utah.
evaluation on technical merit, commercialization strategy, economic
established  scoring  rubric  provided  by  USTAR  that  includes
subject-matter-experts and one business or industry expert.
the criteria in R856-1-8.
evaluate and score the applicant's proposed research project using
independent  subject-matter  experts  ("expert  panel")  who  will
(R856-1-7(1)) will be rejected and not considered for review.
(i)  technical merit of proposal;
(ii)  strength and experience of company and management
team;
(iii)  appropriate technology readiness level (TRL 3-5);
(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 businesses; and, or,
(D)  projected time to revenue or job creation;
(v)  market need;
(vi)  technical and management experience and qualification;
(vii)  commercialization strategy
(viii)  reasonableness of the proposed budget, including
whether the amounts are appropriate for the work proposed;
(ix)  reasonableness of proposed milestones;
(x)  proposed timeline is achievable and will not exceed
18 months; and

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**R856-1.6. Application 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 plan and objectives;
(ii) list of technical milestones;
(iii) description of potential market product;
(iv) potential economic impact on Utah's 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) a 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
R856-1-7 and R856-1-8 herein.

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**R856-1.7. Application Review Procedure.**

(1) Initial eligibility screening.
(a) USTAR will conduct an initial eligibility screening for
each application to ensure:
(i) completeness;
(ii) strict conformity with application instructions;
(iii) verification of minimum eligibility requirements; and,
(iv) appropriateness of applicant's reported TRL.
assessment, technical merit, proposed timelines, and budget.
(b) Any application that fails to meet the criteria in R856-
1-7(1) will be rejected and not considered for review.
(2) Panel review.
(a) Accepted applications will be reviewed by
independent  subject-matter  experts  ("expert  panel")  who  will
evaluate and score the applicant's proposed research project using
the criteria in R856-1-8.
(i) Each expert panel will consist of at least two technical
subject-matter-experts and one business or industry expert.
(ii) Each expert will review the proposals using an
established scoring rubric provided by USTAR that includes
evaluation on technical merit, commercialization strategy, economic
impact to the state and budget and any other factors considered
relevant by USTAR.
(iii) 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.
(iv) USTAR will screen the experts for conflicts of
interest before reviews are initiated, using the conflict of interest
policy on USTAR's website. Experts are participating in the
application review as a volunteer for USTAR. Each expert is
obligated under contract to maintain the classification of records
and to keep information protected and confidential as described in
the Utah Government Records Access and Management Act

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(xi) 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.

R856-1-9. Grant Amount, Award, and Required Contract.

(1) USTAR will have the discretion to limit the amount of funding that may be awarded for each TAP 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 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 contract with USTAR governing the use of grant funding.

(4) Unless addressed in the terms and conditions of the contract between Company and USTAR, the following provisions shall apply:

(a) Company must remain a Utah-based company for at least five years from the initial disbursement of TAP funding;

(b) Grant funding may not be used to provide a primary benefit to any state or country 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 disbursement of funding has been made, and first year reporting has been completed.

(5) Violations of Subsection R856-1-9(4) may result in forfeiture of grant funding and may require repayment of all or a portion of the funding received as part of the TAP grant.

R856-1-10. Contract Modifications.

(1) Company may request a modification to the terms of a TAP 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 milestone due dates, if the changes do not change the total length of the project;

(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;

(b) USTAR staff can issue a “stop work” order until the project can be reviewed by the USTAR governing authority in a closed meeting to determine whether to end a contract due to failed milestones.

(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 when required by State procurement regulations.

R856-1-11. Milestones.

(1) TAP funding must be used to accelerate the research and development of a technology from TRL level 3 to 5 to a higher TRL level, 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; and,

(d) Product development.

(3) Remaining grant funds will be disbursed upon successful completion of designated milestones.

(4) Specific funding details will be provided in the program announcement and in each TAP grant contract.

R856-1-12. Funding Distribution.

(1) Expenses for each milestone will be reimbursed upon successful completion of that milestone, as outlined in the contract.

(2) Specific funding details will be provided in the program announcement and in each TAP 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.


(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)
Chapter 2. Subsection 63M-2-503(2) requires the Utah Science Technology and Research (USTAR) Initiative to create rules governing all USTAR grant programs. This rule is for USTAR's second grant program, the USTAR University-Industry Partnership Program Grants. This rule facilitates the grant under Section 63M-2-503 by establishing the eligibility and reporting criteria for an entity to receive a grant including: 1) the form and process of submitting a grant application; 2) a description of entities eligible to apply for a grant; 3) a description of specific categories of projects that are eligible for a grant; 4) the criteria that will be considered in evaluating and awarding grants; and 5) the contracting and reporting requirements of grant recipients. The repeal and reenact is to: 1) clarify the language in the administrative rules for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; and 3) to make USTAR administrative rule language similar across grant programs.

SUMMARY OF THE RULE OR CHANGE: This rule establishes the USTAR Industry Partnership Program Grants and 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) a description of entities eligible to apply for a grant; 3) a description of specific types of research projects that are eligible for a grant; 4) the criteria that will be considered in evaluating and awarding grants; and 5) the contracting and reporting requirements of grant recipients. The change is to: 1) clarify the language in the administrative rules for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; and 3) to make USTAR administrative rule language similar across grant programs.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63M-2-302(1)(h)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None--It is funded by appropriations that have already been allocated to USTAR for these purposes.
♦ LOCAL GOVERNMENTS: None--It is funded by appropriations that have already been allocated to USTAR for these purposes.
♦ SMALL BUSINESSES: None--It is funded by appropriations that have already been allocated to USTAR for these purposes.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--It is funded by appropriations that have already been allocated to USTAR for these purposes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If successful in winning a grant, awardees will be required to report data for at least five years subsequent at approximately an hour/year of effort. USTAR is unable to estimate the exact cost, since it will vary given the pay of the individual conducting the reporting.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY: After conducting a thorough analysis, it was determined that this proposed rule is expected to have a cost savings for business. It is a grant program where businesses partner with universities to perform research and development on the development of new technologies. USTAR provides matching or shared funds to assist with the research and development. II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The small business that could be impacted would be the estimated up to 20 companies that could win awards for matching USTAR IPP funding. III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The small business that could be impacted is expected to have a cost savings for business. It is a grant program where businesses partner with universities to perform research and development on the development of new technologies. USTAR provides matching or shared funds to assist with the research and development. IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: The company and university would receive funding from USTAR to offset the company's research and development costs. The total aggregate savings for businesses could be up to $1,000,000 per year. It is estimated to impact up to 20 companies that could win awards for matching USTAR IPP funding. V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: Any potential costs on businesses would be limited to the time and materials spent to complete an application and will affect only those that choose to apply. Businesses that are awarded funding will be required to report data for at least five years subsequent at approximately an hour/year of effort. USTAR is unable to estimate the exact cost, since it will vary given the pay of the individual conducting the reporting.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
SCIENCE TECHNOLOGY AND RESEARCH GOVERNING AUTHORITY 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:
♦ Peter Jay by phone at 801-372-3969, or by Internet E-mail at pjay@utah.gov
R856. Science Technology and Research Governing Authority (Utah), Administration.

R856-2.USTAR University-Industry Partnership Program Grants.

R856-2-1. Authority.

Subsection 62M-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.


(1) “Applicant” means a collaboration between a company and university researcher for a particular project.

(2) “Award(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 materials, 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:
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) a description of critical milestones and qualification of team to meet milestones;
       (iii) an itemized budget detailing planned use of grant funds; and,
       (iv) 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.


(1) Pre-screening:
   (a) Companies and researchers are encouraged to work with USTAR headquarters or a USTAR regional director to identify 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,

(2) The IPP is open to companies with a technology gap between TRL 2-5.
NOTICES OF PROPOSED RULES

R856-2-1. Authority.
Subsection 63M-2-503(2) requires the USTAR governing authority to make rules describing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

R856-2-2. Purpose and Goals.
USTAR's Industry Partnership Program promotes the development of industry-university partnerships for technology-based economic 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 company with a substantial presence in Utah. The technology development will lead to a new product or a market advantage for the company.

(1) "Applicant" means a company and a university researcher applying for a particular collaborative 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" or "Companies" 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) "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.
(9) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual application, or intellectual property.
(10) "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.
(11) "Technology Readiness Level" or "TRL" level means the characterization of the maturity of the technology used by the federal government (http://ustar.org/our-programs/tap-technology-acceleration-program/tap-technology-readiness-levels/).
(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) 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 companies in the technology sector;
(E) the potential for the industry sector to develop new jobs and business opportunities in the state; and,

(2) Proposal must be jointly developed by a company, with a substantial presence in Utah as defined in R856-2-4(4), and a university.

(3) Proposal must be submitted by an authorized body within the university. (Eg. Office of Sponsored Programs).

(4) 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.

(5) Company must have a substantial presence in Utah.

(a) A substantial presence, for purposes of the IPP grant, requires the following:

(i) be registered with the Utah Division of Corporations as an active, for-profit business entity, in good standing;
(ii) have a valid business license from the governing locality at the company's primary location;
(iii) meet the following criteria for employees in the state of Utah:

(A) if the company has 8 full time equivalent employees or less, at least 50% must be employed in Utah;
(B) if the company has 9-36 full time equivalent employees, at least 4 employees or 25%, whichever is greater, must be employed in Utah;
(C) if the company has over 36 full time equivalents, at least 10 people must be employed in Utah or

(D) as approved by USTAR governing authority.
(iv) maintain its principal place of business in Utah; and,
(v) not relocate the company or substantial portions of its employees, operations, or management outside of the State of Utah.

(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) business taxes paid 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 in Utah;
(viii) likelihood that the company will maintain a substantial presence in the state of Utah; and,
(ix) the degree to which the company's activities and operations positively impact Utah's economy.

(6) 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) time on the project;
(B) Materials and equipment;
(C) Work/research space;
(D) Travel and other company expenses budgeted for the project;
(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;
(ii) budgetary requirements to complete the project; and,
(iii) potential economic impact to state.

(b) University will provide USTAR with documentation of funding received from company to fulfill the company cost-share commitment prior to completion of the project.

(c) All reported cost-share is subject to audit by USTAR.

R856-2-5. Application and Submission Guidelines.

(1) USTAR will accept applications for IPP grants on an ongoing basis.

(2) USTAR will provide the following instructions for applicants:

(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 plan and objectives;
(ii) list of technical milestones;
(iii) description of potential market for product;
(iv) potential economic impact on Utah's economy; and,
(v) timeline for completion.
(c) Instructions for providing an outlined budget for total project cost, including:
(i) total project cost;
(ii) a description of funds secured or dedicated to the project;
(iii) an itemized budget detailing planned use of grant funds; and
(iv) a 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) The IPP grant application and instructions will be available on USTAR's website and in paper form upon request.
(4) All completed applications will be reviewed and awardees selected via the criteria and method outlined herein.

(1) Pre-screening:
(a) Companies are encouraged to work with USTAR headquarters or a USTAR regional director to define the technology gap and identify appropriate researchers at universities.
(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) strict conformity with application instructions;
   (iii) verification of minimum eligibility requirements;
   (iv) appropriateness of applicant's reported TRL assessment, technical merit, proposed timelines, and budget.
(b) Any application that fails to meet the criteria in Subsection R856-2.6(2) will be rejected and not considered for review.
(3) Panel Review:
(a) Accepted applications will be reviewed 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 will review the proposals using an established scoring rubric provided by USTAR that includes evaluation on technical merit, commercialization strategy, economic impact to the state and budget and any other factors considered relevant by USTAR.
(ii) 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.
(iii) USTAR will screen the experts for conflicts of interest before reviews are initiated, using the conflict of interest policy on USTAR's website. Experts are participating in the application review as a volunteer for USTAR. Each expert is obligated under contract to maintain the classification of records and to keep information protected and confidential as described in the Utah Government Records Access and Management Act (GRAMA).
(4) Governing authority review:
(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations for IPP grants.
(b) The subcommittee will recommend projects for award and award amounts of grant funding to the full governing authority for final approval.

R856-2.7. Evaluation and Award Criteria.
(1) The panel of subject matter experts will use an established scoring system to evaluate and rank grant applications (if there is more than 1) and recommend 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 proposal across several categories, which may include:
   (i) technical merit of proposal;
   (ii) strength and experience of company and management team;
   (iii) appropriate technology readiness level (TRL 2-5);
   (iv) potential for economic impact, as measured by potential for:
       (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;
       (v) market need;
       (vi) technical capabilities and experience of the team;
       (vii) commercialization strategy;
       (viii) reasonableness of the proposed budget and commitment of matching funds, including whether the amounts are appropriate for the work proposed;
       (ix) reasonableness of proposed milestones;
       (x) proposed timeline is achievable and will not exceed 18 months; and
       (xi) 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.

R856-2.8. Grant Amount, Award, and Required Contract.
(1) USTAR will have the discretion to limit the amount of funding that may be awarded for each 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 judgment and discretion of the governing authority.
(3) Upon award of an IPP grant, and prior to any disbursement of funds, university and company must enter into contract(s) with USTAR governing the use of grant funding and requirements for participation in the IPP.

NOTICES OF PROPOSED RULES

DAR File No. 41812

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(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 or country 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 disbursement of funding has been made, and first year reporting has been completed.
(5) Violations of Subsection R856-2-8(4) may result in forfeiture of grant funding and may require repayment of all or a portion of the funding received as part of the IPP program.

(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, non-substantive changes.
   (a) Non-substantive changes may include the following:
      (i) changes to timelines of less than one month if it is the first such modification;
      (ii) changes to milestone due dates, if the changes do not change the total length of the project;
      (iii) corrections to clerical errors in the application materials;
      (iv) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law;
   (b) USTAR staff can issue a "stop work" order until the project can be reviewed by the USTAR governing authority in a closed meeting to determine whether to end a contract due to failed milestones.
(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 when required by State procurement regulations.

R856-2-10. Milestones.
(1) IPP grant funding must be used to accelerate the research and development of a technology from TRL level 2 to 5 to a higher TRL level, and project proposals must identify specific milestones leading to the proposed outcome.
(2) 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.
(3) Remaining grant funds will be disbursed upon successful completion of designated milestones.
(4) Specific funding details will be provided in the program announcement and in each IPP grant contract.

R856-2-11. Funding Distribution.
(1) Expenses for each milestone will be reimbursed upon successful completion of that milestone, as outlined in the contract.
(2) Specific funding details will be provided in the program announcement and in each IPP grant contract.
(3) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding will be grounds to terminate the contract and any future funding.

R856-2-12. 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)

NOTICE OF PROPOSED RULE
(Repeal and Reenact)
DAR FILE NO.: 41813
FILED: 06/14/2017

R856-3
USTAR University Technology Acceleration Grants

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is a result of S.B. 166 from the 2016 General Session, now codified in Utah Code Title 63M, Chapter 2. Subsection 63M-2-503(2) requires the Utah Science Technology and Research (USTAR) Initiative to create rules governing all USTAR grant programs. This rule is for a USTAR grant program, the USTAR University Technology Acceleration Grants. This rule facilitates the grant under Section 63M-2-503 by establishing the eligibility and reporting criteria for an entity to receive a grant including: 1) the form and process of submitting a grant application; 2) a description of entities eligible to apply for a grant; 3) a description of specific categories of projects that are eligible for a grant; 4) the criteria that will be considered in evaluating and awarding grants; and 5) the contracting and reporting requirements of grant recipients. The repeal and reenact is to: 1) clarify the language in the administrative rules for the
grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; and 3) to make USTAR administrative rule language similar across grant programs.

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 under Section 63M-2-503, 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; 4) the criteria for awarding grants and determining grant amount; and 5) the contracting and reporting requirements of grant recipients. The change is to: 1) clarify the language in the administrative rules for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; and 3) to make USTAR administrative rule language similar across grant programs.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63M-2-302(1)(h)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None--It is funded by appropriations that have already been allocated to USTAR for these purposes.
♦ LOCAL GOVERNMENTS: None--It is funded by appropriations that have already been allocated to USTAR for these purposes.
♦ SMALL BUSINESSES: None--It is funded by appropriations that have already been allocated to USTAR for these purposes.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--It is funded by appropriations that have already been allocated to USTAR for these purposes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If successful in winning a grant, awardees will be required to report data for at least five years subsequent at approximately an hour/year of effort. USTAR is unable to estimate the exact cost, since it will vary given the pay of the individual conducting the reporting.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
SCIENCE TECHNOLOGY AND RESEARCH GOVERNING AUTHORITY 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:
♦ Peter Jay by phone at 801-372-3969, or by Internet E-mail at pjay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/14/2017

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 USTAR 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 (JUL-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.
Section 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.

