

UTAH STATE BULLETIN

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

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

Division of Administrative Rules, Salt Lake City 84114

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- AND**
- BY KEYWORD (SUBJECT)..... 45**

SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for March 2015 Medicaid Rate Changes

Effective March 1, 2015, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between January 16, 2015, 12:00 a.m., and February 02, 2015, 11:59 p.m. are included in this, the February 15, 2015, issue of the *Utah State Bulletin*.

In this publication, each **PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **PROPOSED RULE** is usually printed. New rules or additions made to existing rules are underlined (example). Deletions made to existing rules are struck out with brackets surrounding them ([~~example~~]). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (.) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not usually printed. If a **PROPOSED RULE** is too long to print, the Division of Administrative Rules may include only the **RULE ANALYSIS**. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least March 17, 2015. 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 June 15, 2015, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

The Proposed Rules Begin on the Following Page

Attorney General, Administration
R105-1
 Attorney General's Selection of Outside
 Counsel, Expert Witnesses and Other
 Litigation Support Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39099

FILED: 01/30/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to implement the recent changes to the Utah Procurement Code regarding the contingency fee cap for outside counsel.

SUMMARY OF THE RULE OR CHANGE: The change corrects the contingency fee cap from the 33-1/3% to the 25% as provided by the Utah Procurement Code, and correct a minor typo in Subsection R105-1-12(c).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 67-5-32(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs that are expected. The changes update the rule and provide provisions related to the Utah Procurement Code.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs that are expected. The changes update the rule and provide provisions related to the Utah Procurement Code.

◆ **SMALL BUSINESSES:** There are no anticipated costs that are expected. The changes update the rule and provide provisions related to the Utah Procurement Code.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs that are expected. The changes update the rule and provide provisions related to the Utah Procurement Code.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs that are expected. The changes update the rule and provide provisions related to the Utah Procurement Code.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated affects that the rule will have on businesses. The changes update the rule to implement the recent changes to the Utah Procurement Code regarding the contingency fee cap for outside counsel.

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

ATTORNEY GENERAL
 ADMINISTRATION
 ROOM 230 UTAH STATE CAPITOL
 350 N STATE ST
 SALT LAKE CITY, UT 84114
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov

◆ Nicole Alder by phone at 801-538-3240, or by Internet E-mail at nicolealder@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2015

AUTHORIZED BY: Brian Tarbet, Chief Civil Deputy Attorney General

R105. Attorney General, Administration.

R105-1. Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services.

R105-1-1. Purpose and Authority.

A. The purpose of this rule is to provide the requirements for procurements that are managed by the Attorney General, including the hiring of outside counsel, expert witnesses, litigation support services and procurement items.

B. This rule is adopted pursuant to authority granted by the Utah Procurement Code and Section 67-5-32(1)(a), including authority to manage procurement of procurement items directly or by delegation of the Chief Procurement Officer of the Division of Purchasing of the Department of Administrative Services.

R105-1-2. Definitions.

Terms in this Rule R105-1 shall be as defined in the Utah Procurement Code. The definitions in Rule R33-1 also apply to this Rule R105-1, except in case of conflict, the definitions in this Rule R105-1 shall control. Additional definitions are provided below.

A. "Agency" means any department, division, agency, commission, board, council, committee, authority, institution, or other entity within the State government of Utah (see Utah Code Ann. Sec. 67-5-3).

B. "Attorney General" means the Attorney General of the State of Utah, or the Attorney General's designee.

C. "Emergency" means a determination by the Attorney General in writing that a provision of this Rule needs to be waived due to the need for timeliness, litigation deadlines, confidentiality, or other emergency circumstances.

D. "Expert witness" means a person whose knowledge, skill, experience, training or education in a scientific, technical, or other specialized area, would enable the person to give testimony under Rule 702 of the Utah Rules of Evidence.

E. "Litigation Support Services" includes any goods, services, software, or technology.

F. "Outside counsel" means an attorney or attorneys who are not, or a law firm whose attorneys are not, employed by the Attorney General's office, pursuant to Utah Code Ann. Sec. 67-5-7 et seq., which the Attorney General appoints, pursuant to Utah Code Ann. Sec. 67-5-5, to represent, provide legal advice, or counsel to an agency of the State. "Outside counsel" may or may not be designated as "Special Assistant Attorney General", as the Attorney General determines.

G. "Procurement item" or "Procurement items" means any goods, services, software or technology.

H. "Small purchase" means a purchase under Rule R105-1-7.

I. "Sole source" means a determination by the Attorney General, in writing, that the sole source requirements of the Utah Procurement Code and this Rule have been met.

J. "State" means the State of Utah.

R105-1-3. Special Considerations to Best Serve the Public.

A. This rule applies to the procurement and appointment of outside counsel, expert witnesses, litigation support services, litigation related consultants, as well as management software and services by the Attorney General.

B. In order to properly fulfill the responsibilities of the Office, the procurement of outside counsel, expert witnesses, litigation support services, litigation related consultants, as well as management software and services often requires that public notice of a particular procurement not be provided. The provisions of the Utah Procurement Code and this Rule must be met. Such a procurement must be processed as an emergency procurement or be a procurement that does not require notice.

C. The Attorney General may select outside counsel, expert witnesses, professional litigation support services, litigation related consultants, as well as management software and services pursuant to any authorized process under the Utah Procurement Code. In any such selection process, it may be specified that the outside counsel is responsible for providing the expert witnesses or other litigation goods and services through the selection process for outside counsel and pursuant to the contract provisions with the Attorney General.

D. If a procurement item is not procured through the request for proposals, small purchases, prequalification and vendor list, sole source, or emergency provisions of this rule, the Attorney General may determine to use an Invitation for Bids or any other procurement process allowed by the Utah Procurement Code provided that the following applicable Utah laws are met:

1. The Utah Procurement Code; and

2. Administrative Rules of the Division of Purchasing and General Services, when such rules of the Division of Purchasing and General Services are referred to in this Rule R105-1, except as otherwise exempted or in conflict with this Rule R105-1.

E. The Attorney General may, in a multistate case involving other states as parties aligned with Utah, elect to enter into a fee sharing agreement in which each state contributes to a litigation fund that is used to purchase expert witnesses and/or other litigation support services including litigation related consultants, as well as management

software and services, or through a similar group procurement agreement. The agreement shall be treated collectively as a sole source procurement of all goods and services purchased under the terms of the agreement.

F. The Attorney General may, in a multistate case involving other states as parties aligned with Utah, select outside counsel jointly with some or all of the other states as a sole source procurement. If a contingency fee (not based on hourly rates) is used in the multistate case, it shall not be subject to the fee limitations of Rule R105-1-11.

G. The Attorney General's office shall ensure that the procurement of outside counsel is supported by a determination by the Attorney General that the procurement is in the best interests of the state, in light of available resources of the Attorney General's office.

H. The Attorney General's office shall provide for the fair and equitable treatment of all potential providers of outside counsel, expert witnesses, and other litigation support services including, litigation related consultants, as well as management software and services consistent with the limitations and procedures set forth in this Rule R105-1.

I. The Attorney General's office shall ensure that fees for outside counsel, whether based on an hourly rate, contingency fee, or other arrangement, are reasonable and do not exceed industry standards.

R105-1-4. Available Procurement Processes.

(1) In General. Prior to any procurement for legal services, the Attorney General shall first determine which process under the Utah Procurement Code shall be used, including but not limited to, small purchase, prequalification and vendor list, sole source, emergency procurement, availability of a statewide or regional contract, invitation for bids, or request for proposals.

(2) Prequalification and Approved Vendor Lists. Rule R33-4-101 and R33-4-102 shall apply to the Prequalification of Potential Vendors and Thresholds for Approved Vendor Lists, except that the maximum threshold for procuring the services of a licensed attorney(s) shall be \$250,000.

R105-1-5. Invitation for Bids.

Any competitive sealed bidding (invitation for bids) or multiple stage bidding process may occur in accordance with Sections 63G-6a-601 through 63G-6a-612, as well as Rule R33-6.

R105-1-6. Request for Proposal Process.

A. The Request for Proposal process may be used in accordance with Sections 63G-6a-701 through 63G-6a-711. The process shall also be subject to Rule R33-7 except as otherwise specified in this Rule R105-1.