Section 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 markets;
    - (iv) potential economic impact on Utah’s 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;
- (3) For each new round of grants, USTAR will provide an itemized budget detailing planned use of grant funds; and:
- (4) Instructions for reporting project results and completing annual follow-up surveys.
- (2) 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 awarded via the criteria and method outlined in Sections R856-3-6 and R856-3-7 herein.

Section 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(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.
  - (b) 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.
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’s technical and management experience and qualifications;

(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 disbursement 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.


(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 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.

(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.
R856-3-2. Purpose and Goals.

(1) University Technology Acceleration Grants (UTAG) 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 (July 1 - June 30) 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 has been awarded a UTAG.

(3) "Governing authority" means the Utah Science, Technology and Research Governing Authority.

(4) "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 R856-3-4(2).

(5) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual application, or intellectual property.

(6) "Technology Readiness Level" or "TRL" level means the characterization of the maturity of the technology used by the federal government (http://ustar.org/our-programs/tap-technology-acceleration-program/tap-technology-readiness-levels/).

(7) "University" means any public or not-for-profit institution of higher education located in Utah.

(8) "USTAR" means the Utah Science, Technology and Research Initiative.

(9) "UTAG" means the University Technology Acceleration Grants administered by 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) Applicant must have a realistic and verifiable commercialization path for market entry.

(5) Applicant must be developing a technology assessed to be between a TRL of 3-4.

R856-3-5. Application 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 plan and objectives;

(ii) list of technical milestones;

(iii) description of potential market for the product;

(iv) potential economic impact on Utah's economy; and,

(v) timeline for completion.

(c) Specific instructions for the required budget outline, including:

(i) total project cost;

(ii) a description of funds secured for activities related to the project;

(iii) an itemized budget detailing planned use of grant funds; and,

(iv) a 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 from an authorized agent of the university.

(4) 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 Procedure.

(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) strict conformity with application instructions;
(iii) verification of minimum eligibility requirements; and
(iv) appropriateness of applicant's reported TRL.

(b) Any application that fails to meet the criteria in Subsection R856-3-6(2) and R856-3-5(1)-(4) will be rejected and not considered for review.

(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 subject-matter experts and one business or industry expert.

(ii) Each expert will review the proposals using an established scoring rubric provided by USTAR that includes evaluation on technical merit, commercialization strategy, economic impact to the state and budget and any other factors considered relevant by USTAR.

(iii) 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.

(iv) USTAR will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website. Experts are participating in the application review as a volunteer for USTAR. Each expert is obligated under contract to maintain the classification of records and to keep information protected and confidential as described in the Utah Government Records Access and Management Act (GRAMA).

(4) Governing authority review.

(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations for UTAG funding.

(b) The subcommittee will recommend projects and amounts of grant funding to the full governing authority for final approval.

R856-3-7. Application Evaluation and Award Criteria.

(1) The panel of subject matter experts will use an established scoring system to evaluate and rank grant applications and recommend 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 of proposal;

(ii) strength and experience of research or management team, as applicable;

(iii) appropriate technology readiness level (TRL 3-4);

(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) commercialization strategy;

(vii) reasonableness of the proposed budget, including whether the amounts are appropriate for the work proposed;

(viii) reasonableness of proposed milestones;

(ix) proposed timeline is achievable and will not exceed 18 months; and,

(x) 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) No overhead, F&A, G&A or any other indirects will be funded by the UTAG program.

(3) 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.

(4) 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.

(5) 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 or country 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 disbursement of funding has been made, and first year reporting has been completed.

(6) 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.


(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) changes to milestone due dates, if the changes do not change the total length of the project;
R856-3-10. Milestones.
(1) UTAG funding must be used to accelerate the research and development of a technology from TRL level 3 to 4 to a higher TRL level, 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.
(4) Specific funding details will be provided in the program announcement and in each UTAG contract.

R856-3-11. Funding Distribution.
(1) Expenses for each milestone will be reimbursed upon successful completion of that milestone, as outlined in the contract.
(2) Specific funding details will be provided in the program announcement and in each UTAG 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. 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: [November 16, 2016]2017
Authorizing, and Implemented or Interpreted Law: 63M-2-302(b)

Science Technology and Research Governing Authority, Administration
R856-4
USTAR Science Technology Initiation Grant

NOTICE OF PROPOSED RULE
(Repeal and Reenact)
DAR FILE NO.: 41815
FILED: 06/14/2017

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is a result of S.B. 166 from the 2016 General Session, now codified in Utah Code Title 63M, Chapter 2. Subsection 63M-2-503(2) requires the Utah Science Technology and Research (USTAR) Initiative to create rules governing all USTAR grant programs. This rule is for one of USTAR's new grant programs, the USTAR Science Technology Initiation Grants. The new rule facilitates the grant under Section 63M-2-503 by establishing the eligibility and reporting criteria for an entity to receive a grant including: 1) the form and process of submitting a grant application; 2) a description of entities eligible to apply for a grant; 3) a description of specific categories of projects that are eligible for a grant; 4) the criteria that will be considered in evaluating and awarding grants; and 5) the contracting and reporting requirements of grant recipients. The repeal and reenact is to: 1) clarify the language in the administrative rules for the grant; 2) update terms and conditions for entities eligible for a grant; 3) the criteria that will be considered in evaluating and awarding grants; and 4) make specific changes to the contracting and reporting requirements of grant recipients.

SUMMARY OF THE RULE OR CHANGE: The Science TechnologyInitiation Grant (STIG) provides grants to support university-affiliated researchers to develop preliminary data and to conduct proof of concept experiments or other precursor research activities required to pursue larger, commercially-oriented grants from a federal agency, grant making foundation, industry, or related entity. The goal of STIG is to increase the amount of external research funding received by Utah's universities, promote interdisciplinary and cross-university collaboration, and strengthen the research and development capacity at state universities in commercially-oriented areas aligned to existing state industry sectors. STIGs are to be administered to the university that employs the applicant. The repeal and reenact is to: 1) clarify the language in the administrative rules for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; and 3) to make USTAR administrative rule language similar across grant programs.
STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR
THIS RULE: Subsection 63M-2-302(1)(h)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None--It is funded by appropriations
that have already been allocated to USTAR for these purposes.
♦ LOCAL GOVERNMENTS: None--It is funded by appropriations
that have already been allocated to USTAR for these purposes.
♦ SMALL BUSINESSES: None--It is funded by appropriations
that have already been allocated to USTAR for these purposes.
♦ PERSONS OTHER THAN SMALL BUSINESSES,
BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:
None--It is funded by appropriations that have already
been allocated to USTAR for these purposes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If
successful in winning a grant, awardees will be required to
report data for at least five years subsequent at
approximately an hour/year of effort. USTAR is unable to
estimate the exact cost since it will vary given the pay of the
individual conducting the reporting.

COMMENTs BY THE DEPARTMENT HEAD ON THE
FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
After conducting a thorough analysis, it was determined that
this proposed rule will not result in a fiscal impact to business.
The Science and Technology Initiation Grant (STIG) program
provides grants to support university-affiliated researchers (rather than businesses) in the development of preliminary
data to conduct proof of concept experiments or other precursor research activities required to pursue larger grants
from a federal agency, grant making foundation, industry, or related entity.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED,
DURING REGULAR BUSINESS HOURS, AT:
SCIENCE TECHNOLOGY AND RESEARCH
GOVERNING AUTHORITY
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:
♦ Peter Jay by phone at 801-372-3969, or by Internet E-mail
at pjay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO
LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/14/2017

AUTHORIZED BY: Ivy Estabrooke, Executive Director

R856. Science Technology and Research Governing Authority
(Utah), Administration.
R856-4. USTAR Science Technology Initiation Grant.

R856-4-1. Authority.
Subsection 63M-2-502(2) requires the USTAR governing
authority to make rules describing the purpose, eligibility criteria,
award process, and reporting requirements for each grant program
administered by USTAR.

R856-4-2. Purpose and Goals.
(1) The Science and Technology Initiation Grant (STIG)
provides grants to support university affiliated researchers to the
development of preliminary data, conduct proof of concept
experiments or other precursor research activities required to pursue
larger, commercially oriented grants from a federal agency, grant
making foundation, industry or related entity.

(2) The goal of STIG is to increase the amount of
external research funding received by Utah's universities, promote
interdisciplinary and cross university collaboration, and strengthen
the research and development capacity at state Universities in
commercially oriented areas aligned to existing state industry
sectors.

(3) STIG grants are to be administered to the university
that employs the applicant.

R856-4-3. Definitions.
(1) "Applicant" means the university affiliated researcher
or research team for a particular project.
(2) "Award(s)" means a project that has been awarded a
Science and Technology Initiation Grant (STIG).
(3) "Governing authority" means the Utah Science,
Technology and Research Governing Authority.
(4) "Commercialization plan" means the strategy or
process by which a company will introduce a technology into the
market.
(5) "Technology" includes applications of scientific
research such as inventions, methods, processes, or other material,
virtual, or intellectual property.
(6) "Technology Readiness Level" or "TRL" level means
the method of estimating technology maturity used by the federal
government (http://ustar.org/our-programs/nap-technology-
acceleration-program/nap-technology-readiness-levels/).
(7) "Targeted funding" means the larger commercially
oriented grant or other external funding offered by a federal agency,
grant making foundation, or related entity for which the researcher
will apply after using the STIG grant to develop required data.
(8) "Grant making foundation" means any not-for-profit
organization that awards research grants (e.g. The Bill and Melinda
Gates Foundation, The Lemelson Foundation, etc)
(9) "Targeted Industry Sector" means the Utah industry or
industries designated by USTAR for purposes of eligibility for
STIG grants using the selection criteria described in these rules.
(10) "University" means any college, university, or other
public or not for profit higher education institution with its primary
location in Utah.
(11) "USTAR" means the Utah Science, Technology and Research Initiative.

(12) "STIG" and "STIG grant" mean the Science and Technology Initiation Grant, a competitive grant program administered by USTAR.

R856-4-4. Eligibility Criteria.

(1) Individual researchers or research teams employed by a University are eligible to apply for a STIG grant.

(2) Applicants must identify the specific targeted funding source and the award type or solicitation.

(3) Applicants must propose using grant funds to support specific research and development activities, such as developing proofs of concept or performing initial data generation, necessary to develop requisite data for applicant’s technology to be eligible for the targeted funding.

(4) Applicant’s existing technology must be assessed to be between TRL 0-3.

(5) Collaborations among researchers at different universities and/or among researchers in different disciplines, while not required, will be given priority in the evaluation process described in Rule 7.

(6) USTAR funding cannot be used as a material benefit to another state. Funding from a STIG grant must be used within the State of Utah.

(7) Applicants must be developing a technology in an eligible industry sector.

(a) USTAR will identify the "Industry Sector(s)" eligible to receive a STIG in the STIG application materials.

(b) The USTAR governing authority will, according to its discretion and judgment, review and approve the eligible technology sectors to ensure they are strategically selected to maximize the potential benefit to the state and align with USTAR’s economic development objectives.

(c) In selecting industry sectors eligible to receive support from STIG, 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) likelihood that research in this sector will result in creation of a company in Utah or IP transfer to an existing Utah company; and,

(vii) any other factor the governing authority deems relevant.

(8) Applicants must obtain a cost-sharing commitment from each university that will receive funding from a STIG grant.

(a) 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) Salary of university-affiliated researcher or personnel;

(B) Cost of Subject Matter Expert(s) (SME);

(C) Materials and equipment;

(D) Work/research space;

(E) Travel and other expenses budgeted for the project; or,

(F) Other contributions, as approved by USTAR.

R856-4-5. Application Form and Submission Guidelines.

(1) USTAR will accept applications for STIG grants on an ongoing basis.

(2) USTAR will make applications and instructions available on USTAR’s website and also in paper form upon request.

(3) The instructions will include the following:

(a) The procedure for submitting an application.

(b) Specific instructions for application content which will include:

(i) The procedure for submitting an application.

(ii) Specific instructions for application content, including:

(A) description of the target grant;

(B) list of technical milestones; and,

(C) timeline for completion of research.

(iii) Specific instructions for the required budget outline, including:

(1) total project cost;

(2) a description of any funds already secured for activities related to this project;

(3) an itemized budget detailing planned use of grant funds; and,

(4) breakdown of costs to complete each milestone.

(iv) Description of the application evaluation process and scoring system.

(v) Instructions for reporting project results and completing annual follow-up surveys.

(4) All complete applications will be reviewed and awarded as selected via the criteria and method outlined in Rules 6-7 herein.

R856-4-6. Application Review Procedure.

(1) University Pre-screening.

(a) Universities may perform an initial analysis and assessment of the project to be submitted with the application.

(b) 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.

(2) Initial eligibility screening.

(a) Any application that fails to meet the criteria in Rule 6 or 7 will be rejected.

(b) Any application that fails to meet the criteria in Rule 6 Section (2) will be rejected.

(c) Accepted applications will be reviewed by independent subject matter experts ("expert panel") who will evaluate and score the applicant’s proposed research project using the criteria in Rule 7.
(i) Each expert panel will consist of at least two technical subject-matter experts who will assess the scientific and technical merits of the proposal and the alignment to the funding source.

(ii) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:

(A) academic qualifications including 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.

(iii) USTAR will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR’s website.

(1) Governing Authority review.

(i) A subcommittee of the governing authority will convene to review the expert panel’s scores and develop recommendations.

(ii) The subcommittee will recommend projects for award and award amounts of grant funding to the full governing authority for final approval.

R856-4-7. 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 of proposal;

(ii) appropriate technology readiness level (TRL 0-3);

(iii) whether proposal involves a collaboration between researchers at more than one university;

(iv) whether the proposal involves a collaboration between researchers in more than one discipline;

(v) competitiveness of the proposed project and team for the target grant;

(vi) potential future economic benefit to the state;

(vii) reasonableness of the proposed budget, including whether the amounts are appropriate for the work proposed;

(viii) reasonableness of proposed milestones and timelines; 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.

R856-4-8. Grant Amount, Award, and Required Contract.

(1) USTAR will have the discretion to limit the amount of funding that may be awarded for each STIG 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 sole judgment and discretion of USTAR and the governing authority.

(2) Upon award of a STIG, and prior to any disbursement of funds, university(ies) must enter into a contract with USTAR governing the use of STIG grant funding.

(4) Governing Authority review.

(i) A subcommittee of the governing authority will convene to review the expert panel’s scores and develop recommendations.

(ii) The subcommittee will recommend projects for award and award amounts of grant funding to the full governing authority for final approval.


(1) University may request a modification to the terms of an STIG 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 that do not alter the budget, company’s eligibility status, or violate any state or federal law;

(iv) substantive changes must be approved by the USTAR governing authority.

(5) All approved changes shall be made in writing through an amendment modifying the terms of the grant contract.

R856-4-10. Milestones.

(1) STIG funding must be used by individual researchers or research teams to develop proof of concept and/or initial data generation projects needed to apply for the targeted funding.

(2) Acceptable milestones must be specific to the project and designed to result in achieving the targeted funding.

(3) Specific funding details will be provided in the program announcement and in each STIG contract.

R856-4-11. Funding Distribution.

(1) Initial funding of no more than 50% of the total grant award will be provided within 30 days of a signed contract to allow the recipient to meet initial milestones.

(2) Remaining grant funds will be disbursed upon successful completion of designated milestones as set forth in the contract.

(3) Specific funding details will be provided in the program announcement and in each STIG grant contract.
(1) 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.

**R856-4-12. Milestones and Reporting.**

(1) All universities receiving STIG funding are required to provide the reporting for researchers or research teams, as specified in Section 63M-2-702 and 704, as applicable.