B. The Request for Proposal process may be issued in stages, or may be issued after a request for information or other procurement process allowed by the Utah Procurement Code or this Rule.

C. The Request for Proposal, shall contain, in addition to the requirements of Rule R33-7-102, at a minimum, the following information:

1. A description of the project.

2. Any fee arrangements.

3. The persons or entities being sought in the procurement, including whether an individual person, firm or association of firms may respond.

4. The qualification criteria and the relative importance of the criteria. Examples of criteria include:

- a. Identification by name and experience of the proposed service provider(s);
- b. A description of the duties and responsibilities of each person providing the service; and
- c. The ability of the persons providing the service to meet the needs of the project, including the consideration of any association with other persons, expert witnesses or firms;

5. The Contractual Requirements, which may be accomplished by including a copy of the contract.

6. A request for a conflicts analysis, including potential conflicts of interest or other related matters concerning the offeror's ability to ethically perform the requested services.

7. Requirements regarding the date, time, place, form and method concerning the filing of the Response to the Request for Proposals.

8. A statement that the Attorney General reserves the right to reject late-filed or nonconforming proposals.

9. A statement that the Attorney General reserves the right to reject all proposals. The Attorney General also reserves the right to modify or cancel the Request for Proposal Process and may or may not initiate a new Request for Proposal Process for the particular procurement matter.

D. Public notice of the Request for Proposals shall be provided in accordance with the Utah Procurement Code.

E. The award process, including notice of award, shall be made by the Attorney General in accordance with the Utah Procurement Code and this Rule.

F. A record of the procurement shall be made in accordance with the Utah Procurement Code and this Rule, including Rule R105-1-14.

G. In any selection process for outside counsel, it may be specified that the outside counsel is responsible for providing the expert witnesses or other litigation goods and services including litigation related consultants, as well as management software and services through the outside counsel's selection process and pursuant to the contract provisions with the Attorney General.

H. Minimum scores for any of the criteria may be used.

R105-1-7. Small Purchases.

A. Small Purchases shall be conducted in accordance with the Utah Procurement Code and Rule R33-4-104, except that the maximum thresholds for small purchases shall be as described in this Rule R105-1-7.

B. For Outside Counsel, litigation related consultants, management software and services, as well as expert witnesses, the small purchase maximum threshold is \$250,000. A written justification statement shall be filed explaining the reason(s) for selection of the particular attorney, law firm or expert witness for the particular matter.

C. For the selection of litigation support services that are not covered under Rule R105-1-7(B), including but not limited to court reporting, litigation related copying and printing services, the small purchase maximum threshold is \$50,000. For a purchase between \$2500 and \$50,000, a minimum of two quotes shall be obtained or there shall be developed a rotation system of qualified persons or firms that meet the qualifications for the service. For any purchase of \$2500 or less, a direct award may be made.

D. The Attorney General may make such other small purchases delegated to the Attorney General by the Chief Procurement Officer pursuant to the Utah Procurement Code.

E. Under Section 63G-6a-408(3), a threshold stated in this Rule may be exceeded if the Attorney General (not a designee) or a person specifically designated in writing by the Attorney General gives written authorization to exceed the threshold that includes the reasons for exceeding the threshold.

R105-1-8. Sole Source.

A. Sole Source procurement shall be conducted in accordance with the requirements set forth in Section 63G-6a-802 of the Utah Procurement Code.

B. Unless the Attorney General determines that a publication of a sole source shall be published, sole sourced procurement items under this Rule need not be published regardless of cost, all of which is in accordance with Section 63G-6a-802(4)(b)(ii).

R105-1-9. Emergency Procurements and Waiver of Requirements.

A. Emergency procurements shall be conducted in accordance with the requirements set forth in Section 63G-6a-803 of the Utah Procurement Code and Rule R33-8-401.

B. An emergency procurement is a procurement procedure where the Attorney General does not need to use a standard procurement process.

C. An emergency procurement may only be used when an emergency exists as defined in this Rule.

D. Emergency procurements are limited to those procurement items necessary to mitigate the emergency.

E. While a standard procurement process is not required under an emergency procurement, when practicable, the Attorney General should seek to obtain as much competition as possible through the use of phone quotes, internet quotes, limited invitations to bid, or other selection methods while avoiding harm, or risk of harm, to the public health, safety, welfare, property or impairing the ability of a public entity to function or perform required services.

F. The Attorney General shall make a written determination documenting the basis for the emergency and the selection. A record of the determination and selection shall be kept in the contract file. The documentation may be made after the emergency condition has been alleviated.

R105-1-10. Confidentiality.

Except when an emergency exists under Rule R105-1-9 and in accordance with applicable law, where public inspection may be delayed until such time as the cause for the emergency no longer exists, the following shall be met:

A. Protected Records.

1. The following are protected records and may be redacted subject to the procedures described below in accordance with the Governmental Records Access and Management Act (GRAMA) Title 63G, Chapter 2 of the Utah Code:

a. Trade Secrets, as defined in Section 13-24-2;

b. Commercial information or non-individual financial information subject to the provisions of Section 63G-2-305(2); or

c. Other Protected Records under GRAMA.

2. Process For Requesting Non-Disclosure. Any person requesting that a record be protected shall include with the bid/proposal or submitted document:

- a. a written indication of which provisions of the bid/proposal or submitted document are claimed to be considered for business confidentiality or as a protected record (including trade secrets or other reasons for non-disclosure under GRAMA); and
- b. a concise statement of the reasons supporting each claimed provision of business confidentiality or as a protected record.
- c. Pricing may not be classified as business confidential and will be considered public information.
- d. An entire set of bidding documents or proposal documents may not be designated as "PROTECTED", "CONFIDENTIAL" or "PROPRIETARY" and shall be considered non-responsive unless the offeror removes the designation.
- e. This term bid or proposal for purposes of this Rule shall apply to any document submitted to the Attorney General for purposes of a procurement matter.

B. Notification.

1. A person who complies with this Rule R105-1-10 shall be notified by the Attorney General's office prior to the public release of any information for which a claim of confidentiality has been asserted.

2. Except as provided by court order, the Attorney General's office to whom the request for a record is made under GRAMA, may not disclose a record claimed to be protected under this Rule but which the Attorney General's Office or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal, is reached. This Rule does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee. To the extent allowed by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

3. Any allowed disclosure of public records submitted in the request for proposals process will be made only after the selection of the successful offeror(s) has been made public in compliance with Section 63G-6a-709.5.

C. Publicizing Awards.

1. In addition to the requirements of Section 63G-6a-709.5, the following shall be disclosed after receipt by the Attorney General's Office of a GRAMA request and payment of any lawfully enacted and applicable fees:

- a. the contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that are to be non-disclosed under this Rule or State law;
- b. unsuccessful proposals, except for those portions that are to be non-disclosed under this Rule or State law;
- c. the rankings of the proposals;
- d. the names of the members of any evaluation committee members (reviewing authority);
- e. the final scores used by the evaluation committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores or rankings; and
- f. the written justification statement supporting the selection, except for those portions that are to be non-disclosed under this Rule or State law.

2. After due consideration and public input, the following has been determined by the Procurement Policy Board and the Attorney General's Office to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, and, to the extent allowed by law, will not be disclosed by the Attorney General's Office at any time to the public including under any GRAMA request:

- a. the names of individual scorers/evaluators in relation to their individual scores or rankings;
- b. any individual scorer's/evaluator's notes, drafts, and working documents;
- c. non-public financial statements; and
- d. past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the Attorney General's Office. To the extent such past performance or reference information is included in the written justification statement, the justification statement is still subject to public disclosure.

3. In regard to an Invitation for bids issued by the Attorney General's Office, the Attorney General's Office shall, on the day on which the award of a contract is announced, make available to each bidder and to the public, a notice that includes:

- a. the name of the bidder to which the contract is awarded and the price(s) of the procurement item(s); and
- b. the names and the prices of each bidder to which the contract is not awarded.

R105-1-11. Special Provisions regarding Procurement of Outside Counsel.