**R856-4-1. Authority.**

Subsection 63M-2-503(2) requires the USTAR governing authority to make rules describing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

**R856-4-2. Purpose and Goals.**

(1) The Science and Technology Initiative Grant (STIG) program provides grants to support university affiliated researchers in the development of preliminary data, to conduct proof of concept experiments or other precursor research activities required to pursue larger grants from a federal agency, grant making foundation, industry or related entity.

(2) The goal of STIG is to increase the amount of external research funding received by Utah's universities, promote interdisciplinary and cross-university collaboration and strengthen the research and development capacity, particularly in commercially-oriented areas aligned to existing state industry sectors.

(3) STIG grants are to be administered to the university that employs the applicant.

**R856-4-3. Definitions.**

(1) "Applicant" means the university affiliated researcher or research team applying for a STIG for a particular project.

(2) "Awarded(s)" means a project that has been awarded a STIG.

(3) "Commercialization plan" means the strategy or process by which a company will introduce a technology into the market.

(4) "Governing Authority" means the Utah Science, Technology and Research Governing Authority.

(5) "Grant making foundation" means any non-profit or not-for-profit organization that awards research grants.

(6) "STIG" and "STIG grant" mean the Science and Technology Initiative Grant, a competitive grant program administered by USTAR.

(7) "Targeted funding" means the larger commercially-oriented grant or other external funding offered by a federal agency, grant making foundation, or related entity for which the researcher will apply after using the STIG grant to develop required data.

(8) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for STIG grants as described in these rules.

(9) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual application, or intellectual property.

(10) "Technology Readiness Level" or "TRL" level means the method of characterization of the maturity of the technology used by the federal government (http://ustar.gov/programs/tap-technology-acceleration-program/tap-technology-readiness-levels/).

(11) "University" means any college, university, or other public or not-for-profit higher education institution with its primary location in Utah.

(12) "USTAR" means the Utah Science, Technology and Research Initiative.

**R856-4-4. Eligibility Criteria.**

(1) Individual researchers or research teams employed by a University are eligible to apply for a STIG grant.

(2) Applicants must identify the specific targeted funding source and the award type or solicitation.

(3) Applicants must propose using grant funds to support specific research and development activities, such as developing proofs of concept or performing initial data generation, necessary to develop requisite data for applicant's technology to be eligible for the targeted funding.

(4) Collaborations among researchers at different universities and/or among researchers in different disciplines, while not required, will be given priority in the evaluation process described in R856-4.7.

(5) USTAR funding cannot be used as a material benefit to another state or country. Funding from a STIG grant must be used within the State of Utah.

(6) Applicants must be developing a technology in a targeted industry sector.

(a) USTAR will identify the industry sectors eligible to receive a STIG in the STIG 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 STIG, 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 existing workforce including education and training;

(iv) the current availability of other sources of funding or risk capital (public or private) for companies in the technology sector;

(v) the potential for the industry sector to develop new jobs and business opportunities in the state;

(vi) likelihood that research in this sector will result in creation of a company in Utah or IP transfer to an existing Utah company; and,

(vii) any other factor the governing authority deems relevant.

(7) Applicant's existing technology must be assessed to be between TRL 1-3.
(8) Applicants must obtain a cost-sharing commitment from each university that will receive funding from a STIG grant:
(a) 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) salary of university affiliated researcher or personnel;
(B) cost of Subject Matter Expert(s) (SME);
(C) materials and equipment;
(D) work/research space;
(E) travel and other expenses budgeted for the project; or,
(F) other contributions, as approved by USTAR.

R856-4-5. Application and Submission Guidelines.
(1) USTAR will accept applications for STIG grants on an ongoing basis:
(2) USTAR will make applications and instructions available on USTAR's website and also in paper form upon request.
(3) 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 plan and objectives;
(ii) list of technical milestones;
(iii) description of potential market for the product;
(iv) potential economic impact on Utah's economy and timeline for completion;
(c) Specific instructions for the required budget outline, including:
(i) total project cost;
(ii) a description of funds secured for activities related to the 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.

(4) All complete applications will be reviewed and awarded as selected via the criteria and method outlined in R856-4-7.

R856-4-6. Application Review Procedure.
(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) strict conformity with application instructions;
(iii) verification of minimum eligibility requirements; and
(iv) appropriateness of applicant's reported TRL assessment, proposed timelines, and budget.
(b) Any application that fails to meet the criteria in R856-4-6(2) will be rejected and not considered for review.

(3) Panel Review:
(a) Accepted applications will be reviewed by independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in R856-4-7.
(i) Each expert panel will consist of at least two technical subject-matter experts.
(ii) Each expert will review the proposals using an established scoring rubric provided by USTAR that includes evaluation on technical merit, commercialization strategy, economic impact to the state and budget and any other factors considered relevant by USTAR.
(iii) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:
(A) academic qualifications including 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.
(iv) USTAR will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website. Experts are participating in the application review as a volunteer for USTAR. Each expert is obligated under contract to maintain the classification of records and to keep information protected and confidential as described in the Utah Government Records Access and Management Act (GRAMA).
(4) Governing Authority review.
(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations for STIG grants.
(b) The subcommittee will recommend projects for award and award amounts of grant funding to the full governing authority for final approval.

R856-4-7. Evaluation and Award Criteria.
(1) The panel of subject matter experts will use an established scoring system to evaluate and rank grant applications and recommend 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 of proposal;
(ii) strength and experience of the team;
(iii) appropriate technology readiness level (TRL 1-3);
(iv) whether proposal involves a collaboration between researchers at more than one university;
(v) whether the proposal involves a collaboration between researchers in more than one discipline;
(vi) competitiveness of the proposed project and team for the target grant;
(vii) 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;
(viii) reasonableness of the proposed budget, including whether the amounts are appropriate for the work proposed;
(ix) reasonableness of proposed milestones and timelines; and
(x) 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.

R856-4-8. Grant Amount, Award, and Required Contract.
(1) USTAR will have the discretion to limit the amount of funding that may be awarded for each STIG 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 judgment and discretion of USTAR and the governing authority.
(3) Upon award of a STIG, and prior to any disbursement of funds, university(ies) must enter into a contract with USTAR governing the use of STIG grant funding.
(4) Unless addressed in the terms and conditions of the contract between university(ies) and USTAR, the following provisions shall apply:
(a) grant funding may not be used to provide a primary benefit to any state or country other than Utah; and,
(b) for all other eligibility requirements, awardees must maintain eligibility status for the STIG program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year of reporting has been completed.
(5) Violations of Subsection R856-4-8(4) may result in forfeiture of grant funding and may require repayment of all or a portion of the funding received as part of the program.

(1) University may request a modification to the terms of an STIG 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) changes to milestone due dates, if the changes do not change the total length of the project;
(iii) corrections to clerical errors in the application materials;
(iv) technical changes that do not alter the budget, company's eligibility status, or violate any state or federal law;
(b) USTAR staff can issue a "stop work" order until the project can be reviewed by the USTAR governing authority in a closed meeting to determine whether to end a contract due to failed milestones.
(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 when required by State procurement regulations.

R856-4-10. Milestones.
(1) STIG funding must be used by individual researchers or research teams to develop proof of concept and/or initial data generation projects needed to apply for the targeted funding. Project proposals must identify specific milestones leading to the proposed outcome.
(2) Examples of acceptable milestones must be specific to the project and designed to result in achieving the targeted funding, may include:
(a) research and development activities;
(b) proof of concept;
(c) product validation; and,
(d) product development.
(3) Remaining grant funds will be disbursed upon successful completion of designated milestones.
(4) Specific funding details will be provided in the program announcement and in each STIG contract.

R856-4-11. Funding Distribution.
(1) Expenses for each milestone will be reimbursed upon successful completion of that milestone, as outlined in the contract.
(2) Specific funding details will be provided in the program announcement and in each STIG 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.

R856-4-12. Reporting.
(1) All universities receiving STIG funding are required to provide the reporting for researchers or research teams as specified in Section 63M-2-702 and 704, as applicable.

KEY: USTAR, TRL, STIG
Date of Enactment or Last Substantive Amendment: [March 22], 2017
Authorizing, and Implemented or Interpreted Law: 63M-2-302(h)

Science Technology and Research Governing Authority, Administration
USTAR Energy Research Triangle Professors Grant

NOTICE OF PROPOSED RULE
(Repeal and Reenact)
DAR FILE NO.: 41828
FILED: 06/14/2017
RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is a result of S.B. 166 from the 2016 General Session, now codified in Utah Code Title 63M, Chapter 2. Subsection 63M-2-503(2) requires the Utah Science Technology and Research (USTAR) Initiative to create rules governing all USTAR grant programs. This rule is for one of USTAR's new grant programs, the USTAR Energy Research Triangle Professors Grant. This rule establishes the eligibility and reporting criteria 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 USTAR Energy Research Triangle Professors Grant; 3) specific categories of projects that are eligible; 4) the criteria for awarding grants and determining grant amounts; and 5) the reporting requirements of grant recipients. The repeal and reenact is to: 1) clarify the language in the administrative rules for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; and 3) to make USTAR administrative rule language similar across grant programs.

SUMMARY OF THE RULE OR CHANGE: This rule establishes the USTAR Energy Research Triangle Professors grant program, which is a collaborative effort between USTAR and The Utah Governor's Office of Energy Development (GOED) and will be administered according to this rule. Grants provide funding for projects in which research teams from at least three Utah non-profit higher education institutions collaborate to address energy-related technical challenges important to economic growth in the state of Utah. Anticipated duration of projects will be 12 to 18 months. Funding must be budgeted by state fiscal year (July 1 through June 30) and funding will be dependent on meeting milestones and continued USTAR/GOED appropriation. The change is to: 1) clarify the language in the administrative rules for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; and 3) to make USTAR administrative rule language similar across grant programs.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63M-2-302(1)(h)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None--It is funded by appropriations that have already been allocated to USTAR for these purposes.
♦ LOCAL GOVERNMENTS: None--Only universities can apply for these grants. Therefore, local government entities are not affected by this rule.
♦ SMALL BUSINESSES: None--Only universities can apply for these grants. It is anticipated that small businesses will benefit from the research of universities that receive this grant, since the grant is established to create economic growth in Utah. However, USTAR is unable to estimate any fiscal benefit for small businesses as a result of this rule, because the impact is indirect and will vary depending on circumstance.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Only universities can apply for these grants. Therefore, persons other than small business are not affected by this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If successful in winning a grant, awardees will be required to report data for at least five years subsequent at approximately an hour/year of effort. USTAR is unable to estimate the exact cost, since it will vary given the pay of the individual conducting the reporting.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to business. Energy Research Triangle Professors Grants provide funding to university faculty research professors for student-led projects.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
SCIENCE TECHNOLOGY AND RESEARCH GOVERNING AUTHORITY 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:
♦ Peter Jay by phone at 801-372-3969, or by Internet E-mail at pjay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/14/2017

AUTHORIZED BY: Ivy Estabrooke, Executive Director

R856. Science Technology and Research Governing Authority (Utah), Administration.
R856-5. USTAR Energy Research Triangle Professors Grant.
R856-5-L. Authority.

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Subsection 63M-2-503(2) requires the USTAR governing authority to make rules describing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

R856-5-P. Purpose and Goals.

(1) The USTAR Energy Research Triangle Professors Grant program is a collaborative effort between USTAR and The
(2) Grants provide funding for projects in which research teams from at least 2 Utah non-profit higher education institutions collaborate to address energy-related technical challenges important to economic growth in the state of Utah.

(3) Anticipated duration of projects will be 12-18 months.

Funding must be budgeted by State fiscal year (1 JUL-30 JUN) and funding will be dependent on meeting milestones and continued USTAR/OED appropriation.

R856-5-3. Definitions.

(1) "Applicant" means the research team for a particular project.

(2) "Awardee(s)" means a project that has been awarded an Energy Research Triangle—Professor grant.

(3) "Commercialization plan" means the strategy or process by which a researcher or research team will introduce a technology into the market.

(4) "ERT-P" and "ERT-P grant" mean the Energy Research Triangle—Professor grant program, a competitive grant program administered by USTAR.

(5) "Governing authority" means the Utah Science, Technology and Research Governing Authority.

(6) "Lead university" is defined as the university which applies for ERT-P funding and is the principal contact between USTAR and the research team.

(7) "OED" means the Utah Governor's Office of Energy Development.

(8) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(9) Technology Readiness Level" or "TRL" level means the characterization of the maturity of the technology used by the federal government (http://ustar.org/our-programs/tap-technology-acceleration-program/tap-technology-readiness-levels/).

(10) "University" means any college, university, or other public or not-for-profit higher education institution with its primary location in Utah.

(11) "USTAR" means the Utah Science, Technology and Research Initiative.

(12) "UTAG" means the Utah Technology Acceleration Grants administered by the Utah Science, Technology and Research Initiative.

R856-5-4. Eligibility Criteria.

(1) ERT-P grant is available to university research teams that meet the following guidelines:

(a) Research team must include at least three researchers.

(b) Research team must include at least three Utah universities or colleges.

(c) Research team must include at least two Utah research universities under the Carnegie Classification of Institutions of Higher Education (http://carnegieclassifications.inedu/classification_descriptions/basic.php). The following three Utah universities are currently classified as research universities:

(i) University of Utah;

(ii) Utah State University;

(iii) Brigham Young University;

(d) Research team may include at least one researcher from universities in the state of Utah other than those listed in (1) (e).

(2) Research team must be developing a technology with applications that can address Utah-specific energy and natural resource issues.

(a) USTAR/OED may specify a specific subsector of Utah's energy and natural resource industry as a priority for grant funding in the ERT-P application materials.

(b) ERT-P grants are targeted at energy and natural resource innovation and development.

(c) In selecting targeted energy and natural resource subsectors eligible to receive support from ERT-P, the governing authority may consider the following factors:

(A) statewide or regional importance of the subsector to Utah's economy;

(B) relative size of the subsector, 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 subsector to develop new jobs and business opportunities in the state, and;

(F) the likelihood that research in this subsector will result in the creation of a company in Utah or IP transfer to an existing Utah company.

(3) Eligible technologies will be between a TRL 2-5 at the time of the anticipated grant award.

(4) Applicants may not receive ERT-P funding and UTAG funding for the same technology in the same Utah fiscal year.

R856-5-5. Application Form and Submission Guidelines.

(1) For each round of grants, USTAR/OED will provide a program announcement and make applications and instructions available on USTAR and OED's website, and in paper form upon request.

(2) Completed applications must be received on or before the specified deadline in the application instructions.

(3) The instructions will include the following:

(a) the procedure for submitting an application;

(b) specific instructions for application content which will include:

(i) the procedure for submitting an application;

(A) description of the target grant;

(B) list of technical milestones; and,

(C) timeline for completion of research;

(ii) specific instructions for the required budget outline, including:

(A) total project cost;

(B) a description of any funds already secured for activities related to this project;

(C) an itemized budget detailing planned use of grant funds; and,

(D) breakdown of costs to complete each milestone;

(iii) Description of the application evaluation process and scoring system.
(iv) Instructions for reporting project results and completing annual follow-up surveys.

(1) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Rules 6-7 herein.


(1) Initial eligibility screening.

(a) USTAR/OED 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 (1) will be rejected.

(2) Panel Review.

(a) Accepted applications will be reviewed by subject-matter experts (“expert panel”) who will evaluate and score the applicant’s proposed research project using the criteria in Rule 7.

(i) USTAR/OED will have discretion to select the experts for the review panels and shall consider, as applicable:

(A) Academic qualifications including 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 the commercial/industrial energy sector or sub-sector in Utah;
(D) Experience evaluating grant proposals; and,
(E) Any other factors USTAR/OED deems important.

(ii) USTAR/OED will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR’s website. The experts will also be required to sign an NDA.

(iii) Governing authority review. A subcommittee of the governing authority will convene to review the expert panel’s scores and develop recommendations.

(iv) Recommendations from the subcommittee concerning which projects should be awarded a grant and the proposed budget will be presented to the full governing authority for approval.

R856-5-7. Evaluation and Award Criteria.