A. The Attorney General shall not enter into a contract for outside counsel unless the following requirements are met throughout the contract period and any extensions thereof:

1. The Attorney General shall review the proposed fee arrangement to hire outside counsel to ensure that there is a reasonable, good faith legal basis to pursue the litigation in the interest of the citizens of the State, and ensure that fees for outside counsel, whether based on an hourly rate, contingency fee, or other arrangement, are reasonable and consistent with industry standards.
2. The Attorney General shall retain oversight and control over the course and conduct of the litigation or anticipated litigation;
3. The Attorney General shall designate a member of the Attorney General's Office to personally oversee the litigation;
4. The Attorney General shall retain veto power over any decisions made by outside counsel, and no lawsuit will be filed, or party added to or served with process in any lawsuit, by outside counsel, without express written permission of the Attorney General;
5. The Attorney General shall be apprised of, attend and/or participate in all settlement offers or conferences; and
6. Decisions regarding settlement of the case shall be made by the Utah Attorney General and not the outside counsel, provided that the Attorney General may give outside counsel a reasonable range of specific settlement authority in writing, within which outside counsel is authorized to settle the case.

B. Every contingency fee contract for outside counsel shall be reasonable and not exceed industry standards for the type of case

and level of expertise needed. Unless subject to the Opt-Out Provisions of Rule R105-1-11 C or an exception under Rule R105-1-11 D, contingency fees (not based on hourly rates) paid by the State of Utah shall be no greater than:

1. ~~[33 and 1/3]25~~ percent ~~[of the first \$5,000,000 recovered;~~
2. ~~25% of any additional amounts recovered above \$5,000,000,~~ up to a total of \$25,000,000 recovered;
- [3]2. 10 percent for any amount in excess of \$25,000,000 recovered; and
- [4]3. A total maximum contingency fee paid by the State of Utah to not exceed \$50,000,000.

C. Opt-out.

1. A contingency fee contract in excess of the limits set forth in Rule R105-1-11 B 1 through Rule R105-1-11 B 4, or that otherwise differs materially from any limitations contained in this Rule R105-1, may only be entered into upon a written finding by the Attorney General that the higher fee or different terms are appropriate given the needs of the case, reasonable and do not exceed industry standards given the nature of the case, and that the contract will not encourage unwarranted high risk litigation that is not in the interests of the citizens of the State. This written finding shall be posted on the Attorney General's website. The written finding may be filed at any time, including, but not limited to, before or after the filing of a protest or any other objection, claim or litigation regarding the procurement.

2. The Attorney General shall provide the written finding that the higher fee is appropriate to the Governor at least seven calendar days before the contingency fee contract is to be signed, except when an emergency exists under Rule R105-1-9, in which case the Attorney General shall, if time permits given the emergency, provide the written finding one day before the contingency fee contract is to be signed.

3. If the Governor so requests prior to the contingency fee contract being signed, the Attorney General shall call a meeting of all Division Directors in the Attorney General's Office to review the Attorney General's written finding. The contract shall only be signed if at least two thirds of the Division Directors whose Divisions are not directly involved in the procurement agree that the higher fee or different terms are in the interests of the citizens of the state. Some Directors may participate by electronic means.

D. Exceptions: This Rule R105-1-11 does not apply to the hiring of counsel for any of the following:

1. Debt collection or restitution cases;
2. Legal advice or litigation services related to international goods or services;
3. Legal advice or litigation services related to matters involving death or personal injury;
4. Bond counsel, disclosure counsel, or other similar counsel involved in the issuance of debt instruments by the State;
5. A multistate case under Rule R105-1-3 E or F; or
6. As otherwise provided in Utah Code, including Section 26-19-7(2)(b)(ii), wherein the Office of Recovery Services pays a contingency fee of 33.3% in Medicaid reimbursement cases.

E. Notwithstanding any other provision of this Rule R105-1-11, the solicitation for outside counsel may provide a lower fee limitation and/or provide for weights and scoring of the proposed fees in accordance with the Utah Procurement Code, which will allow for a competitive process and may provide for fees below the limitations set forth in this Rule.

R105-1-12. Transparency in Contingency Fee Contracts with Outside Counsel.

A. Except as otherwise provided by GRAMA, applicable law, Rules of Professional Conduct or this Rule, a copy of the executed contract with outside counsel shall be made available for public inspection in accordance with GRAMA.

B. Any payment by the Attorney General under a contingency fee contract shall be made available for public inspection in accordance with GRAMA.

C. Upon request of the President of the Utah Senate or Speaker of the Utah House of Representatives, the Attorney General shall make available all contracts for hiring outside counsel on a contingency fee basis in the preceding year from the date of the request as well as any known names of the parties to the legal matter, the amount of any recovery and the amount of any contingency fee paid. Notwithstanding this, the Attorney General may withhold information that is confidential under GRAMA, Rules of Professional Conduct or applicable law unless the Attorney General determines that such release of information can lawfully be provided to the President of the Utah Senate or Speaker of the Utah House of Representatives ~~[can be]~~ and is adequately assured of confidentiality through a confidentiality agreement or similar document.

R105-1-13. Contracts.

Those awarded a contract under this Rule shall be required to enter into a written contract with the Attorney General. The written contract shall contain all material terms set forth in:

- A. The final procurement documents issued by the Utah Attorney General;
- B. The provisions in documents submitted by the provider to the extent such provisions are accepted by the Attorney General;
- C. A termination for cause and a termination for convenience clause; and
- D. Any terms required by law, whether by the constitutions, statutes, or rules or regulations of the United States or the State of Utah.

R105-1-14. Retention and Non-availability of Files.

A. All proposals submitted to the Attorney General under this rule become the property of the State of Utah and the office of the Attorney General.

B. All information in all proposals shall be placed in a file relating to the project for which the proposal was submitted. Each file shall contain:

1. If applicable, a copy of all written determinations of the Attorney General required by the Utah Procurement Code or this Rule;
2. A copy of the procurement documents and any written documentation related to notification requirements; and
3. All responses to procurements and modifications, in writing, to any procurement if those modifications have been negotiated by the Attorney General.
4. All records shall be maintained or disposed of in accordance with Part 20 of the Utah Procurement Code.

R105-1-15. Cancellations, Rejections, and Debarment.

Cancellations, rejections and debarments shall be subject to the provisions of the Utah Procurement Code and, except as otherwise provided in this Rule R105, Rule R33-9.

R105-1-16. Preferences.

Preferences shall be subject to the provision of the Utah Procurement Code, and except as otherwise provided in this Rule R105, Rule R33-10.

R105-1-17. Bond and Security.

Any bonds or security shall comply with Part 11 of the Utah Procurement Code and Rule R33-11.

R105-1-18. Terms and Conditions, Contracts, Multiple Year, Multiple Award, Change Orders and Costs.

There shall be compliance, as applicable, with Part 12 of the Utah Procurement Code and Rule R33-12.

R105-1-19. Controversies and Protests.

Part 16 of the Utah Procurement Code shall apply as well as Rule R33-16.

R105-1-20. Procurement Appeals Board, Appeals to Court and Court.

Parts 17, 18 and 19 of the Utah Procurement Code shall apply as well as Rules R33-17, R33-18 and R33-19.

R105-1-21. Interaction between Procurement Units.

Part 21 of the Utah Procurement Code shall apply as well as Rule R33-21.

R105-1-22. Unlawful Conduct and Penalties.

There shall be compliance with Part 24 of the Utah Procurement Code and Rule R33-24.

KEY: Attorney General, litigation support, outside counsel, expert witnesses

**Date of Enactment or Last Substantive Amendment: 2015
Authorizing, and Implemented or Interpreted Law: Art VII Sec 16; 67-5; 63G-6**

**Commerce, Occupational and
Professional Licensing
R156-24b-302b
Qualifications for Licensure -
Examination Requirements**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39092

FILED: 01/26/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Physical Therapy Licensing Board determined the rule needs to clarify that verification of a passing score on the National Physical Therapy

Examination shall be verified through a score transfer from the Federation of State Boards of Physical Therapy (FSBPT).

SUMMARY OF THE RULE OR CHANGE: An explicit statement requiring an FSBPT score transfer in order to verify that the applicant received a passing score on the National Physical Therapy Examination was added to Subsection R156-24b-302b(1).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-24b-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** It is difficult to quantify the potential impact of the proposed change on the state/Division budget. With a score transfer, Division staff would not need to send letters and/or seek other verification that an applicant met minimum licensure requirements as established by the profession, which would result in a time savings. The Division will incur minimal costs of approximately \$25 to print and distribute the rule once the proposed amendments are made effective. Any printing/distribution costs incurred will be absorbed in the Division's current budget.