(1) The expert panel 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 and management team, as applicable;
(iii) Appropriate technology readiness level (TRL 2–5);
(iv) Potential economic impact, as measured by:

(A) Job creation;
(B) Potential revenue due to expansion of current business or development of a new business; and/or,
(C) 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);
(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.

R856-5-8. Grant Amount, Award, and Required Contract.

(1) USTAR/OED will have the discretion to limit the amount of funding that may be awarded for each ERT-P based on available funds, scope of project, and quality of proposal.

(2) USTAR/OED 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 judgment and discretion of the governing authority.

(3) Upon award of an ERT-P, and prior to any disbursement of funds, each lead university must enter into a contract with USTAR governing the use of grant funding.

(a) The “lead university” is defined as the principal investigator’s university

(b) Subcontracts to the remaining universities will be administered by the lead university.

(1) 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 ERT-P program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year reporting has been completed.

(5) Violations of Rule 8, Section 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.


University may request a modification to the terms of an ERT-P contract.

(1) USTAR may deny a modification request for any reason.

(2) USTAR shall have discretion to agree to reasonable, non-substantive changes.

(a) Non-substantive 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 that do not alter the budget, company’s eligibility status, or violate any state or federal law;

(2) Substantive changes must be approved by the USTAR governing authority.

(1) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.
NOTICES OF PROPOSED RULES

R856-5-10. Funding Distribution.  
(1) Funding will be provided to the lead university and will be distributed per the subcontracts to each of the supporting universities.  
(2) Initial funding of no more than 50% of the total grant award will be provided within a reasonable time after the ERT-P grant is approved to allow the university team to meet initial milestones.  
(3) Remaining grant funds for individual milestones will be disbursed upon successful completion of those milestones.  
(4) A portion of the final milestone funding will be withheld until final reporting is received.  
(5) Specific funding details will be provided in the program announcement and in each ERT-P grant contract.  
(6) 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.

R856-5-11. Milestones and Reporting.  
(1) Research team is required to provide reporting, as applicable, specified in Sections 63M-2-702 and 704.  

R856-5-1. Authority.  
Subsection 63M-2-503(2) requires the Utah Science, Technology and Research (USTAR) governing authority to make rules describing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

R856-5-2. Purpose and Goals.  
(1) The USTAR Energy Research Triangle (ERT) Professors (ERT-P) grant program is a collaborative effort between USTAR and The Utah Governor's Office of Energy Development (OED) and will be administered according to these rules.  
(2) Grants provide funding to university faculty research professors for student-led projects in which research teams from at least 3 universities seek to address technical hurdles related to energy and/or natural resource challenges important to economic growth in the state of Utah.  
(3) Anticipated duration of projects will be 12 months. Funding must be budgeted by State fiscal year (July 1 - June 30) and funding will be dependent on meeting milestones and continued USTAR/OED appropriation.

R856-5-3. Definitions.  
(1) "Applicant" means the research team for a particular project.  
(2) "Awardee(s)" means a project that has been awarded an Energy Research Triangle - Professor grant.  
(3) "Commercialization plan" means the strategy or process by which a researcher or research team will introduce a technology into the market.  
(4) "ERT-P" and "ERT-P grant" mean the Energy Research Triangle - Professor grant program, a competitive grant program administered by USTAR.  
(5) "ERT-S" and "ERT-Scholars" means the Energy Research Triangle - Scholars grant program, a competitive grant program administered by USTAR.  
(6) "Governing authority" and "GA" means the Utah Science, Technology and Research Governing Authority.  
(7) "Lead university" is defined as the university which applies for ERT-P funding and is the principal contact between USTAR and the research team.  
(8) "OED" means the Utah Governor's Office of Energy Development.  
(9) "Research faculty" means a full time employee of a Utah university.  
(10) "Research team" means at least three research faculty representing at least three universities.  
(11) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material applications, virtual or digital applications, or intellectual property.  
(12) "Technology Readiness Level" or "TRL" level means the characterization of the maturity of the technology used by the federal government (http://ustar.org/our-programs/tap-technology-acceleration-program/tap-technology-readiness-levels/).  
(13) "University" means any college, university, or other public or not-for-profit higher education institution with its primary location in Utah.
(14) "USTAR" means the Utah Science, Technology and Research Initiative.  
(15) "UTAG" means the University Technology Acceleration Grants administered by USTAR.

R856-5-4. Eligibility Criteria.  
(1) The ERT-P grant is available to university research teams that meet the following guidelines:  
(a) Research team must include at least three researchers.  
(b) Research team must include at least three Utah universities.  
(c) Research team must include at least two Utah research universities under the Carnegie Classification of Institutions of Higher Education (http://carnegieclassifications.iu.edu/classification_descriptions/basics.php). The following three Utah universities are currently classified as research universities (as of 5/1/2017):  
(i) Brigham Young University;  
(ii) University of Utah;  
(iii) Utah State University;  
(2) Research team must be developing a technology with applications that can address technical challenges related to energy and/or natural resource challenges important to economic development in the state of Utah.  
(a) USTAR/OED may specify a specific subsector of Utah's energy and natural resource industry as a priority for grant funding in the ERT-P application materials.  
(b) ERT-P grants are targeted at energy and natural resource innovation and development.  
(c) In selecting targeted energy and natural resource subsectors eligible to receive support from ERT-P, the governing authority may consider the following factors:  
(i) statewide or regional importance of the subsector to Utah's economy;  
(ii) relative size of the subsector, its stability, and growth potential;  
(iii) characteristics of the state's existing 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 subsector to develop new jobs and business opportunities in the state; and,
(vi) the likelihood that research in this subsector will result in the creation of a company in Utah or IP transfer to an existing Utah company.

(3) Eligible technologies will be between a TRL of 2-5 at the time of the application.

(4) Applicants may not receive ERT-P, ERT-S and/or UTAG funding for the same technology in the same Utah fiscal year.

(5) ERT-P funds cannot support development of a technology beyond a TRL of 6.

R856-5-5. Application and Submission Guidelines.
(1) For each round of grants, USTAR/OED will provide a program announcement and make applications and instructions available on USTAR and/or OED's website, and in paper form upon request.

(2) Completed applications must be received on or before the specified deadline in the application instructions.

(3) The instructions will include the following:
(a) The procedure for submitting an application,
(b) Specific instructions for application content which will include:
(i) technical overview of the project,
(A) description of the technology and commercialization plan and objectives;
(B) list of technical milestones;
(C) Description of potential market for product;
(D) Potential economic impact on Utah's economy; and
(E) timeline for completion,
(ii) Specific instructions for the required budget outline, including:
(A) total project cost;
(B) a description of funds secured for activities related to this project;
(C) an itemized budget detailing planned use of grant funds; and,
(D) breakdown of costs to complete each milestone,
(iii) Description of the application evaluation process and scoring system,
(iv) Instructions for reporting project results and completing annual follow-up surveys.

(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in R856-5-6.

(1) Initial eligibility screening.
(a) USTAR/OED will conduct an initial eligibility screening for each application to ensure:
(i) completeness;
(ii) strict conformity with application instructions
(iii) verification of minimum eligibility requirements; and
(iv) appropriateness of applicant’s reported TRL assessment, technical merit, proposed timelines, and budget.

(b) Any application that fails to meet the criteria in R856-5-6(1) will be rejected and not considered for review.

(2) Panel Review.
(a) Accepted applications will be reviewed by independent subject-matter experts (“expert panel”) who will evaluate and score the applicant's proposed research project using the criteria in R856-5-7.

(i) Each expert panel will consist of at least two technical subject-matter-experts and one business or industry expert.

(ii) Each expert will review the proposals using an established scoring rubric provided by USTAR that includes evaluation on technical merit, commercialization strategy, economic impact to the state and budget and any other factors considered relevant by USTAR.

(iii) USTAR/OED 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 commercial/industrial energy or natural resources sector or sub-sector in Utah;
(D) experience evaluating grant proposals;
(E) general investment experience; and,
(F) any other factors USTAR/OED deems important.

(iv) USTAR/OED will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website. Experts are participating in the application review as a volunteer for USTAR. Each expert is obligated under contract to maintain the classification of records and to keep information protected and confidential as described in the Utah Government Records Access and Management Act (GRAMA).

(3) 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 for award and award amounts of a grant funding to the full governing authority for final approval.

(c) The Governor or his designee must approve the projects.

R856-5-7. Evaluation and Award Criteria.
(1) The panel of subject matter experts will use an established scoring system to evaluate and rank grant applications and recommend 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 of proposal;
(ii) strength and experience of research and management team;
(iii) appropriate technology readiness level
(iv) potential economic impact, as measured by:
R856-5-8. Grant Amount, Award, and Required Contract.
(1) USTAR/OED will have the discretion to limit the amount of funding that may be awarded for each ERT-P based on available funds, scope of project, and quality of proposal.
(2) USTAR/OED 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 judgment and discretion of the governing authority.
(3) Upon award of an ERT-P, and prior to any disbursement of funds, each lead university must enter into a contract with USTAR governing the use of grant funding.
(a) The "lead university" is defined as the principal investigator's university.
(b) Subcontracts to the remaining universities will be administered by the lead university.
(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 or country other than Utah; and,
(b) for all other eligibility requirements, awardee must maintain eligibility status for the ERT-P program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year reporting has been completed.
(5) Violations of R856-5-8(4) may result in forfeiture of grant funding and may require repayment of all or a portion of the funding received as part of the program.
(6) University overhead, F&A or G&A are not allowed on ERT-P awards.

(1) University may request a modification to the terms of an ERT-P 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 milestone due dates, if the changes do not change the total length of the project;
(ii) corrections to clerical errors in the application materials;
(iii) technical changes to conditions that do not alter the budget, applicant's eligibility status, or violate any state or federal law;
(b) USTAR staff can issue a "stop work" order until the project can be reviewed by the USTAR governing authority in a closed meeting to determine whether to end a contract due to failed milestones.
(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 when required by State procurement regulations.

R856-5-10. Milestones.
(1) Award funding must be used to accelerate the research and development of a technology from one TRL level to a higher TRL level, and project proposals must identify specific milestones leading to the proposed outcome.
(2) Examples of acceptable milestones must be specific to the student researcher to engage in project may include:
(a) research under and development activities;
(b) proof of concept;
(c) product validation; and,
(d) product development.
(3) Remaining grant funds will be disbursed upon successful completion of designated milestones.
(4) Specific funding details will be provided in the program announcement and in each grant contract.

R856-5-11. Funding Distribution.
(1) Award funding shall be made to the lead university and will be distributed per the subcontracts to each of the supporting universities.
(2) Expenses for each milestone will be reimbursed upon successful completion of that milestone, as outlined in the contract.
(3) Specific funding details will be provided in the program announcement and in each ERT-P grant contract.
(4) Failure to successfully complete the milestones will be grounds to terminate the contract and any future funding.

R856-5-12. Milestones and Reporting.
(1) Research team is required to provide reporting, as applicable, specified in Sections 63M-2-702 and 704 for at least 5 years following initial receipt of the grant funds.

KEY: ERT Professors Grant, TRL, USTAR
Date of Enactment or Last Substantive Amendment: [March 22], 2017
Authorizing, and Implemented or Interpreted Law: 63M-2-302(h)
Science Technology and Research
Governing Authority, Administration

R856-6
USTAR Energy Research Triangle
Scholars Grant

NOTICE OF PROPOSED RULE
(Repeal and Reenact)
DAR FILE NO.: 41829
FILED: 06/14/2017

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is a result of S.B. 166 from the 2016 General Session, now codified in Utah Code Title 63M, Chapter 2. Subsection 63M-2-503(2) requires the Utah Science Technology and Research (USTAR) Initiative to create rules governing all USTAR grant programs. This rule is for one of USTAR’s new grant programs, the USTAR Energy Research Triangle Scholars Grant. This rule establishes the eligibility and reporting criteria 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 USTAR Energy Research Triangle Scholars Grant; 3) specific categories of projects that are eligible; 4) the criteria for awarding grants and determining grant amounts; and 5) the reporting requirements of grant recipients. The repeal and reenact is to: 1) clarify the language in the administrative rules for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; and 3) to make USTAR administrative rule language similar across grant programs.

SUMMARY OF THE RULE OR CHANGE: This rule establishes the USTAR Energy Research Triangle Scholars grant program, which is a collaborative effort between USTAR and the Utah Governor’s Office of Energy Development (GOED) and will be administered according to these rules. Grants provide funding to university faculty research professors for student-led projects that seek to address technical challenges related to energy issues important to economic growth in the state of Utah. Anticipated duration of projects will be 12 to 18 months. Funding must be budgeted by state fiscal year (July 1 through June 30) and funding will be dependent on meeting milestones and continued USTAR appropriation. The change is to: 1) clarify the language in the administrative rules for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; and 3) to make USTAR administrative rule language similar across grant programs.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63M-2-302(1)(h)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None--It is funded by appropriations that have already been allocated to USTAR for these purposes.
♦ LOCAL GOVERNMENTS: None--Only universities can apply for these grants. Therefore, local government entities are not affected by this rule.
♦ SMALL BUSINESSES: None--Only universities can apply for these grants. It is anticipated that small businesses will benefit from the research of universities that receive this grant, since the grant is established to create economic growth in Utah. However, USTAR is unable to estimate any fiscal benefit for small businesses as a result of this rule, because the impact is indirect and will vary depending on circumstance.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Only universities can apply for these grants. Therefore, persons other than small business are not affected by this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If successful in winning a grant, awardees will be required to report data for at least five years subsequent at approximately an hour/year of effort. USTAR is unable to estimate the exact cost, since it will vary given the pay of the individual conducting the reporting.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses. Only universities can apply for these grants. Therefore, businesses are not affected by this rule. It is anticipated that businesses will likely benefit from the research of universities that receive this grant, since the grant is established to create economic growth in Utah. However, USTAR is unable to estimate any fiscal benefit for small businesses as a result of this rule because the impact is indirect and will vary depending on circumstance.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
SCIENCE TECHNOLOGY AND RESEARCH
GOVERNING AUTHORITY
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:
♦ Peter Jay by phone at 801-372-3969, or by Internet E-mail at pjay@utah.gov
R856-6. USTAR Energy Research Triangle Scholars Grant.

R856-6-1. Authority.

Subsection 63M-2-503(2) requires the USTAR governing authority to make rules describing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

R856-6-2. Purpose and Goals.

(1) The USTAR Energy Research Triangle Scholars grant program is a collaborative effort between USTAR and The Utah Governor's Office of Energy Development and will be administered according to these rules.

(2) Grants provide funding to university faculty research professors for student-led projects that seek to address technical challenges related to energy issues important to economic growth in the state of Utah.

(3) Anticipated duration of projects will be 12-18 months. Funding must be budgeted by State fiscal year (1 Jul-30 Jun) and funding will be dependent on meeting milestones and continued USTAR appropriation.

R856-6-3. Definitions.

(1) "Applicant" means the researcher for a particular project.

(2) "Awarded" means a project that has been awarded an Energy Research Triangle Scholars grant.

(3) "Commercialization plan" means the strategy or process by which a researcher will introduce a technology into the market.

(4) "ERT-S" and "ERT-S grant" mean the Energy Research Triangle Scholar grant program, a competitive grant program administered by USTAR.

(5) "Governing authority" means the Utah Science, Technology and Research Governing Authority.

(6) "OED" means the Utah Governor's Office of Energy Development.

(7) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(8) "Technology Readiness Level" or "TRL" level means the characterization of the maturity of the technology used by the federal government (http://ustar.org/our-programs.tap/technology-acceleration-program/tap-technology-readiness-levels/).

(9) "University" means any college, university, or other public or not for profit higher education institution with its primary location in Utah.

(10) "USTAR" means the Utah Science, Technology and Research Initiative.

(11) "ERT-P" and "ERT-P grant" mean the Energy Research Triangle Professor grant program, a competitive grant program administered by USTAR.

(12) "UTAG" means the University Technology Acceleration Grants administered by the Utah Science, Technology and Research Initiative.

R856-6-4. Eligibility Criteria.

(1) The ERT-S grant is restricted to university affiliated researchers for student lead projects meeting the following guidelines:

(a) Project must be led by currently matriculated students in good standing.