◆ **LOCAL GOVERNMENTS:** The proposed amendments apply only to applicants for licensure as a physical therapist or physical therapist assistant. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** The proposed amendment applies only to applicants for licensure as a physical therapist or physical therapist assistant. Applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendment applies only to applicants for licensure as a physical therapist or physical therapist assistant. The FSBPT automatically completes a no cost score transfer to the jurisdiction in which the applicant has applied for licensure. If an individual is seeking licensure in another jurisdiction, the FSBPT currently charges \$80 for the first score transfer and \$55 for any subsequent score transfers. Many jurisdictions require FSBPT score transfers in order to verify that applicants for licensure have met professional standards as measured by the national examination. An FSBPT score transfer will decrease the length of time required to process an application for licensure by the Division.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendment applies only to applicants for licensure as a physical therapist or physical therapist assistant. The FSBPT automatically completes a no cost score transfer to the jurisdiction in which the applicant has applied for licensure. If an individual is seeking licensure in another jurisdiction, the FSBPT currently charges \$80 for the first score transfer and \$55 for any subsequent score transfers.

Many jurisdictions require FSBPT score transfers in order to verify that applicants for licensure have met professional standards as measured by the national examination. An FSBPT score transfer will decrease the length of time required to process an application for licensure by the Division.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing requires an applicant for a physical therapist or physical therapist assistant license to arrange for the examination provider to transfer the applicant's examination score directly to the Division. The associated costs, which are not within the control of the Division, are anticipated to impact individual applicants rather than businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Suzette Farmer by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at sfarmer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2015

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-24b. Physical Therapy Practice Act Rule.

R156-24b-302b. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsections 58-24b-302(1)(e), (2)(e) and (3)(e), each applicant for licensure as a physical therapist or physical therapist assistant shall pass the FSBPT's National Physical Therapy Examination with a passing score as established by the FSBPT, after submitting proof of graduation from a professional physical therapist education program that is accredited by a recognized accreditation agency. A passing score on the FSBPT's National Physical Therapy Examination shall be verified through a score transfer from the FSBPT.

(2) An applicant for licensure as a physical therapist who fails the FSBPT National Physical Therapy Examination-Physical Therapist is eligible to sit for the FSBPT National Physical Therapy Examination-Physical Therapist Assistant after submitting an application for licensure as a Physical Therapist Assistant.

KEY: licensing, physical therapy, physical therapist, physical therapist assistant

Date of Enactment or Last Substantive Amendment: [~~August 21, 2014~~2015]

Notice of Continuation: November 15, 2011

Authorizing, and Implemented or Interpreted Law: 58-24b-101; 58-1-106(1)(a); 58-1-202(1)(a)

**Environmental Quality, Water Quality
R317-10-8
Utah Wastewater Operator Certification
Council**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39105

FILED: 02/02/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Following the last amendment, it was discovered that once the actual changes in the marked text were incorporated, the composition of the membership of the council was not consistent with the number of members. This amendment allows the representation by the council members to be consistent with the total number of voting members previously established, and also meet the intent of the previous amendment.

SUMMARY OF THE RULE OR CHANGE: Beginning in Subsection R317-10-8(A)(2)(a), the three defined positions representing educational institution, certified wastewater operators in the private sector, and vocational training, are changed to be "two members who are at large and may represent" those same three areas. This will allow more flexibility and are suggestions on areas that should be represented, but does not require all three to be represented at the same time. The language concerning attendance at meetings by division staff was separated from the composition of the council to more clearly show that they are not voting council members. The numbering for the subsequent subsections was adjusted accordingly.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 19, Chapter 5

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget due to this change. The changes are to clarify the language about the composition of the Wastewater Operator Certification Council, and do not introduce or remove any responsibilities or fees. There are still seven voting members of the council who receive no compensation from the state budget.

♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to the local budget due to this change. The changes are to clarify the language about the composition of the Wastewater Operator Certification Council, and do not introduce or remove any responsibilities or fees. There are still seven voting members of the council who serve on a voluntary basis. Some members are employees of local governments and may be paid for their time by those entities as they perform their voluntary duties on the council.

♦ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses due to this change. The changes are to clarify the language about the composition of the Wastewater Operator Certification Council, and do not introduce or remove any responsibilities or fees. There are still seven voting members of the council who serve on a voluntary basis. Some members may represent small business as a wastewater operator and may, or may not, be paid for their time by those entities as they perform their voluntary duties on the council.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities since they are not generally involved in the wastewater industry or the composition of the certification council.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this amendment. It only redefines the composition of the membership of the council and has no compliance aspects to it.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment is to clean up the language of the rule concerning the certification council and should have no impact on businesses. The certification of wastewater operators is only required for publicly owned wastewater works and very few businesses have voluntary certification of their operators. There is the possibility that one of the members may be from the private sector, but with this change it will not be required as it was previously.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2015

AUTHORIZED BY: Walter Baker, Director

R317. Environmental Quality, Water Quality.

R317-10. Certification of Wastewater Works Operators.

R317-10-8. Utah Wastewater Operator Certification Council.

A. Membership.

1. Members of the council shall be appointed by the board.

a. Recommendations for appointments may be made by interested individuals or organizations, including the Department of Environmental Quality, Utah League of Cities and Towns, Water Environment Association of Utah, the Rural Water Association of Utah, and the Civil and Environmental Engineering Departments of universities in Utah.

b. The council shall serve at the discretion of the board to oversee the certification program in an advisory capacity to the director as provided in this rule.

2. The council shall consist of seven voting members and should include representation from interest groups as follows:

a. four members who are operators holding valid certificates, with at least two members being wastewater collection system operators and two members being wastewater treatment system operators;

b. one member with at least three years of management experience in either wastewater treatment, collection, or both, who represents municipal wastewater management;

c. ~~one~~two members who ~~is~~are at large and may represent:

(1) an educational institution in Utah;

~~(d.)~~(2) ~~one member from~~those who are currently certified as wastewater operators in the private sector ~~who is currently certified as a wastewater operator~~; or

~~(e.)~~(3) ~~one member representing~~vocational training~~;~~ and]

~~(f)~~3. ~~a~~At least two non-voting division staff ~~members~~ should be in attendance at any council meeting.

~~(3)~~4. Voting council members shall serve as follows:

a. terms of office shall be for three years with two members retiring each year, except for the third year when three shall retire;

b. any member who does not attend at least 50 percent of the meetings during a year of service may be replaced at the discretion of the board;

c. appointments to succeed a council member who is unable to serve his full term shall be for the remainder of the unexpired term; and

d. council members may be reappointed, but they do not automatically succeed themselves.

~~(4)~~5. A majority of voting members shall constitute a quorum for the purpose of transacting council business.

~~(5)~~6. Each year the Council shall elect from its membership a Chair and Vice Chair.

B. Duties of the council shall include:

1. evaluating examinations to ensure compatibility with operator responsibilities, accuracy of content, and composition of individual exam databank items;

2. evaluating certification applications, as requested by the director, and making recommendations for approval or disapproval;

3. assisting in administering examinations at various locations;
4. providing a forum for ongoing evaluation of the certification program and recommending changes to the director;
5. providing advice and recommendations for CEU approval; and
6. preparing an annual report of certification program activities for distribution to the board and other interested parties.

KEY: water pollution, operator certification, wastewater treatment, renewals

Date of Enactment or Last Substantive Amendment: [~~August 27, 2014~~2015]

Notice of Continuation: July 11, 2012

Authorizing, and Implemented or Interpreted Law: 19-5

Governor, Economic Development **R357-3** Refundable Economic Development Tax Credit

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
DAR FILE NO.: 39094
FILED: 01/28/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule has been updated to reflect historic practices and provide a more comprehensive outline to the processes and procedures utilized in administering and awarding the tax incentive.

SUMMARY OF THE RULE OR CHANGE: This rule outlines how a tax incentive under this part is granted including the criteria used in screening applicants. It also outlines how the tax credit is calculated and redeemed. This rule defines key terms that the old rule did not. It also provides for the application process, the factors to be considered in authorizing an economic development tax increment financing (EDTIF) award, the old rule did not. The new rule also outlines the application for and verification of information supporting an annual EDTIF payment, the old rule does not do this. The new rule outlines how a request for modification of the EDTIF offer or contract, the old rule does not include this.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63M-1-2404

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** No effect to the state budget is anticipated because this outlines already existing processes and procedures.

◆ **LOCAL GOVERNMENTS:** Local governments will not be affected by this rule because local governments cannot redeem tax credits.

◆ **SMALL BUSINESSES:** Small businesses will not be affected by this rule because only businesses with the intent to hire more than 50 employees maybe consider for this tax credit.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** All those who apply and are awarded the tax credit under this part will not be affected because this rule outlines the already existing processes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no new compliance costs for affected persons because this rule outlines the already existing processes and procedures to apply and be awarded this tax credit.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2015

AUTHORIZED BY: Val Hale, Executive Director

R357. Governor, Economic Development.

R357-3. Refundable Economic Development Tax Credit.

[R357-3-1. Authority:

~~(1) Subsection 63M-1-2404 requires the office to make rules establishing the conditions that a business entity must meet to qualify for a tax credit under Part 24 of the Utah Code Annotated.~~

R357-3-2. Definitions:

~~(1) Terms in these rules are used as defined in UCA 63M-1-2403.~~

R357-3-3. Conditions:

~~(1) To qualify for an economic development tax credit a business entity must have a new commercial project which:~~

~~_____ (a) must be within an economic development zone created under UCA 63M-1-2404;~~

~~_____ (b) Includes direct investment within the geographic boundaries of the development zone created under UCA 63M-1-2404;~~

~~_____ (c) brings new incremental jobs to Utah;~~

~~_____ (d) includes significant capital investment, the creation of high paying jobs, or significant purchases from Utah vendors and providers, or any combination of these three economic factors;~~

~~_____ (e) generates new state revenues; and~~

~~_____ (2) The business entity must follow the procedure in UCA 63M-1-2405 for obtaining a tax credit certificate.~~

~~_____ (3) The office, with advice from the board, may enter into an agreement with a business entity authorizing a tax credit if the business entity meets the standards under subsections (1) and (2).~~

~~_____ (4) A business entity is eligible for an economic development tax credit only if the office has entered into an agreement under subsection (3) with the business entity.]~~

R357-3-1. Authority.

(1) Subsection 63M-1-2404 requires the office to make rules establishing the conditions that a business entity must meet to qualify for a tax credit under Part 24 of the Utah Code Annotated.

R357-3-2. Definitions.

(1) Terms in these rules are used as defined in UCA 63M-1-2403.

(2) "Administrator" means the internal staff position created by the Executive Director of GOED.

(3) "Direct investment within the geographic boundaries" means that the applicant for the tax credit will invest in a new commercial project in the economic development zones.

(4) "Employee," "Employee Position" or "Full Time Equivalent (FTE)" means an employee, or leased employee via a third party vendor, who is a Utah resident working at and dedicated to the new commercial project. Each position shall be entitled to the same basic health insurance, retirement and other benefits, if any, given by the new commercial project to its other FTEs excluding those benefits given to any of the new commercial project's executive and other highly compensated employees, except in the case where an FTE is a leased employee, in which case such leased employee should be entitled to comparable benefits as other leased employees.

(a) When counting FTEs, if an FTE has his or her employment with the new commercial project terminated for any reason before completion of the applicable year, another FTE otherwise meeting the requirements described above may be hired full-time to fill the terminated FTE's position and complete the year of qualifying full-time employment, so long as such position is filled within 60 days for a non-exempt FTE and 90 days for an exempt employee.

(5) "GOED" means The Governor's Office of Economic Development.

(6) "High Paying Jobs" means:

(a) jobs associated with a new commercial project when the aggregate average wage is at least 100% of the average county wage, if the new commercial project is located within a rural county;

_____ (b) jobs associated with a new commercial project when the aggregate average wage is at least 125% of the average county wage, if the new commercial project is located within an urban county; or

_____ (c) upon application from an urban county, GOED may consider jobs associated with a new commercial project when the aggregate average wage is at least 100% of the average county wage, if the new commercial project would provide substantive unique benefit to the county, as determined by the GOED Board.

_____ (d) "Rural County" means the following counties:

_____ (i) Beaver;

_____ (ii) Box Elder;

_____ (iii) Cache;

_____ (iv) Carbon;

_____ (v) Daggett;

_____ (vi) Duchesne;

_____ (vii) Emery;

_____ (viii) Garfield;

_____ (ix) Grand;

_____ (x) Iron;

_____ (xi) Juab;

_____ (xii) Kane;

_____ (xiii) Millard;

_____ (xiv) Morgan;

_____ (xv) Piute;

_____ (xvi) Rich;

_____ (xvii) San Juan;

_____ (xviii) Sanpete;

_____ (xix) Sevier;

_____ (xx) Summit;

_____ (xxi) Tooele;

_____ (xxii) Uintah;

_____ (xxiii) Wasatch;

_____ (xxiv) Washington; and

_____ (xxv) Wayne.

(7) "Urban County" means the following counties:

_____ (i) Davis;

_____ (ii) Salt Lake;

_____ (iii) Utah; and

_____ (iv) Weber.

(8) "Wages" means gross earnings, including company contributed medical benefits, bonuses, and overtime pay.

R357-3-3. Application Process.

(1) In order to apply for an Economic Development Tax Incentive, a business entity must submit an application in a form prescribed by GOED.

(2) In order to verify the information submitted in the application, the company may be required to supply additional information, which may include:

_____ (a) Balance Sheets;

_____ (b) Income Statements;

_____ (c) Cash Flow Statements;

_____ (d) Tax filings;

_____ (e) Market analyses;

_____ (f) Competing states' incentive offers;

- _____ (g) Corporate structure;
- _____ (h) Workforce data;
- _____ (i) Forecasted new state revenue associated with the new commercial project;
- _____ (j) Forecasted incremental job creation associated with the new commercial project;
- _____ (k) Forecasted wages associated with the new commercial project; or
- _____ (l) Other information as determined by GOED within its reasonable discretion.
- _____ (3) Information provided by the business entity is subject to the Government Records Access and Management Act. The business entity has the option, at its sole discretion and responsibility, to designate what information provided is private or protected subject to UCA 63G-2-302 and/or UCA 63G-2-305.
- _____ (4) GOED will review the applications to consider at least the following factors:
 - _____ (a) Whether the new commercial project meets the criteria set forth in UCA 63M-1-2404 and UCA 63M-1-2405;
 - _____ (b) Whether the company is projecting positive long term growth;
 - _____ (c) The overall benefit to the State of the new commercial project;
 - _____ (d) The uniqueness of the economic opportunity;
 - _____ (e) Other factors that, in conjunction with (a) through (d), would mitigate the loss or potential loss of new state and local revenues in the state, high paying jobs, new economic growth, or that address the factors set forth in UCA 63M-1-2402 and 2404.
- _____ (5) Pursuant to UCA 63M-1-910, the GOED Board of Economic Development shall determine which industries shall be targeted for economic development.

R357-3-4. Factors to Be Considered in Authorizing an Economic Development Tax Credit Award.

- _____ (1) The amount and duration of the tax credit award shall be determined on a case-by-case basis. Factors to be considered include but are not limited to:
 - _____ (a) Whether the industry has been determined by the GOED Board as a targeted industry;
 - _____ (b) The competitive nature of the project, including whether the Company has secured real estate for its new commercial project at the time of application;
 - _____ (c) To what extent other states have available incentives for the new commercial project, and the competitiveness of the other incentives, if known;
 - _____ (d) Comparison to previously incented projects in size and scope, and in conjunction with other factors listed;
 - _____ (e) The economic environment, including the unemployment rate and the underemployment rate, at the time the new commercial project or business entity applies;
 - _____ (f) The location of the new commercial project;
 - _____ (g) The average wage level of the forecasted jobs created;
 - _____ (h) What terms would result in the most effective incentive for the new commercial project;
 - _____ (i) The overall benefit to the State of the new commercial project;
 - _____ (j) The demonstrated support of the local community for the project; and

_____ (k) Other factors as reasonably determined by the administrator in consultation with the GOED Board.

_____ (2) All annual tax credits shall be based on actual incremental taxes paid by the business entity or withheld on behalf of employees of a new commercial project.

_____ (3) GOED shall propose a tax credit structure based on the factors set forth in this rule in a combination GOED deems the most effective and beneficial in weighing the benefits of the State, local community, and company.