(b) Project must be led by student enrolled in a nonprofit Utah university.

(c) Student project must be overseen by a research professor at a nonprofit Utah university.

(2) Student researcher must be developing a technology with applications that can address Utah specific energy and natural resource issues.

(3) USTAR/OED may specify a specific subsector of Utah’s energy and natural resource industry as a priority for grant funding in the ERT-S application materials.

(b) ERT-S grants are targeted at energy and natural resource innovation and development.

(c) In selecting targeted energy and natural resource subsectors eligible to receive support from ERT-S, the governing authority may consider any or all of the following factors:

(A) statewide or regional importance of the subsector to Utah’s economy;

(B) relative size of the subsector, 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 subsector to develop new jobs and business opportunities in the state; and,

(F) the likelihood that research in this subsector will result in the creation of a company in Utah or IP transfer to an existing Utah company.

(2) Student researcher must be developing a technology assessed at the start of the project to be between a TRL of 2 and 5.

(4) ERT-S, ERT-P funding and UTAG funding cannot be requested for the same technology in the same fiscal year.

R856-6-5. Application Form and Submission Guidelines.

(1) For each round of grants, USTAR/OED will provide a program announcement and make applications and instructions available on USTAR and/or OED’s website and in paper form upon request.

(2) Completed applications must be received on or before the specified deadline in the application instructions.
NOTICES OF PROPOSED RULES

R856-6-6. Application Review Procedure.

(1) Initial eligibility screening.

(a) USTAR/OED 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 (1) will be rejected.

(2) Panel Review.

(a) Accepted applications will be reviewed by subject-matter experts (“expert panel”) who will evaluate and score the applicant’s proposed research project using the criteria in Rule 7.

(i) USTAR/OED will have discretion to select the experts for the review panels and shall consider, as applicable:

(A) academic qualifications including 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 the commercial/industrial energy-sector or sub-sector in Utah;

(D) experience evaluating grant proposals; and,

(E) any other factor USTAR/OED deems important.

(ii) USTAR/OED will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR’s website.

(iii) 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 and the budget for the grant will be presented to the full governing authority for approval.

(b) Specific instructions for application content which will include:

(A) description of the technology;

(B) list of technical milestones; and,

(C) timeline for completion of research.

(ii) Specific instructions for the required budget outline including:

(A) total project cost;

(B) a description of any funds already secured for activities related to this project;

(C) an itemized budget detailing planned use of grant funds; and,

(D) breakdown of costs to complete each milestone.

(iii) Description of the application evaluation process and scoring system.

(vi) Instructions for reporting project results and completing annual follow-up surveys.

(b) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Rules 6-7 herein.

R856-6-7. Evaluation and Award Criteria.

(1) The expert panel 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) Potential revenue due to expansion of current business or development of a new business; and,

(C) Projected time to revenue or job creation;

(D) Other measures of economic impact such as natural resource impacts.

(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);

(vii) Reasonableness of proposed milestones;

(viii) Proposed timeline is achievable and will not exceed 18 months;

(ix) Potential for positive impact on student’s professional development goals and;

(x) 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.

R856-6-8. Grant Amount, Award, and Required Contract.

(1) USTAR/OED will have the discretion to limit the amount of funding that may be awarded for each ERT-S based on available funds, scope of project, and quality of proposal.

(2) USTAR/OED 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 judgment and discretion of the governing authority.

(3) Upon award of a ERT-S, and prior to any disbursement of funds, each 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, awardees must maintain eligibility status for the ERT-S program until the project is completed, all milestones have been met, final disbursement of funding has been made, and first year reporting has been completed.

(5) Violations of Rule 8, Section 4 may result in forfeiture of ERT-S grant funding and require repayment of all or a portion of the funding received as part of the program.
R856-6.9. Contract Modifications.

University may request a modification to the terms of an ERT-S contract.

(1) USTAR may deny a modification request for any reason.

(2) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.

(i) Nonsubstantive changes may include the following:

(a) changes to timelines of less than one month if it is the first such modification;

(b) corrections to clerical errors in the application materials;

(c) technical changes that do not alter the budget, company's eligibility status, or violate any state or federal law;

(2) Substantive changes must be approved by the USTAR governing authority.

(4) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.

R856-6.10. Funding Distribution.

(1) Award funding shall be made to the university faculty research professor mentoring the student. The professor will then distribute funds to the student researcher to engage in research under the professor's direction.

(2) Initial funding of no more than 50% of the total grant award will be provided within a reasonable time after an ERT-S grant is approved to allow the student researcher to meet initial milestones.

(3) Remaining grant funds for individual milestones will be disbursed upon successful completion of those milestones.

(4) A portion of the grant may be retained until final reporting is received.

(5) Specific funding details will be provided in the program announcement and in each ERT-S grant contract.

(6) 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.

R856-6.11. Milestones and Reporting.

(1) Student researcher is required to provide reporting, as applicable, specified in Section 63M-2-702 and 704.


R856-6.1. Authority.

Subsection 63M-2-503(2) requires the Utah Science, Technology and Research (USTAR) governing authority to make rules describing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

R856-6.2. Purpose and Goals.

(1) The USTAR Energy Research Triangle (ERT) Scholars (ERT-S) grant program is a collaborative effort between USTAR and the Utah Governor's Office of Energy Development (OED) and will be administered according to these rules.

(2) Grants provide funding to university faculty research professors for student-led projects that seek to address technical hurdles related to energy and/or natural resource challenges important to economic growth in the state of Utah.

(3) Anticipated duration of projects will be 12 months. Funding must be budgeted by State fiscal year (July 1 - June 30) and funding will be dependent on meeting milestones and continued USTAR/OED appropriation.

R856-6.3. Definitions.

(1) "Applicant" means the university faculty research professor and student for a particular project.

(2) "Awardee" means a project that has been awarded an Energy Research Triangle - Scholars grant.

(3) "Commercialization plan" means the strategy or process by which a researcher will introduce a technology into the market.

(4) "ERT-S" and "ERT-S grant" mean the Energy Research Triangle - Scholar grant program, a competitive grant program administered by USTAR.

(5) "Governing authority" and "GA" means the Utah Science, Technology and Research Governing Authority.

(6) "OED" means the Utah Governor's Office of Energy Development.

(7) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual or digital application, or intellectual property.

(8) Technology Readiness Level" or "TRL" level means the characterization of the maturity of the technology used by the federal government (http://ustar.org/our-programs/tap-technology-acceleration-program/tap-technology-readiness-levels/).

(9) "University" means any college, university, or other public or not-for-profit higher education institution with its primary location in Utah.

(10) "USTAR" means the Utah Science, Technology and Research Initiative.

(11) "ERT-P" and "ERT-P grant" mean the Energy Research Triangle - Professor grant program, a competitive grant program administered by USTAR.

(12) "UTAG" means the University Technology Acceleration Grants administered by USTAR.

R856-6.4. Eligibility Criteria.

(1) The ERT-S grant is restricted to university researchers for student-led projects meeting the following guidelines:

(a) Project must be led by currently matriculated student in good standing.

(b) Project must be led by student enrolled in a university.

(c) Student project must be overseen by a research professor at a university.

(2) Student researcher must be developing a technology with applications that can address technical hurdles related to energy and/or natural resource challenges important to economic growth in the state of Utah.

(a) USTAR/OED may specify a specific subsector of Utah's energy and natural resource industry as a priority for grant funding in the ERT-S application materials.

(b) In selecting targeted energy and natural resource subsectors eligible to receive support from ERT-S, the governing authority may consider any or all of the following factors:
R856-6-5. Application and Submission Guidelines.

(1) For each round of grants, USTAR/OED will provide a program announcement and make applications and instructions available on USTAR and/or OED'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 plan and objectives;

(ii) list of technical milestones;

(iii) description of potential market for product;

(iv) potential economic impact on Utah's economy; and,

(v) timeline for completion.

(c) Specific instructions for the required budget outline, including:

(i) total project cost;

(ii) a description of funds secured for activities related to the project;

(iii) an itemized budget detailing planned use of grant funds; and,

(iv) a 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 R856-6-6 and R856-6-7 herein.

R856-6-6. Application Review Procedure.

(1) Initial eligibility screening.

(a) USTAR/OED will conduct an initial eligibility screening for each application to ensure:

(i) state-wide or regional importance of the subsector to Utah's economy;

(ii) relative size of the subsector, its stability, and growth potential;

(iii) characteristics of the state's existing 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 subsector to develop new jobs and business opportunities in the state; and,

(vi) the likelihood that research in this subsector will result in the creation of a company in Utah or IP transfer to an existing Utah company.

(3) Eligible technologies will be between a TRL of 2 and 5 at the time of application.

(4) Applicants may not receive ERT-S, ERT-P and/or UTAG funding for the same technology in the same Utah fiscal year.

(5) ERT-S funds cannot support development of a technology beyond a TRL of 6.

R856-6-7. Evaluation and Award Criteria.

(1) The panel of subject matter experts will use an established scoring rubric provided by USTAR that includes evaluation on technical merit, commercialization strategy, economic impact to the state and budget and any other factors considered relevant by USTAR.

(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 commercial/industrial energy or natural resources sector or sub-sector in Utah;

(D) experience evaluating grant proposals;

(E) general investment experience; and,

(F) any other factors USTAR/OED deems important.

(iv) USTAR/OED will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website. Experts are participating in the application review as a volunteer for USTAR. Each expert is obligated under contract to maintain the classification of records and to keep information protected and confidential as described in the Utah Government Records Access and Management Act (GRAMA).

(3) Selection Committee.

(a) USTAR and OED may hold a selection committee to discuss the outcomes of the panel review.

(4) Governing authority review.

(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations for grants.

(b) The subcommittee will recommend projects for award and award amounts of grant funding to the full governing authority for final approval.

(c) The Governor or his designee must approve the projects.

R856-6-7. Evaluation and Award Criteria.
(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:

(i) technical merit of proposal;
(ii) strength and experience of company and management team;
(iii) appropriate technology readiness level
(iv) abilities and potential of the student to complete the research and/or pursue a career related to energy or natural resources;
(v) potential economic impact, as measured by:
(A) potential for the development of original intellectual property;
(B) potential for technology transfer to industry or establishment of a start-up company;
(C) projected time to revenue or job creation;
(D) other measures of economic impact such as natural resource, environmental or Utah-specific impacts.

(E) 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

(iii) market need,
(iv) technical and management experience and qualifications of faculty advisor;
(v) commercialization strategy
(ix) reasonableness of the proposed budget, including whether the amounts are appropriate for the work proposed;
(x) reasonableness of proposed milestones;
(xi) proposed timeline is achievable and will not exceed 18 months; and
(xii) 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.

R856-6-8. Grant Amount, Award, and Required Contract.

(1) USTAR/OED will have the discretion to limit the amount of funding that may be awarded for each ERT-S based on available funds, scope of project, and quality of proposal.

(2) USTAR/OED 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 judgment and discretion of the governing authority.

(3) Upon award of a ERT-S, and prior to any disbursement of funds, each 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 or country other than Utah; and,
(b) for all other eligibility requirements, awardee must maintain eligibility status for the ERT-S program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year reporting has been completed.

(5) Violations of R856-6-8(4) may result in forfeiture of ERT-S grant funding and may require repayment of all or a portion of the funding received as part of the program.

(6) University overhead, F&A or G&A are not allowed on ERT-S awards.


University may request a modification to the terms of an ERT-S contract.

(1) USTAR may deny a modification request for any reason.

(2) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.

(a) Nonsubstantive changes may include the following:
(i) changes to milestone due dates, if the changes do not change the total length of the project;
(ii) corrections to clerical errors in the application materials;
(iii) technical changes to conditions that do not alter the budget, applicant’s eligibility status, or violate any state or federal law;

(b) USTAR staff can issue a “stop work” order until the project can be reviewed by the USTAR governing authority in a closed meeting to determine whether to end a contract due to failed milestones.

(3) Substantive changes must be approved by the USTAR governing authority.

(4) All approved changes shall be made in writing and through an amendment modifying the terms of the grant agreement when required by State procurement regulations.

R856-6-10. Milestones.

(1) Award funding must be used to accelerate the research and development of a technology from one TRL level to a higher TRL level, and project proposals must identify specific milestones leading to the proposed outcome.

(2) Examples of acceptable milestones must be specific to the student researcher to engage in project may include:
(a) research under and development activities;
(b) proof of concept;
(c) product validation; and,
(d) product development.

(3) Remaining grant funds will be disbursed upon successful completion of designated milestones.

(4) Specific funding details will be provided in the program announcement and in each grant contract.

R856-6-11. Funding Distribution.

(1) Award funding must be made to the university faculty research professor mentoring the student. The professor will then distribute funds to the student researcher to engage in research under the professor’s direction.

(6) Expenses for each milestone will be reimbursed upon successful completion of that milestone, as outlined in the contract.

(7) Specific funding details will be provided in the program announcement and in each ERT-S grant contract.
(8) Failure to successfully complete the milestones may result in recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

**R856-6-12. Reporting.**

(1) Student researcher is required to provide reporting, as applicable, specified in Section 63M-2-702 and 704 for at least (5) years following initial receipt of the grant funds.

KEY: ERT Scholars Grant, TRL, USTAR
Date of Enactment or Last Substantive Amendment: [March 22], 2017
Authorizing, and Implemented or Interpreted Law: 63M-2-302(h)

End of the Notices of Proposed Rules Section
NOTICES OF
120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that regular rulemaking procedures would:

(a) cause an imminent peril to the public health, safety, or welfare;
(b) cause an imminent budget reduction because of budget restraints or federal requirements; or
(c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a PROPOSED RULE, a 120-DAY RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the 120-DAY RULE including the name of a contact person, justification for filing a 120-DAY RULE, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the 120-DAY RULE is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text ([example]). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (........) indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective when filed with the Office of Administrative Rules, or on a later date designated by the agency. A 120-DAY RULE is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a 120-DAY RULE is not codified as part of the Utah Administrative Code.

The law does not require a public comment period for 120-DAY RULES. However, when an agency files a 120-DAY RULE, it may file a PROPOSED RULE at the same time, to make the requirements permanent.

Emergency or 120-DAY RULES are governed by Section 63G-3-304, and Section R15-4-8.

Administrative Services, Finance
R25-7
Travel-Related Reimbursements for State Employees

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 41797
FILED: 06/09/2017

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Due to the increase in consumer price index for food, the Division of Finance has determined that reimbursements rates should also increase. Also, the reimbursement rate will increase per mile for a private vehicle. This is because the rate is based on the Utah Division of Fleet Operations costs for mileage reimbursements, which increased.

SUMMARY OF THE RULE OR CHANGE: The rule increases reimbursement rates for in-state food reimbursements, and increases mileage reimbursements for use of a private vehicle. (Editor’s Note: A corresponding proposed amendment is under Filing No. 41798 in this issue, July 1, 2017, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-3-106 and Section 63A-3-107

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

JUSTIFICATION: The Division of Finance is required by Section 63A-3-107 to make rules governing in-state and out-of-state travel expenses and to set travel rates. This is done on a fiscal year basis. Any changes in travel rates need to be in place by 07/01/2017. Travel reimbursements for employees and board members will be inaccurate if the rule is not changed.

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will potentially be an increased cost to the state as in-state food per diem rates have increased, and mileage reimbursement rates have increased for private vehicles. However, the Division cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

♦ LOCAL GOVERNMENTS: There will potentially be an increased cost to certain local governments as in-state food per diem rates have increased, and mileage reimbursement rates have increased for private vehicles. However, the Division cannot determine exactly what the increase will be
as that depends on the amount of travel by individuals eligible for reimbursement.

♦ SMALL BUSINESSES: Small business may see an increase in revenue. However, the Division cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Individuals eligible for reimbursement will see a slight increase in their per diem reimbursement amounts for in-state travel, and people will see a slight increase in their mileage reimbursement if using a private vehicle. However, the Division cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the amendment only changes reimbursement rates and does not require any new action on the part of persons applying for reimbursements, there are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed these changes with the Division of Finance Director and believe these changes are reasonable and warranted. After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FINANCE
ROOM 2110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Richard Beckstead by phone at 801-538-3100, by FAX at 801-538-3562, or by Internet E-mail at rbeckstead@utah.gov

EFFECTIVE: 07/01/2017

AUTHORIZED BY: John Reidhead, Director

R25-7. Travel-Related Reimbursements for State Employees.
R25-7-1. Purpose.
The purpose of this rule is to establish procedures to be followed by departments to pay travel-related reimbursements to state employees.