_____ (a) GOED shall propose the tax credit terms and structure to the GOED Economic Development Board prior to making a final offer to the business entity.

_____ (4) The GOED Economic Development Board may advise GOED Executive Director regarding the Tax Credit Offer.

_____ (5) If the Executive Director of GOED approves an Economic Development Tax Credit, GOED shall provide a tax credit offer letter to a business entity that includes:

_____ (a) The proposed terms of the Economic Development Tax Credit, including the maximum amount of aggregate annual tax credits and the time period over which the Tax Credits may be claimed;

_____ (b) the documentation that will be required each year in order to claim a tax credit for the following tax year as outlined in the Agreement.

_____ (6) If the applicant intends to accept the incentive offer, it shall counter-execute the tax credit offer letter.

_____ (7) If the Executive Director of GOED denies an application for an Economic Development Tax Credit, GOED shall provide a letter to the business entity that includes:

_____ (a) Notice of the application denial;

_____ (b) Reason for denial; and

_____ (c) Notice that the business entity can reapply for a tax credit if changes to the proposed new commercial project are made.

R357-3-5. Application for and Verification of Information Supporting an Annual Economic Development Tax Credit.

_____ (1) In order to receive a tax credit certificate during the term of an EDTIF agreement, a business entity must demonstrate to GOED's satisfaction, that the business entity has satisfied all of the criteria set forth in UCA 63M-1-2403 and 63M-1-2404, that the new commercial project resulted in new incremental tax revenue, that the contractual incremental job creation at the required wage criteria was achieved, and that the business entity is otherwise in compliance with the contractual requirements.

_____ (a) If the jobs, wage, and other contractual criteria are met then a tax credit award is calculated annually based on the new commercial project's new state revenue performance for the disbursement period.

_____ (2) In general, tax revenue shall be verified in the following ways with additional verification to be determined by GOED as needed:

_____ (a) Employee Withholding Taxes: Report the employee withholding taxes remitted to the Utah State Tax Commission and dates paid.

_____ (b) Vendor Paid Sales Tax: Report the Utah sales tax paid to vendors, total invoice amounts, and taxable total purchase amount.

(c) Corporate Income Taxes: Report the corporate tax in a format prescribed by GOED including Use Taxes from the annual, quarterly or monthly Utah Sales and Use Tax Return TC-62 form report the Line 4 "Goods purchased tax free and used by you" amounts and date the taxes were remitted to the Utah tax commission.

(d) If the new commercial project is not inclusive of the Company's total Utah operation, documentation supporting the apportionment of corporate tax liability to the project is required. The apportionment methodology must be approved by the GOED Administrator and documented.

(3) In order to verify direct investment in an Economic Development Zone, when requested by GOED the applicant shall provide:

(a) a lease agreement or occupancy permit that shows that the new commercial project is located in the economic development zone, during the first applicable year.

(4) In order to verify new incremental jobs, GOED may review:

(a) Aggregate Employee data from the Department of Workforce Services; or

(b) Company or a Payroll vendor for the new commercial project provided a list that included the following information but is not limited to: the number of employees, the gross wages paid including overtime pay, bonuses and other compensation, and the taxes withheld for each employee of the new commercial project.

(5) In order to verify creation of new incremental jobs and to determine whether such jobs comply with the wage requirement, GOED shall consider and/or the applicant shall provide:

(a) The employee data provided by the Department of Workforce Services, the business entity, or the private professional employment or payroll organization.

(b) If a business entity fails to produce sufficient documentation to demonstrate increased state revenue and compliance with the terms of their contract, GOED shall either request additional information or deny the tax credit pursuant to UCA 63M-1-2405(4).

R357-3-6. Requests for Modification of the Tax Credit Offer or Contract.

(1) GOED may modify, or a business entity may apply to modify, the terms of a tax credit agreement as set forth below.

(2) Nonsubstantive Modifications: GOED and the business entity may, by written amendment, make nonsubstantive modifications to the tax credit contract if:

(a) Necessary to correct clerical errors made in the initial application, the offer, the contract, or the tax credit;

(b) Necessary to make technical changes, including but not limited to: changing the business entity's legal name, timeline change subject to subsection (c) below, any other condition that does not alter the tax incentive amount or violate any state or federal law;

(c) For the purposes of this section, a timeline change of no more than 24 months is generally considered "nonsubstantive".

(d) all nonsubstantive modifications shall be documented and maintained by the GOED staff.

(3) Substantive Modifications: Under extraordinary circumstances, a business entity may apply to GOED to modify the terms of the tax credit agreement if:

(a) There is a substantial change to new commercial project plan; and

(b) Modifying the terms of the tax credit would benefit the State.

(4) Substantive Modifications be will brought to the GOED Executive Director for final approval after open consultation and comment with the GOED Board of Economic Development.

KEY: economic development, tax credit, jobs, EDTIF

Date of Enactment or Last Substantive Amendment: ~~June 18, 2008~~2015

Notice of Continuation: May 30, 2013

Authorizing, and Implemented or Interpreted Law: 63M-1-2404

Health, Children's Health Insurance Program **R382-10** Eligibility

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39102

FILED: 01/30/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to implement by rule provisions of the Patient Protection and Affordable Care Act, which allow for an ex parte review under the Children's Health Insurance Program (CHIP).

SUMMARY OF THE RULE OR CHANGE: This amendment includes reportable change requirements and outlines the process for treating reportable changes after an ex parte review. It also defines "ex parte" and makes other technical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Pub. L. No. 111-148 and Section 26-1-5 and Section 26-18-3

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Subsections 2110(b) and (c) of the Compilation of Social Security Laws, published by Social Security Administration, 01/01/2015

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because this amendment only clarifies reportable change requirements under CHIP.

- ◆ LOCAL GOVERNMENTS: There is no impact to local governments because they neither fund nor provide CHIP services to CHIP recipients.
- ◆ SMALL BUSINESSES: There is no impact to small businesses because this amendment only clarifies reportable change requirements under CHIP.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to CHIP providers and to CHIP recipients because this amendment only clarifies reportable change requirements under CHIP.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single CHIP provider or to a CHIP recipient because this amendment only clarifies reportable change requirements under CHIP.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment has no impact on business because it makes no additional requirements on care providers or enrollees.

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

HEALTH
CHILDREN'S HEALTH INSURANCE PROGRAM
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2015

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2015

AUTHORIZED BY: David Patton, PhD, Executive Director

R382. Health, Children's Health Insurance Program.

R382-10. Eligibility.

R382-10-2. Definitions.

(1) The Department adopts and incorporates by reference the definitions found in Subsections 2110(b) and (c) of the Compilation of Social Security Laws, in effect January 1, 2013[3]5.

(2) The Department adopts the definitions in Section R382-1-2. In addition, the Department adopts the following definitions:

(a) "American Indian or Alaska Native" means someone having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

(b) "Best estimate" means the eligibility agency's determination of a household's income for the upcoming eligibility period, based on past and current circumstances and anticipated future changes.

(c) "Children's Health Insurance Program" (CHIP) means the program for benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40.

(d) "Co-payment and co-insurance" means a portion of the cost for a medical service for which the enrollee is responsible to pay for services received under CHIP.

(e) "Due process month" means the month that allows time for the enrollee to return all verification, and for the eligibility agency to determine eligibility and notify the enrollee.

(f) "Eligibility agency" means the Department of Workforce Services (DWS) that determines eligibility for CHIP under contract with the Department.

(g) "Employer-sponsored health plan" means a health insurance plan offered by an employer either directly or through Utah's Health Marketplace (Avenue H).

(h) "Ex parte review" means a review process the agency conducts without contacting the recipient for information as defined in 42 CFR 457.343.

(i) "Federally Facilitated Marketplace" (FFM) means the entity individuals can access to enroll in health insurance and apply for assistance from insurance affordability programs such as Advanced Premium Tax Credits, Medicaid and CHIP.

(j) "Modified Adjusted Gross Income" (MAGI) means the income determined using the methodology defined in 42 CFR 435.603(e).

(k) "Presumptive eligibility" means a period of time during which a child may receive CHIP benefits based on preliminary information that the child meets the eligibility criteria.

(l) "Quarterly Premium" means a payment that enrollees must pay every three months to receive coverage under CHIP.

(m) "Review month" means the last month of the eligibility certification period for an enrollee during which the eligibility agency determines an enrollee's eligibility for a new certification period.

(n) "Utah's Premium Partnership for Health Insurance" or "UPP" means the program described in Rule R414-320.

R382-10-4. Applicant and Enrollee Rights and Responsibilities.

(1) A parent or an adult who assumes responsibility for the care or supervision of a child may apply or reapply for CHIP benefits on behalf of a child. A child who is independent may apply on his own behalf.

(2) If a person needs assistance to apply, the person may request assistance from a friend, family member, the eligibility agency, or outreach staff.

(3) The applicant must provide verification requested by the eligibility agency to establish the eligibility of the child, including information about the parents.

(4) Anyone may look at the eligibility policy manuals located on-line or at any eligibility agency office, except at outreach or telephone locations.

(5) If the eligibility agency determines that the child received CHIP coverage during a period when the child was not eligible for CHIP, the parent or legal guardian who arranges for

medical services on behalf of the child must repay the Department for the cost of services.

(6) The parent or child, or other responsible person acting on behalf of a child must report certain changes to the eligibility agency within ten calendar days of the day the change becomes known. The following changes are [R]reportable; [changes include:]

(a) An enrollee begins to receive coverage or to have access to coverage under a group health plan or other health insurance coverage[-];

(b) An enrollee leaves the household or dies[-];

(c) An enrollee or the household moves out of state[-];

(d) Change of address of an enrollee or the household[-];

and

(e) An enrollee enters a public institution or an institution for mental diseases.

(7) The parent or child, or other responsible person acting on behalf of a child must report the following changes to the eligibility agency. These changes must be reported at a review involving enrollee participation, or within ten calendar days of the notice date that informs the enrollee of a completed ex parte review:

(a) A new income source;

(b) A change in gross income of \$25 or more;

(c) Tax filing status;

(d) Pregnancy or termination of a pregnancy;

(e) Number of dependents claimed as tax dependents;

(f) Earnings of a child;

(g) Marital status; and

(h) Student status of a child.

~~(7)8~~ An applicant and enrollee may review the information that the eligibility agency uses to determine eligibility.

~~(8)9~~ An applicant and enrollee have the right to be notified about actions that the agency takes to determine their eligibility or continued eligibility, the reason the action was taken, and the right to request an agency conference or agency action as defined in Section R414-301-6 and Section R414-301-7.

~~(9)10~~ An enrollee in CHIP must pay quarterly premiums, co-payments, or co-insurance amounts to providers for medical services that the enrollee receives under CHIP.

R382-10-17. Effective Date of Enrollment and Renewal.

(1) Subject to the limitations in Section R414-306-6, Section R382-10-10, and the provisions in Subsection R414-308-3(7), the effective date of CHIP enrollment is the first day of the application month.

(2) If the eligibility agency receives an application during the first four days of a month, the agency shall allow a grace enrollment period that begins no earlier than four days before the date that the agency receives a completed and signed application.

(a) If the eligibility agency allows a grace enrollment period that extends into the month before the application month, the days of the grace enrollment period do not count as a month in the 12-month enrollment period.

(b) During the grace enrollment period, the individual must receive medical services, meet eligibility criteria, and have an emergency situation that prevents the individual from applying. The Department may not pay for any services that the individual receives before the effective enrollment date.

(3) For a family who has a child enrolled in CHIP and who adds a newborn or adopted child, the effective date of enrollment is the date of birth or placement for adoption if the family requests the coverage within 30 days of the birth or adoption. If the family makes the request more than 30 days after the birth or adoption, enrollment in CHIP will be effective beginning the first day of the month in which the date of report occurs, subject to the limitations in Section[s] R414-306-6, Section R382-10-10, and the provisions of Subsection R382-10-17(2).

(4) The effective date of enrollment for a new certification period after the review month is the first day of the month after the review month, if the review process is completed by the end of the review month. If a due process month is approved, the effective date of enrollment for a renewal is the first day of the month after the due process month if the review process is completed by the end of the due process month. The enrollee must complete the review process and continue to be eligible to be reenrolled in CHIP at review.

R382-10-18. Enrollment Period.

(1) Subject to the provisions in Subsection R382-10-18(2), a child determined eligible for CHIP ~~[enrollment]~~ receives 12 months of coverage that begins with the effective month of enrollment. ~~[If the eligibility agency allows a grace enrollment period that extends into the month before the application month, the days of the grace enrollment period do not count as a month in the 12-month enrollment period.]~~

(2) CHIP coverage may end before the end of the 12-month certification period if the child:

(a) turns 19 years of age before the end of the 12-month enrollment period;

(b) moves out of the state;

(c) becomes eligible for Medicaid;

(d) leaves the household;

(e) fails to respond to a request to verify access to employer-sponsored health coverage;

~~(f)~~ begins to be covered under a group health plan or other health insurance coverage;

~~(g)~~ enters a public institution or an institution for mental diseases; or

~~(h)~~ does not pay the quarterly premium.

(3) The agency shall take the following actions on changes reported after an ex parte review is completed:

(a) The agency shall re-determine eligibility when it receives a change report before the ten-day notice deadline in the review month;

(b) The agency shall process the reported change according to Subsections R382-10-18(5), (6) and (7) if the agency receives a change report after the ten-day notice deadline in the review month.

(4) If the agency cannot complete an ex parte review, the agency shall complete a regular review by requesting updated information from the client. The agency will act on all reported changes to re-determine eligibility up to the point of approving a new certification period. Subsections R382-10-18(5), (6) and (7) apply to changes reported after the regular review has been completed.

~~(3)5~~ Certain changes affect an enrollee's eligibility during the 12-month certification period.

(a) If an enrollee gains access to health insurance under an employer-sponsored plan or COBRA coverage, the enrollee may switch to UPP. The enrollee must report the health insurance within ten calendar days of enrolling, or within ten calendar days of when coverage begins, whichever is later. The employer-sponsored plan must meet UPP criteria.

(b) If income decreases, the enrollee may report the income and request a redetermination. If the change makes the enrollee eligible for Medicaid, the eligibility agency shall end CHIP eligibility and enroll the child in Medicaid.

(c) If income increases during the certification period, eligibility remains unchanged through the end of the certification period.

([4]6) The agency shall re-determine eligibility if a family reports a decrease in income and requests a redetermination during the certification period. A decrease in the premium is effective as follows:

(a) The premium change is effective the month of report if income decreased that month and the family provides timely verification of income;

(b) The premium change is effective the month following the report month if the decrease in income is for the following month and the family provides timely verification of income;

(c) The premium change is effective the month in which verification of the decrease in income is provided, if the family does not provide timely verification of income.

([5]7) Failure to make a timely report of a reportable change may result in an overpayment of benefits and case closure.

KEY: children's health benefits

Date of Enactment or Last Substantive Amendment: [~~November 1, 2014~~2015]

Notice of Continuation: May 9, 2013

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-40

Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-6
Reduction in Certain Targeted Case
Management Services

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 39087

FILED: 01/22/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is unnecessary because it does not implement Targeted Case Management (TCM) services, but rather affirms the elimination of certain TCM services discontinued by Medicaid several years ago.

SUMMARY OF THE RULE OR CHANGE: This rule is unnecessary because it does not implement Targeted Case Management (TCM) services. This rule is repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no impact to the state budget because the current rule only affirms the elimination of certain TCM services, and does not affect current and future appropriations for other TCM programs.