R25-7-2. Authority and Exemptions.
This rule is established pursuant to:
(1) Section 63A-3-107, which authorizes the Division of Finance to make rules governing in-state and out-of-state travel expenses; and
(2) Section 63A-3-106, which authorizes the Division of Finance to make rules governing in-state and out-of-state travel expenses for board members attending official meetings.

R25-7-3. Definitions.
(1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.
(2) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.
(3) "Department" means all executive departments of state government.
(4) "Finance" means the Division of Finance.
(5) "Home-Base" means the location the employee leaves from and/or returns to.
(6) "Per diem" means an allowance paid daily.
(7) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."
(8) "Rate" means an amount of money.
(9) "Reimbursement" means money paid to compensate an employee for money spent.
(10) "State employee" means any person who is paid on the state payroll system.

R25-7-4. Eligible Expenses.
(1) Reimbursements are intended to cover all normal areas of expense.
(2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.

R25-7-5. Approvals.
(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.
(2) Both in-state and out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FIS - "Request for Out-of-State Travel Authorization".
(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form F15, or on an attachment, and must be approved by the Department Director or the designee.
(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

R25-7-6. Reimbursement for Meals.
(1) State employees who travel on state business may be eligible for a meal reimbursement.
(2) The reimbursement will include tax, tips, and other expenses associated with the meal.
(3) Allowances for in-state travel differ from those for out-of-state travel.

(a) The daily travel meal allowance for in-state travel is $41.00 and is computed according to the rates listed in the following table.

<table>
<thead>
<tr>
<th>Meals</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Breakfast</td>
<td>$10.00</td>
</tr>
<tr>
<td>Lunch</td>
<td>$14.00</td>
</tr>
<tr>
<td>Dinner</td>
<td>$22.00</td>
</tr>
<tr>
<td>Total</td>
<td>$46.00</td>
</tr>
</tbody>
</table>

(b) The daily travel meal allowance for out-of-state travel is $46.00 and is computed according to the rates listed in the following table.

<table>
<thead>
<tr>
<th>Meals</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Breakfast</td>
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</tr>
<tr>
<td>Lunch</td>
<td>$14.00</td>
</tr>
<tr>
<td>Dinner</td>
<td>$22.00</td>
</tr>
<tr>
<td>Total</td>
<td>$46.00</td>
</tr>
</tbody>
</table>

(4) When traveling to a Tier I premium location (Anchorage, Chicago, Hawaii, New York City, San Francisco, and Seattle), the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to $46 per day.

When traveling to a Tier II premium location (Atlanta, Baltimore, Boston, Dallas, Los Angeles, San Diego, and Washington, DC), the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to $52 per day.

(a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.

(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the premium location allowance as follows:

Tier I Location

(i) If breakfast is provided deduct $15, leaving a premium allowance for lunch and dinner of actual up to $44.

(ii) If lunch is provided deduct $20, leaving a premium allowance for breakfast and dinner of actual up to $46.

(iii) If dinner is provided deduct $22, leaving a premium allowance for breakfast and lunch of actual up to $35.

Tier II Location

(i) If breakfast is provided deduct $13, leaving a premium allowance for lunch and dinner of actual up to $44.

(ii) If lunch is provided deduct $17, leaving a premium allowance for breakfast and dinner of actual up to $40.

(iii) If dinner is provided deduct $18, leaving a premium allowance for breakfast and lunch of actual up to $30.

(c) The traveler must use the same method of reimbursement for an entire day.

(d) Actual meal cost includes tips.

(e) Alcoholic beverages are not reimbursable.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed the actual meal cost, with original receipts, not to exceed the United States Department of State Meal and Incidental Expenses (M and IE) rate for their location.

(a) The traveler may combine the use both reimbursement methods during a trip; however, they must use the same method of reimbursement for an entire day.

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

(6) The meal reimbursement calculation is comprised of three parts:

(a) The day the travel begins. The traveler's entitlement is determined by the time of day the traveler leaves their home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

<table>
<thead>
<tr>
<th>Meals</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Breakfast</td>
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</tr>
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</tr>
<tr>
<td>Dinner</td>
<td>$22.00</td>
</tr>
<tr>
<td>Total</td>
<td>$46.00</td>
</tr>
</tbody>
</table>

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance. However, continental breakfasts will not reduce the meal allowance. Please Note: For breakfast, if a hot food item is offered, it is considered a "continental breakfast" if no hot food items are offered. The meal reimbursement calculation is comprised of three parts:

(a) The day the travel begins. The traveler's entitlement is determined by the time of day the traveler leaves their home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

<table>
<thead>
<tr>
<th>Meals</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Breakfast</td>
<td>$10.00</td>
</tr>
<tr>
<td>Lunch</td>
<td>$14.00</td>
</tr>
<tr>
<td>Dinner</td>
<td>$22.00</td>
</tr>
<tr>
<td>Total</td>
<td>$46.00</td>
</tr>
</tbody>
</table>

(c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day the traveler returns to their home base, as illustrated in the following table.

<table>
<thead>
<tr>
<th>Meals</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Breakfast</td>
<td>$10.00</td>
</tr>
<tr>
<td>Lunch</td>
<td>$14.00</td>
</tr>
<tr>
<td>Dinner</td>
<td>$22.00</td>
</tr>
<tr>
<td>Total</td>
<td>$46.00</td>
</tr>
</tbody>
</table>

NOTICES OF 120-DAY (EMERGENCY) RULES
(7) An employee may be authorized by the Department Director or designee to receive a taxable meal allowance when the employee's destination is at least 100 miles one way from their home base and the employee does not stay overnight.

(a) Breakfast is paid when the employee leaves their home base before 6:00 a.m.

(b) Lunch is paid when the trip meets one of the following requirements:

(i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.

(ii) The employee leaves their home base before 10 a.m. and returns after 2 p.m.

(iii) The Department Director provides prior written approval based on circumstances.

(c) Dinner is paid when the employee leaves their home base and returns after 6:00 p.m. or later.

(d) The allowance is not considered an absolute right of the employee and is authorized at the discretion of the Department Director or designee.


(1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.

(2) Where salaried employees of the State of Utah or other advisors or consultants must, of necessity, attend such a meeting in order to permit the board to carry on its business, the meals of such employees, advisors, or consultants may also be paid. In determining whether or not the presence of such employees, advisors, or consultants is necessary, the boards are requested to restrict the attendance of such employees, advisors, or consultants to those absolutely necessary at such mealtime meetings.


State employees who travel on state business may be eligible for a lodging reimbursement.

(1) For stays at a conference hotel, the state will reimburse the actual cost plus tax and any mandatory fees charged by the hotel for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI 51A or FI 51B.

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost plus tax and any mandatory fees charged by the hotel except as noted in the table below:

<table>
<thead>
<tr>
<th>Cities with Differing Rates</th>
<th>Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beaver</td>
<td>$75.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Bluff</td>
<td>$90.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Brigham City</td>
<td>$80.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Bryce Canyon City</td>
<td>$75.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Cedar City</td>
<td>$80.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Duchesne</td>
<td>$80.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Ephraim</td>
<td>$75.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Farmington</td>
<td>$85.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Fillmore</td>
<td>$75.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Garden City</td>
<td>$80.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Green River</td>
<td>$85.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Hanksville</td>
<td>$75.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Heber</td>
<td>$85.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Kanab</td>
<td>$85.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Layton</td>
<td>$85.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Logan</td>
<td>$85.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Mexican Hat</td>
<td>$90.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Moab</td>
<td>$100.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Monticello</td>
<td>$80.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Ogden</td>
<td>$85.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Park City/Midway</td>
<td>$100.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Price</td>
<td>$75.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Provo/Dre/Lehi/American Fork/</td>
<td>$85.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Springville</td>
<td></td>
</tr>
<tr>
<td>Roosevelt/Ballard</td>
<td>$90.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Salt Lake City Metropolitan Area</td>
<td>$100.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>(Draper to Centerville), Tooele</td>
<td></td>
</tr>
<tr>
<td>St. George/Washington/Springdale/ Hurricane</td>
<td>$85.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Torrey</td>
<td>$85.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Trenton</td>
<td>$90.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>Vernal</td>
<td>$95.00 plus tax and mandatory fees</td>
</tr>
<tr>
<td>All Other Utah Cities</td>
<td>$70.00 plus tax and mandatory fees</td>
</tr>
</tbody>
</table>

(3) State employees traveling less than 50 miles from their home base are not entitled to lodging reimbursement. Miles are calculated from either the departure home-base or from the destination to the traveler's home-base. The traveler may leave from one home-base and return to a different home-base. For example, if the traveler leaves from their residence, then the home-base for departure calculations is their residence. If the traveler returns to where they normally work (ie. Cannon Health Building), then the home-base for arrival calculations is the Cannon Health Building.

(a) In some cases, agencies must use judgement to determine a traveler's home-base. The following are some things to consider when determining a traveler's home-base.
(i) Is the destination less than 50 miles from the traveler's home or normal work location? If the destination is less than 50 miles from either the traveler's home or from their normal work location, then generally the employee should not be reimbursed for lodging.

(ii) Is there a valid business reason for the traveler to go to the office (or to some other location) before driving to the destination?

(iii) Is the traveler required to work at the destination the next day?

(iv) Is the traveler going directly home after the trip, or is there a valid business reason for the traveler to first go to the office (or to some other location)?

(v) Even if "it is not specifically against policy", would the lodging be considered necessary, reasonable and in the best interest of the State?

(4) When the State of Utah pays for a person from out-of-state to travel to Utah, the in-state lodging per diem rates will apply.

(5) For out-of-state travel stays at a non-conference hotel, the state will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel, not to exceed the federal lodging rate for the location. These reservations must be made through the State Travel Office.

(6) The state will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel for in-state or out-of-state travel stays where the department/traveler makes reservations through the State Travel Office.

If lodging is not available at the allowable per diem rate in the area the employee needs to stay, the State Travel Office will book a hotel with the best available rate. In this circumstance, the employee will be reimbursed at the actual rate booked.

If an employee chooses to stay at a hotel that costs more than the allowable per diem rate, the employee will only be reimbursed for the allowable per diem rate plus tax and any mandatory fees charged by the hotel. These instances will be audited 100% by the State Finance Post-Auditors.

(7) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double state employee occupancy, add $20, for triple state employee occupancy, add $40, for quadruple state employee occupancy, add $60.

(8) Exceptions will be allowed for unusual circumstances when approved in writing by the traveler's Department Director or designee prior to the trip.

(a) For out-of-state travel, the approval may be on the form FI 5.

(b) Attach the written approval to the Travel Reimbursement Request, form FI 51B or FI 51D.

(9) A proper receipt for lodging accommodations must accompany each request for reimbursement.

A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date(s) of occupancy, amount and date paid, [signature of agent, number in the party, and (single, double, triple, or quadruple occupancy).

(10) When lodging is required, travelers should stay at the lodging facility nearest to the meeting/training/work location where state lodging per diem rates are accepted in order to minimize transportation costs.

(11) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.

(a) With proof of staying overnight away from home on approved state business, the traveler will be reimbursed the following:

(i) $25 per night with no receipts required or

(ii) Actual cost up to $40 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(12) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:

(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.

(b) After 30 days - $46 per day for lodging and meals. No receipt is required.

R25-7-9. Reimbursement for Incidents.

State employees who travel on state business may be eligible for a reimbursement for incidental expenses.

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips, transportation costs, maid service, and bellman. Gratuities/tips for various services such as taxi/shuttle, assistance with baggage, maid service, and bellman, may be reimbursed up to a combined maximum of $5.00 per day.

(a) Tips for doormen and meals are not reimbursable.

(b) No other gratuities will be reimbursed.

(c) Include an original receipt for each individual incidental item above $19.99.

(2) The state will reimburse incidental ground transportation and parking expenses.

(a) Travelers shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.

(b) Personal use of such transportation to restaurants is not reimbursable.

(c) The maximum that airport parking will be reimbursed is the economy lot parking rate at the airport they are flying out of. A receipt is required for amounts of $20 or more.

(3) Registration should be paid in advance on a state warrant, or with a state purchasing card if there is a state travel card.

(a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.

(b) If a traveler must pay the registration when they arrive, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with them.

(4) Telephone calls related to state business are reimbursed at the actual cost.

(a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A or FI 51B.
NOTICES OF 120-DAY (EMERGENCY) RULES

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls.

(5) Allowances for personal telephone calls made while out of town on state business overnight may be based on the number of nights away from home. The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for personal telephone calls.

(a) Four nights or less - actual amount up to $2.50 per night.

(b) Five to eleven nights - actual amount up to $20.00

(c) Twelve nights to thirty nights - actual amount up to $30.00

(d) More than thirty days - start over

(6) Actual laundry expenses up to $18.00 per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night out.

(a) The traveler must provide receipts for the laundry expense.

(b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.

(7) An amount of $5 per day will be allowed for travelers away in excess of six consecutive nights beginning after the sixth night out.

(a) This amount covers miscellaneous incidentals not covered in this rule.

(b) This allowance is not available for travelers going to conferences.

(8) Travel on a Weekend during Trips of More Than 10 Nights' Duration - A department may provide for employees to return home on a weekend when a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

R25-7-10. Reimbursement for Transportation.

State employees who travel on state business may be eligible for a transportation reimbursement.

(1) Air transportation is limited to Air Coach or Excursion class. Priority seating charges will not be reimbursed unless preapproved by the department director or designee.

(a) All reservations (in-state and out-of-state) should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.

(2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.

(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the long term parking rate at the airport they are flying out of.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51B for amounts of $20 or more.

(c) Travelers may be reimbursed, up to the maximum reimbursements rate, for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) Travelers may use private vehicles with approval from the Department Director or designee.

(a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for a private vehicle will be at the rate of $38.40 cents per mile or 53 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at 53 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of $38.40 cents per mile.

(c) Agencies may establish a reimbursement rate that is more restrictive than the rate established in this Section.

(d) Any exceptions to this mileage reimbursement rate guidance must be approved in writing by the employees Executive Director or designee.

(e) Mileage will be computed using Mapquest or other generally accepted map/route planning website, or from the latest official state road map and will be limited to the most economical, usually traveled routes.

(f) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(g) An approved Private Vehicle Usage Report, form FI 40, should be included with the department's payroll documentation reporting miles driven on state business during the payroll period.

(h) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A or FI 51B, if other costs associated with the trip are to be reimbursed at the same time.

(4) A traveler may choose to drive instead of flying if preapproved by the Department Director or designee.

(a) If the traveler drives a state-owned vehicle, the traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of $38.40 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director or designee.

(i) The lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.
(ii) A comparison printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.

(iii) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(iv) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(c) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.

(d) If the travel time taken for driving during the employee's normal work week is greater than that which would have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.

(5) Use of rental vehicles must be approved in writing in advance by the Department Director or designee.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for reimbursement and approved by the Department Director or designee.

(b) Detailed explanation is required if a rental vehicle is requested for a traveler staying at a conference hotel.

(c) When making rental car arrangements through the State Travel Office, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) State employees should rent vehicles to be used for state business in their own names, using the state contract so they will have full coverage under the state's liability insurance.

(ii) Rental vehicle reservations not made through the State Travel Office must be approved in advance by the Department Director or designee.

(iii) The traveler will be reimbursed the actual rate charged by the rental agency.

(iv) The traveler must have approval for a rental car in order to be reimbursed for rental car parking.

(6) Travel by private airplane must be approved in advance by the Department Director or designee.

(a) The pilot must certify to the Department Director or designee that the pilot is certified to fly the plane being used for state business.

(b) If the plane is owned by the pilot/employee, the pilot must certify the existence of at least $500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that the insurance covers the traveler and the state as insured. The insurance must be adequate to cover any physical damage to the plane and at least $500,000 for liability coverage.

(d) Reimbursement will be made at 53 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 20 cents per mile.

(8) A car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the Department Director, the Executive Director of the Department of Administrative Services, and the Governor is required.

KEY: air travel, per diem allowances, state employees, transportation

Date of Enactment or Last Substantive Amendment: July 1, 2017
Notice of Continuation: April 15, 2013
Authorizing, and Implemented or Interpreted Law: 63A-3-107; 63A-3-106
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.
R123-3
State Auditor Adjudicative Proceedings

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 63G, Chapter 4, requires the Office of the State Auditor to establish rule in order to hold adjudicative proceedings.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In order for the Office of the State Auditor to hold adjudicative proceedings, statute requires a rule to be in place. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AUDITOR
ADMINISTRATION
ROOM E310 EAST BUILDING
420 N STATE ST
SALT LAKE CITY, UT 84114-2310
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Phalin Flowers by phone at 801-538-1361, or by Internet E-mail at pflowers@utah.gov

AUTHORIZED BY: Phalin Flowers, Administrative Assistant
EFFECTIVE: 06/07/2017

R123-4
Public Petitions for Declaratory Orders

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 63G, Chapter 4, requires the Office of the State Auditor to establish rule in order to receive and review public petitions for declaratory orders.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received in 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: In order for the Office of the State Auditor to receive and review public petitions for declaratory orders, statute requires a rule to be in place. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AUDITOR
ADMINISTRATION
ROOM E310 EAST BUILDING
420 N STATE ST
SALT LAKE CITY, UT 84114-2310
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Phalin Flowers by phone at 801-538-1361, or by Internet E-mail at pflowers@utah.gov

AUTHORIZED BY: Phalin Flowers, Administrative Assistant
EFFECTIVE: 06/07/2017
Auditor, Administration  
**R123-5**
Audit Requirements for Audits of Political Subdivisions and Nonprofit Organizations

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**
DAR FILE NO.: 41766  
FILED: 06/07/2017

**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 51-2a-201 and 51-2a-201.5 require the Office of the State Auditor to establish rule in order to provide guidelines, qualifications criteria, and procurement procedures for certain audits.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received in 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: In order for the Office of the State Auditor to provide guidelines, qualifications criteria, and procurement procedures for certain audits, statute requires a rule to be in place. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
- AUDITOR  
  ADMINISTRATION  
  ROOM E310 EAST BUILDING  
  420 N STATE ST  
  SALT LAKE CITY, UT 84114-2310  
  or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
- Phalin Flowers by phone at 801-538-1361, or by Internet E-mail at pflowers@utah.gov

AUTHORIZED BY: Phalin Flowers, Administrative Assistant  
EFFECTIVE: 06/07/2017

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Commerce, Securities  
**R164-9**
Registration by Coordination

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**
DAR FILE NO.: 41718  
FILED: 06/02/2017

**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 61-1-9 of the Utah Uniform Securities Act establishes registration by coordination as one of two methods of registering securities offerings in the state of Utah. Section 61-1-24 of the Utah Uniform Securities Act allows the division to make rules necessary to carry out the provisions of the chapter.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule defines key terms and establishes the specific procedures to which an applicant for registration by coordination must adhere in order to obtain approval of its registration statement. The rule also coordinates registration procedures with Canada under the multijurisdictional disclosure system. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
- COMMERCE  
  SECURITIES  
  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:  
- Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

AUTHORIZED BY: Keith Woodwell, Director  
EFFECTIVE: 06/02/2017
FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Commerce, Securities

R164-10
Registration by Qualification

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41719
FILED: 06/02/2017

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 61-1-10 of the Utah Uniform Securities Act establishes registration by qualification as one of two methods of registering securities offerings in the state of Utah. Section 61-1-24 of the Utah Uniform Securities Act allows the division to make rules necessary to carry out the provisions of the chapter.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISCLAIMS WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule defines key terms, sets forth filing and procedural requirements, and provides a comprehensive disclosure regimen for offerings registered by qualification. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
SECURITIES
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:
♦ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

AUTHORIZED BY: Keith Woodwell, Director
EFFECTIVE: 06/02/2017

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Commerce, Securities

R164-11
Registration Statement

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41720
FILED: 06/02/2017

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 61-1-24 of the Utah Uniform Securities Act allows the division to make rules necessary to carry out the provisions of the chapter. Subsection 61-1-11(7)(b) authorizes the division to determine escrow and impounding requirements. Subsection 61-1-11.1(9) authorizes the division to establish rules for the conduct of fairness hearings.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISCLAIMS WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule was established to ensure disclosure of material information, prevent fraud, and limit excessive promoter profits in registered securities offerings. In addition, the rule serves to establish procedures for fairness hearings and for the impound of funds in offerings registered by qualification until the division approves a release of those funds. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
SECURITIES
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:
♦ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

AUTHORIZED BY: Keith Woodwell, Director
EFFECTIVE: 06/02/2017
Commerce, Securities  
**R164-12**
Sales Commission

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**
DAR FILE NO.: 41721  
FILED: 06/02/2017

**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 61-1-24 of the Utah Uniform Securities Act allows the division to make rules necessary to carry out the provisions of the chapter.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: As a protection for investors, this rule limits the amount of commission-related compensation that can be paid to agents in connection with a public offering. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE  
SECURITIES  
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:  
♦ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

AUTHORIZED BY: Keith Woodwell, Director  
EFFECTIVE: 06/02/2017

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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**
DAR FILE NO.: 41722  
FILED: 06/02/2017

**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 61-1-14 establishes the various exemptions from registration under the Utah Uniform Securities Act. Subsections 61-1-14(1)(i) and 61-1-14(2)(v) allow the division to exempt from registration by rule such securities or transactions as to which the division director finds that registration is not necessary or appropriate for the protection of investors.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule aids the public in qualifying for exemptions from registration by setting forth in detail filing and qualification requirements for many of the statutory exemptions. It also establishes several additional exemptions by rule. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE  
SECURITIES  
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:  
♦ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

AUTHORIZED BY: Keith Woodwell, Director  
EFFECTIVE: 06/02/2017

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Commerce, Securities  
**R164-14**
Exemptions

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Commerce, Securities  
**R164-15**
Federal Covered Securities
FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41723
FIELD: 06/02/2017

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 61-1-15.5 governs federal covered securities and states that the division may, by rule or order, require filing of documents relating to federal covered securities. Section 61-1-24 allows the division to make rules when necessary to carry out the provisions of the chapter.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule prescribes the notice filing procedures authorized by Section 61-1-15.5. The operation of this rule helps to ensure that the division receives notice of federal covered securities offered to residents of this state. These filings include Rule 506 offerings, Mutual Funds, and Offerings under Tier II of Regulation A. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
SECURITIES
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:
♦ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

AUTHORIZED BY: Keith Woodwell, Director
EFFECTIVE: 06/02/2017

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Commerce, Securities
R164-26
Consent to Service of Process

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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41726
FIELD: 06/02/2017

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 61-1-26(7) of the Utah Uniform Securities Act requires that every applicant for registration and every issuer shall consent to have the division or its director be its attorney to receive service of any lawful, noncriminal process. Section 61-1-24 authorizes the division to make rules necessary to carry out the provisions of the Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Act allows the division to accept service of process for individuals or companies registered under the Act. This rule outlines the process. Therefore, this rule should be continued. For the service to be effective, the plaintiff in the action (whether the division or a private party) must send a copy of the process, by registered mail, to the defendant’s or respondent’s last address filed with the division. This creates an obligation for applicants and issuers to provide the division with current address information.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
SECURITIES
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:
♦ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

AUTHORIZED BY: Keith Woodwell, Director
EFFECTIVE: 06/02/2017

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Commerce, Securities
R164-26
Consent to Service of Process
Education, Administration  
R277-101  
Utah State Board of Education  
Procedures  

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION  
DAR FILE NO.: 41732  
FILED: 06/06/2017  

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.  

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 R277-101 continues to be necessary because it provides the procedures to be followed by the Board in its conduct of the public's business in order to hear from those who desire to be heard on public education matters in the state and to effectively and efficiently utilize the time of the Board. Therefore, this rule should be continued.  

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
EDUCATION  
ADMINISTRATION  
250 E 500 S  
SALT LAKE CITY, UT 84111-3272  
or at the 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, Deputy Superintendent, Policy and Communication  
EFFECTIVE: 06/06/2017  

Education, Administration  
R277-410  
Accreditation of Schools  

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION  
DAR FILE NO.: 41733  
FILED: 06/06/2017  

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 Section 53A-1-402 directs the Board to establish rules governing school accreditation.  

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 R277-410 continues to be necessary because it provides procedures for qualifying secondary school required accreditation. 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, Deputy Superintendent, Policy and Communication  
EFFECTIVE: 06/06/2017
FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Education, Administration

R277-460
Distribution of Substance Abuse Prevention Account

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41734
FILED: 06/06/2017

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-13-102 directs the Utah State Board of Education (Board) to adopt rules providing for instruction on the harmful affects of controlled substances; and Section 53A-1-401 allows the Board to make rules to execute the Board’s duties and responsibilities under the Utah Constitution and state law.

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 R277-460 continues to be necessary because it provides procedures for distribution of the Board's share of the money from the Substance Abuse Prevention Account. 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, Deputy Superintendent, Policy and Communication
EFFECTIVE: 06/06/2017

Education, Administration

R277-484
Data Standards

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41735
FILED: 06/06/2017

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 Subsection 53A-1-413(8) requires the Board to make rules regarding local education agency (LEA) inclusion of data in an LEA's student information system.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-484 continues to be necessary because it provides standards and procedures for timely submission of data by LEAs which supports the operation of required educational accountability and financial systems. 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, Deputy Superintendent, Policy and Communication
EFFECTIVE: 06/06/2017
FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41736
FILED: 06/06/2017

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.

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 R277-485 continues to be necessary because it establishes guidelines for funding school districts with a loss in enrollment. 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, Deputy Superintendent, Policy and Communication
EFFECTIVE: 06/06/2017
**R277-489**

**Early Intervention Program**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.:  41738

FILED:  06/06/2017

**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; Section 53A-17a-167 directs the Board to distribute funds appropriated for the early intervention program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE:  No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY:  Rule R277-489 continues to be necessary because it establishes criteria and procedures to administer and distribute funds for the early intervention program. Therefore, this rule should be continued.

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

EDUCATION ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the 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, Deputy Superintendent, Policy and Communication

EFFECTIVE:  06/06/2017

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**R277-520**

**Appropriate Licensing and Assignment of Teachers**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.:  41739

FILED:  06/06/2017

**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 Subsection 53A-6-104(2)(a) authorizes the Board to rank, endorse, or classify licenses.

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 R277-520 continues to be necessary because it provides criteria for local schools boards to employ educators in appropriate assignments and for the Board to provide state funding to local school boards for appropriately qualified and assigned staff. 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, Deputy Superintendent, Policy and Communication

EFFECTIVE:  06/06/2017
FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53A-15-401 vests general control and supervision over adult education in the Utah State Board of Education (Board); Subsection 53A-1-402(1) allows the Board to adopt minimum standards for programs; and Section 53A-1-401 allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

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 R277-733 continues to be necessary because it describes curriculum and allocation formulas, and provides program and operation procedures for the adult education program. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the 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, Deputy Superintendent, Policy and Communication
EFFECTIVE: 06/06/2017

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-1-403.5 makes the Utah State Board of Education (Board), along with the Utah Department of Corrections, responsible for the education of inmates in custody; and Section 53A-1-401 allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

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 R277-735 continues to be necessary because it specifies operation standards and procedures for inmates in corrections education programs that are the responsibility of the public school system. 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, Deputy Superintendent, Policy and Communication
EFFECTIVE: 06/06/2017
FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

EDUCATION

R277-911
Secondary Career and Technical Education

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41742
FILED: 06/06/2017

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 Section 53A-15-202 allows the Board to establish minimum standards for career and technical education (CTE) 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: 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 R277-911 continues to be necessary because it establishes standards and procedures for local education agencies seeking to qualify for funds administered by the Board for CTE programs in the public education system. 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, Deputy Superintendent, Policy and Communication

EFFECTIVE: 06/06/2017

ENVIRONMENTAL QUALITY, WATER QUALITY

R317-801
Utah Sewer Management Program (USMP)

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41800
FILED: 06/12/2017

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 19-5-107 authorizes the Utah Water Quality Board to require discharge permits to control the management of sewage sludge or to prevent or control the discharge of pollutants, including effluent limitations for the discharge of waste into the waters of the state. Subsection 19-5-108(1) authorizes the Utah Water Quality Board to make rules and require the submission of plans, specifications, and other information to the director in connection with the issuance of discharge permits.

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 since the implementation of the rule five years ago.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of the rule is to ensure proper operation and maintenance of sewer collection systems in the state of Utah. The rule has minimum standards for planning, design, operation, and maintenance of sewer collection systems. The rule requires that these minimum standards be met by federal, state, municipal, and special service districts that own and operate sewer collection systems within the state of Utah. The rule requires reporting of sanitary sewer overflows to ensure that the public and environment are protected from discharges from a sewer collection system. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
WATER QUALITY
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Office of Administrative Rules.
DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

AUTHORIZED BY: Brad Johnson, Deputy Director
EFFECTIVE: 06/12/2017

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-60A
Drug Utilization Review Board

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41803
FILED: 06/13/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 26-18-102, which sets forth membership requirements for the Drug Utilization Review (DUR) Board. In addition, 42 CFR 456.716 requires the Department of Health to establish a DUR Board that includes health care professionals with knowledge and expertise in prescribing, dispensing, or evaluating drugs.

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 received a comment from the American Academy of Physician Assistants, which recommended a proposed change to include physician assistants among those who sit on the DUR Board.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In response to the comment above, DUR Board composition has minimum and maximum thresholds to include physician and pharmacist members based on federal law. Although the Department encourages participation by all provider groups, it cannot include every provider group and maintain statutory thresholds. The Department will continue this rule because it implements DUR Board composition and membership requirements, and spells out board member responsibilities to provide medically necessary and cost effective services for Medicaid recipients.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH CARE FINANCING, COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director
EFFECTIVE: 06/13/2017

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-60B
Preferred Drug List

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41811
FILED: 06/14/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 26-18-2.4 which allows the Department of Health to reimburse for certain classes of drugs on the Preferred Drug List (PDL), spells out prior authorization requirements, and sets forth prescription override exceptions. In addition, Section 26-18-3 requires the Department to implement the Medicaid drug program through administrative rules, and Section 26-1-5 grants the Department the authority to adopt these rules for implementation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule
because it implements PDL eligibility, specifies the purpose of the PDL in relation to certain classes of drugs, clarifies that coverage is based on clinical and cost effectiveness, spells out prior authorization requirements, implements Pharmacy and Therapeutics (P&T) Committee composition and membership, implements P&T Committee responsibilities and functions, and sets forth provisions for the P&T Committee to make determinations based on clinical and cost-related factors.

The full text of this rule may be inspected, during regular business hours, at:

Health Care Financing, Coverage and Reimbursement Policy
Cannon Health Bldg
288 N 1460 W
Salt Lake City, UT 84116-3231
or at the Office of Administrative Rules.

Direct questions regarding this rule to:
♣ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

Authorized by: Joseph Miner, MD, Executive Director
Effective: 06/14/2017

Human Services, Recovery Services
R527-378
Withholding of Social Security Benefits

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41724
FILED: 06/02/2017

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 enacted under Section 62A-11-107 which authorizes the Office of Recovery Services (ORS) to adopt, amend, and enforce rules necessary to carry out its statutory responsibilities. This rule deals with the statutory responsibility concerning income withholding for collection of child support as specified in Section 62A-11-104. This rule clarifies that an income withholding notice to the Social Security Administration must be limited to 25 percent of the benefit amount if Social Security is the obligor's sole means of support.

Summary of written comments received during and 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: 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: The statues under which this rule is enacted are still in effect and the rule is reflected in the current policy, practices, and procedures of ORS. 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:
♣ Casey Cole by phone at 801-741-7523, by FAX at 801-536-8509, or by Internet E-mail at cacole@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

Authorized by: Liesa Stockdale, Director
Effective: 06/02/2017

Human Services, Recovery Services
R527-601
Establishing or Modifying an Administrative Award for Child Support

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41725
FILED: 06/02/2017

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 enacted under Section 78B-12-203 which requires each parent to provide verification of current income for the purpose of calculating the amount of a child support award under Utah's child support guidelines, and Section 78B-12-201 which permits the moving party in a child support action to submit the best
evidence available concerning the other party's income if the financial verification required under Section 78B-12-203 is not available. It also requires that the evidence be provided in affidavit form and that a copy of the affidavit be provided to the other party before the evidence is submitted. This rule defines "best evidence available" and describes the method of providing the affidavit to the other party.

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: The statutes under which this rule is enacted are still in effect. They describe what is meant by "best evidence available", and specifies the method for providing the non-moving party with an affidavit describing the evidence before the evidence is used in determining the amount of a child support award. 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:
♦ Casey Cole by phone at 801-741-7523, by FAX at 801-536-8509, or by Internet E-mail at cacole@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

AUTHORIZED BY: Liesa Stockdale, Director
EFFECTIVE: 06/02/2017
NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) authorizes the commissioner to make rules to implement the provisions of the Insurance Code, Title 31A. As a result of this authority, this rule defines the term "permissible arbitration" as set forth in Subsections 31A-21-313(3)(c) and 31A-21-314(2).

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 regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is important that this rule be continued because it provides guidance to insurance companies about the type of arbitration provisions they may put into their policies. These provisions provide steps to be taken by insureds who disagree with the settlement of their claims and would like to involve a third party in the settlement process. The rule gives the department the authority to make sure these provisions are fair and nondiscriminatory.

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: 06/05/2017

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NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The purpose of this rule is to implement the provisions of 28 CFR 35 and Title II of the Americans with Disabilities Act, which provides that no individual shall be excluded from participation in or be denied the benefits of the services, programs, or activities of the Insurance Department, or be subjected to discrimination by the department because of a disability. Subsection 63G-3-201(3) requires rulemaking when the department issues a written interpretation of a state or federal legal mandate. Subsection 31A-2-201(3)(a) authorizes the commissioner to write rules to implement the provisions of the Insurance Code, Title 31A.

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 regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is important that this rule be continued because it provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or the benefits of the services, programs, and activities of the Insurance Department. The rule needs to remain in force so that the department will be in compliance with the federal Americans with Disabilities Act.

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: 06/05/2017
Insurance, Administration  
**R590-173**  
Credit for Reinsurance

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41730  
FILED: 06/05/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201 authorizes the commissioner to write rules to implement the provisions of the Insurance Code, Title 31A. In this case, the rule sets forth requirements that are necessary to carry on the provisions of Section 31A-17-404.

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 received one comment regarding this rule during the past five years. The comment was in support of the rule and its efforts to implement collateral reform for reinsurance.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Credit for reinsurance has relevance for many Utah insurance companies and may be a significant factor in establishing their solvency position. The rule lays out the detailed requirements that apply to this important area. It provides protection to the ceding insurers within the state of Utah and to the individuals insured. 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: 06/05/2017

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Insurance, Administration  
**R590-240**  
Procedure to Obtain Exemption of Student Health Programs From Insurance Code

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41728  
FILED: 06/05/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-1-103(3)(d) specifies by rule business transactions that are exempted from insurance regulation. Section 31A-2-201 authorizes the commissioner to write rules to implement the Insurance Code, Title 31A.

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 regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must be continued because it provides guidance regarding procedures that institutions of higher education must follow in order to obtain exemption of student health programs from the Insurance Code.

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: 06/05/2017
Natural Resources; Oil, Gas and Mining Board

**R641-100**

General Provisions

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 41744

FILED: 06/07/2017

**CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE:**

This rule is authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

**SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE:**

Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

**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 so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

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

NATURAL RESOURCES

OIL, GAS AND MINING BOARD

ROOM 1210

1594 W NORTH TEMPLE

SALT LAKE CITY, UT 84116-3154

or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017

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Natural Resources; Oil, Gas and Mining Board

**R641-101**

Parties

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 41745

FILED: 06/07/2017

**CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE:**

This rule is authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

**SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE:**

Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

**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 so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

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

NATURAL RESOURCES

OIL, GAS AND MINING BOARD

ROOM 1210

1594 W NORTH TEMPLE

SALT LAKE CITY, UT 84116-3154

or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017
Natural Resources; Oil, Gas and Mining Board

R641-102
Appearances and Representations

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41746
FILED: 06/07/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

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 so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING BOARD
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

AUTHORIZED BY: John Baza, Director
EFFECTIVE: 06/07/2017

Natural Resources; Oil, Gas and Mining Board

R641-103
Intervention

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41747
FILED: 06/07/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
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AUTHORIZED BY: John Baza, Director
EFFECTIVE: 06/07/2017
Natural Resources; Oil, Gas and Mining Board

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41748
FILED: 06/07/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

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DIRECT QUESTIONS REGARDING THIS RULE TO:
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AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017

Natural Resources; Oil, Gas and Mining Board

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41749
FILED: 06/07/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017
Natural Resources; Oil, Gas and Mining Board

R641-106
Notice and Service

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41750
FILED: 06/07/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
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DIRECT QUESTIONS REGARDING THIS RULE TO:
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AUTHORIZED BY: John Baza, Director
EFFECTIVE: 06/07/2017

Natural Resources; Oil, Gas and Mining Board

R641-107
Prehearing Conference

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41751
FILED: 06/07/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
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DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

AUTHORIZED BY: John Baza, Director
EFFECTIVE: 06/07/2017
Natural Resources; Oil, Gas and Mining Board

R641-108 Conduct of Hearings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41752
FILED: 06/07/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
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DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017

Natural Resources; Oil, Gas and Mining Board

R641-109 Decisions and Orders

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41753
FILED: 06/07/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
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DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017
Natural Resources; Oil, Gas and Mining Board  
**R641-110**  
Rehearing and Modification of Existing Orders

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41754  
FILED: 06/07/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

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- NATURAL RESOURCES  
- OIL, GAS AND MINING BOARD  
- ROOM 1210  
- 1594 W NORTH TEMPLE  
- SALT LAKE CITY, UT 84116-3154  
- or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
- James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017

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Natural Resources; Oil, Gas and Mining Board  
**R641-111**  
Declaratory Rulings

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41755  
FILED: 06/07/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

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- 1594 W NORTH TEMPLE  
- SALT LAKE CITY, UT 84116-3154  
- or at the Office of Administrative Rules.

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- James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017
Natural Resources; Oil, Gas and Mining Board

R641-112

Rulemaking

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.:  41756
FILED:  06/07/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Section 63G-3-101 et seq., the Utah Administrative Rulemaking Act, which requires the Board of Oil, Gas and Mining to promulgate rules in accordance with such act. In addition, the Board has been granted rulemaking authority in Section 40-6-5 and Subsections 40-6-6(1) and 40-10-6(1).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

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 so that petitioners, the Board, and parties interested in commenting on the Board's rules are clear that the rulemaking procedure by the Board of Oil, Gas and Mining will be in accordance with the Utah Administrative Rulemaking Act.

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NATURAL RESOURCES
OIL, GAS AND MINING BOARD
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
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AUTHORIZED BY:  John Baza, Director
EFFECTIVE:  06/07/2017

Natural Resources; Oil, Gas and Mining Board

R641-113

Hearing Examiners

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.:  41757
FILED:  06/07/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
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AUTHORIZED BY:  John Baza, Director
EFFECTIVE:  06/07/2017
Natural Resources; Oil, Gas and Mining Board  
**R641-114**  
Exhaustion of Administrative Remedies

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

**DAR FILE NO.: 41758**  
**FILED: 06/07/2017**

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

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- **1594 W NORTH TEMPLE**
- **SALT LAKE CITY, UT 84116-3154**
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**DIRECT QUESTIONS REGARDING THIS RULE TO:**
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**AUTHORIZED BY: John Baza, Director**

**EFFECTIVE: 06/07/2017**

Natural Resources; Oil, Gas and Mining Board  
**R641-115**  
Deadline for Judicial Review

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

**DAR FILE NO.: 41759**  
**FILED: 06/07/2017**

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

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**DIRECT QUESTIONS REGARDING THIS RULE TO:**
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**AUTHORIZED BY: John Baza, Director**

**EFFECTIVE: 06/07/2017**
Natural Resources; Oil, Gas and Mining Board

**R641-116**

Judicial Review of Formal Adjudicative Proceedings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41760
FILED: 06/07/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017

Natural Resources; Oil, Gas and Mining Board

**R641-117**

Civil Enforcement

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41761
FILED: 06/07/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

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 so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING BOARD
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017
Natural Resources; Oil, Gas and Mining Board

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41762
FILED: 06/07/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

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THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING BOARD
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

AUTHORIZED BY: John Baza, Director
EFFECTIVE: 06/07/2017

Natural Resources; Oil, Gas and Mining Board

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41763
FILED: 06/07/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

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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 so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING BOARD
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

AUTHORIZED BY: John Baza, Director
EFFECTIVE: 06/07/2017
Natural Resources, Wildlife Resources **R657-14** Commercial Harvesting of Protected Aquatic Wildlife

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**
DAR FILE NO.:  41834
FILED:  06/15/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under Sections 23-14-3, 23-14-18, and 23-14-19, the Wildlife Board is authorized and required to regulate and prescribe the means by which wildlife may be taken.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments supporting or opposing Rule R657-14 were received since July 2012, when the rule was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-14 provides the procedures, standards, and requirements for: harvesting protected aquatic wildlife for use as fish bait; commercially harvesting brine shrimp and brine shrimp eggs; and seining protected wildlife. The provisions adopted in this rule are effective. Continuation of this rule is necessary for continued success for allowing harvesting of protected aquatic wildlife for use as fish bait and seining protected wildlife.

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

- NATURAL RESOURCES
- WILDLIFE RESOURCES
- 1594 W NORTH TEMPLE
- SALT LAKE CITY, UT 84116-3154
- or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
- ♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY:  Mike Fowlks, Deputy Director

EFFECTIVE:  06/15/2017

Transportation; Operations, Traffic and Safety **R920-4** Special Road Use or Event

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**
DAR FILE NO.:  41767
FILED:  06/08/2017

**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 required by and enacted under the authority of Subsection 72-1-212(2) and Sections 72-1-201 and 41-6a-1111. Subsection 72-1-212(2) expressly requires the Department of Transportation to make rules governing the issuance of a special use permit to maintain public safety and serve the needs of the traveling public. Section 72-1-201 provides that the Department shall maintain state transportation systems that are safe, reliable, environmentally sensitive, and serve the needs of the traveling public, commerce, and industry. Section 72-1-201 also requires the Department to establish standards and procedures regarding the technical details of administration of the state transportation systems as established by statute and administrative rule. Section 41-6a-1111 allows bicycle racing events on a highway under certain conditions approved by the Department.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from interested persons received during and since the last five-year review, but there was a complete rewrite of the rule in January 2016.

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 continue in order to keep in place the procedure and criteria for granting special use permits on public highways to maintain public safety and serve the needs of the traveling public. Additional policy reasons supporting the rule are stated in Subsections R920-4-1(1) and (2).

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

- TRANSPORTATION OPERATIONS, TRAFFIC AND SAFETY
- 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 jpalmer@utah.gov

AUTHORIZED BY: Carlos Braceras, Executive Director

EFFECTIVE: 06/08/2017

End of the Five-Year Notices of Review and Statements of Continuation Section
NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **Proposed Rules** or **Changes in Proposed Rules** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **Changes in Proposed Rules** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule’s publication date, but not more than 120 days after the publication date. If an agency fails to file a **Notice of Effective Date** within 120 days from the publication of a **Proposed Rule** or a related **Change in Proposed Rule** the rule lapses.

Agencies have notified the 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.

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**Abbreviations**
- **AMD** = Amendment
- **CPR** = Change in Proposed Rule
- **NEW** = New Rule
- **R&R** = Repeal & Reenact
- **REP** = Repeal

**Environmental Quality**
- **Air Quality**
    - Published: 04/01/2017
    - Effective: 06/08/2017

**Agriculture and Food**
- **Animal Industry**
  - No. 41471 (AMD): R58-21. Trichomoniasis
    - Published: 05/01/2017
    - Effective: 06/14/2017

**Commerce**
- **Occupational and Professional Licensing**
  - No. 41474 (AMD): R156-24b-102. Definitions
    - Published: 05/01/2017
    - Effective: 06/08/2017

  - No. 41473 (AMD): R156-42a-304. Continuing Education
    - Published: 05/01/2017
    - Effective: 06/08/2017

**Health**
- **Health Care Financing, Coverage and Reimbursement Policy**
  - No. 41446 (AMD): R414-1-5. Incorporations by Reference
    - Published: 05/01/2017
    - Effective: 06/14/2017

  - No. 41379 (AMD): R414-60-2. Definitions
    - Published: 04/15/2017
    - Effective: 06/14/2017

    - Published: 04/15/2017
    - Effective: 07/01/2017

**Crime Victim Reparations**
- **Administration**
  - No. 41475 (AMD): R270-1. Award and Reparation Standards
    - Published: 05/01/2017
    - Effective: 06/07/2017

**Public Safety**
- **Administration**
  - No. 41373 (AMD): R698-8. Local Public Safety and Firefighter Surviving Spouse Trust Fund
    - Published: 04/15/2017
    - Effective: 06/07/2017
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End of the Notices of Rule Effective Dates Section
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, 2017 through June 15, 2017. 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).

Editor's Note: Due to space constraints, the Keyword Index is not included 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/).
# RULES INDEX - BY AGENCY (CODE NUMBER)

## ABBREVIATIONS

- **AMD** = Amendment (Proposed Rule)
- **CPR** = Change in Proposed Rule
- **EMR** = 120-Day (Emergency) Rule
- **EXD** = Expired Rule
- **EXP** = Expedited Rule
- **EXT** = Five-Year Review Extension
- **GEX** = Governor's Extension
- **LNR** = Legislative Nonreauthorization
- **NEW** = New Rule (Proposed Rule)
- **NSC** = Nonsubstantive Rule Change
- **R&R** = Repeal and Reenact (Proposed Rule)
- **REP** = Repeal (Proposed Rule)
- **5YR** = Five-Year Notice of Review and Statement of Continuation

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- **R21-2** Office of State Debt Collection Administrative Procedures 41376 5YR 03/17/2017 2017-8/59
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- **R23-3** Planning, Programming, Request for Capital Development Projects and Operation and Maintenance Reporting 40947 AMD 01/20/2017 2016-23/6
- **R23-19** Facility Use Rules 41267 5YR 02/01/2017 2017-4/57
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- **R27-3** Vehicle Use Standards 41106 AMD 02/21/2017 2017-2/6
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**AGRICULTURE AND FOOD**

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**Horse Racing Commission (Utah)**

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**Regulatory Services**

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  - Amendment: 5YR
  - Date: 02/13/2017
  - Expiration: 2017-5/64

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  - Amendment: 1008/2017
  - Expiration: 2017-7/25

- R307-105 General Requirements: Emergency Controls
  - Amendment: 5YR
  - Date: 05/15/2017
  - Expiration: 2017-11/22

- R307-110 General Requirements: State Implementation Plan
  - Amendment: 5YR
  - Date: 01/27/2017
  - Expiration: 2017-4/61

- R307-120 General Requirements: Tax Exemption for Air Pollution Control Equipment
  - Amendment: 5YR
  - Date: 01/27/2017
  - Expiration: 2017-4/61

- R307-125 Clean Air Retrofit, Replacement, and Off-Road Technology Program
  - Amendment: 5YR
  - Date: 03/03/2017
  - Expiration: 2017-6/19

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**PUBLIC LANDS POLICY COORDINATING OFFICE**

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**Driver License**

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**SCHOOL AND INSTITUTIONAL TRUST LANDS**

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**SCIENCE TECHNOLOGY AND RESEARCH GOVERNING AUTHORITY**

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### Operations, Traffic and Safety

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<td>Establishing and Defining a Functional Classification of Highways in the State of Utah</td>
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## VETERANS' AND MILITARY AFFAIRS

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## WORKFORCE SERVICES

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