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

◆ **SMALL BUSINESSES:** There is no impact to small businesses because the current rule only affirms the elimination of certain TCM services, and does not affect current and future appropriations for other TCM programs.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid recipients because the current rule only affirms the elimination of certain TCM services, and does not affect current and future appropriations for other TCM programs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single Medicaid provider or to a Medicaid recipient because the current rule only affirms the elimination of certain TCM services, and does not affect current and future appropriations for other TCM programs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule has no effect on business because the services addressed in the rule have not been provided for the past several years.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2015

AUTHORIZED BY: David Patton, PhD, Executive Director

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

~~[R414-6. Reduction in Certain Targeted Case Management Services.~~

~~**R414-6-1. Introduction and Authority.**~~

~~———— This rule describes the Utah Medicaid Program's reduction in certain targeted case management services. Utilization of cost containment methods is authorized by Section 26-18-2.3.~~

~~**R414-6-2. Definition.**~~

~~———— "Targeted Case Management Services" are a set of planning, coordinating and monitoring activities that assist Medicaid recipients in the target group to access needed housing, employment, medical, nutritional, social, education, and other services to promote independent living and functioning in the community.~~

~~**R414-6-3. Targeted Case Management Services for Recipients with HIV/AIDS.**~~

~~———— Upon the effective date of this rule, targeted case management services for recipients with HIV/AIDS are not available.~~

~~**R414-6-4. Targeted Case Management Services for Recipients Exposed to Tuberculosis.**~~

~~———— Upon the effective date of this rule, targeted case management services for recipients exposed to tuberculosis are not available.~~

KEY: Medicaid, case management

~~**Date of Enactment or Last Substantive Amendment: July 22, 2008**~~

~~**Notice of Continuation: March 8, 2013**~~

~~**Authorizing, and Implemented or Interpreted Law: 26-18]**~~

Insurance, Administration

R590-271

Data Reporting for Consumer Quality Comparison

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39103

FILED: 01/30/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule to adopt a methodology for determining and comparing insurer transparency information as required by Subsection 31A-22-613.5(4)(b).

SUMMARY OF THE RULE OR CHANGE: The rule adopts the Utah Health Information Network data interchange standards, the Transparency Administration Performance Standards, and the Transparency Denial Standards. The rule requires insurers to report the required data elements on an annual basis, with the first report due on 04/01/2016.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-216 and Section 31A-22-613.5

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds Transparency Administration Performance Standard, published by Utah Health Information Network, 06/18/2011
- ◆ Adds Transparency Denial Standards, published by Utah Health Information Network, 06/30/2012

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The rule will create no fiscal impact or increased workload for the department or state budget. The rule sets forth reporting requirements for health insurers to follow on an annual basis.
- ◆ LOCAL GOVERNMENTS: This rule will have no effect on local governments since it deals with the relationship between the department and health insurers licensed through the department to do business in Utah.
- ◆ SMALL BUSINESSES: This rule will have no effect on small businesses since it deals with the relationship between the department and health insurers licensed through the department to do business in Utah.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Health insurers will be required to collect and report the required data elements. The associated costs are anticipated to be insignificant.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Health insurers will be required to collect and report the required data elements. The associated costs are anticipated to be insignificant.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact on health insurers will be minimal if any. The rule merely requires aggregation of data that insurers gather for other reasons.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2015

AUTHORIZED BY: Todd Kiser, Commissioner

R590. Insurance, Administration.**R590-271. Data Reporting for Consumer Quality Comparison.****R590-271-1. Authority.**

This rule is promulgated pursuant to Subsections 31A-2-216 and 31A-22-613.5 wherein the commissioner is directed to educate consumers and to adopt a rule for purposes of reporting transparency information.

R590-271-2. Purpose and Scope.

- (1) The purpose of this rule is to:
 - (a) define terms;
 - (b) define the methodology for determining and comparing insurer transparency information;
 - (c) provide the data and format for submission to the commissioner; and
 - (d) provide the date the information is due.
- (2)(a) This rule applies to all health benefit plans issued or renewed on or after January 1, 2015.
- (b) This rule does not apply to an insurer whose health benefit plans cover fewer than 3,000 individual Utah residents.

R590-271-3. Definitions.

In addition to the definitions in Sections 31A-1-301, the following definitions shall apply for the purpose of this rule:

- (1) "Electronic Data Interchange Standard" means the:
 - (a) the standards developed by the UHIN Standards Committee at the request of the commissioner; and
 - (b) others as adopted by the commissioner by rule.
- (2) "SFTP" means the Secure File Transfer Protocol.
- (3) "UHIN" means the Utah Health Information Network.
- (4) "UHIN Standards Committee" means the Standards Committee of the UHIN.

R590-271-4. Reporting Requirements.

(1) The commissioner has convened a group, as identified in 31A-22-613.5(4)(a), to develop information for consumers to compare health insurers and health benefit plans. As a result of the group's work, the commissioner adopts the following UHIN electronic data interchange standards developed and adopted by the UHIN Standards Committee, which are hereby incorporated by reference with this rule and are available for public inspection at the department during normal business hours, at www.insurance.utah.gov, or at www.uhin.org:

- (a) the Transparency Administration Performance Standard; and

(b) the Transparency Denial Standards, version 1.1.

(2)(a) Beginning on April 1, 2016, and each year thereafter, an insurer shall submit the reports referenced in R590-271-4(1)(a) to UHIN in an electronic data interchange standard which includes data for the previous calendar year.

(b) Each report shall include data for both paper and electronic claims combined.

(3) Submission format, procedures and guidelines are described in detail in the adopted transparency standards published by UHIN.

R590-271-5. Records.

The commissioner finds the data submitted to the commissioner in the Transparency Administration Performance Standard and the Transparency Denial Standards to be considered a public record as defined in Section 63G-2-103 for the purpose of display on:

- (1) the Health Insurance Exchange as described in Section 63M-1-2505, avenueh.com;
- (2) the department's website, insurance.utah.gov; and
- (3) the department's transparency website, healthrates.utah.gov.

R590-271-6. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-271-7. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-271-8. Severability.

If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

KEY: data, data reporting, insurance

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: 31A-2-216; 31A-22-613.5

Pardons (Board of), Administration
R671-201
 Original Parole Grant Hearing
 Schedule and Notice

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39093

FILED: 01/28/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In limited circumstances, Utah law allows a person less than 18 years of age to be committed to prison. When a juvenile is committed to a prison system designed for adults careful consideration must be given to achieving community safety, accountability, and competency development. This rule change requires the Board to make a deliberate decision about setting the original hearing.

SUMMARY OF THE RULE OR CHANGE: In most cases, the timing of an original hearing is based on rule. This proposed change would require the Board to review the case and make an individualized decision if an individual less than 18 years of age is committed to prison.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-7

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Making individualized decisions for this population requires more staff and Board member time however only a few individuals less than 18 years of age are committed to prison. The Board will absorb any increase.
- ◆ **LOCAL GOVERNMENTS:** Local governments are not involved in the original hearing process and do not have jurisdiction over individuals committed to prison.
- ◆ **SMALL BUSINESSES:** The change is in how the Board sets original hearing dates. Small businesses are not involved in the parole hearing process and will not be impacted.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed change is only in the way a hearing date is set. It does not affect other persons or organizations.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Original hearing dates are set for all individuals committed to prison and eligible for parole. The change is only in the way the Board sets the hearing date and does not impose any compliance cost on the individual.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Board of Pardons does not foresee any fiscal impact as a result of the proposed rule change.

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

PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Greg Johnson by phone at 801-261-6454, by FAX at 801-261-6481, or by Internet E-mail at gregjohnson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 03/09/2015 08:00 AM, Board of Pardons, 448 E Winchester, Suite 300, Murray, UT

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2015

AUTHORIZED BY: Angela Micklos, Chair

R671. Pardons (Board of), Administration.**R671-201. Original Parole Grant Hearing Schedule and Notice. R671-201-1. Schedule and Notice.**

(1) Within six months of an offender's commitment to prison the Board shall give notice of the month and year in which the inmate's original hearing will be conducted. A minimum of [7]seven days prior notice should be given regarding the specific day and approximate time of such hearing.

(2)(a) Homicide offense commitment, for purposes of this rule, means a prison commitment to serve a sentence for a conviction of aggravated murder (if the sentence includes the possibility of parole), murder, felony murder, manslaughter, child abuse homicide, negligent homicide, automobile homicide, homicide by assault, or any attempt, conspiracy or solicitation to commit any of these offenses.

(b) Sexual offense commitment, for purposes of this rule, means a prison commitment to serve a sentence for a conviction of any crime for which an offender is defined as a kidnap offender pursuant to Utah Code Ann. Subsection 77-41-102(9); or for which an offender is defined as a sex offender pursuant to Utah Code Ann. Subsection 77-41-102(16); or any attempt, conspiracy or solicitation to commit any of the offenses listed in those sections.

(3)(a) All homicide offense commitments eligible for parole shall be routed to the Board as soon as practicable for the determination of the month and year for an original hearing. In setting an original hearing for a homicide offense commitment, the Board shall only consider information available to the court or offender at the time of sentencing.

(b) Homicide offense commitments not eligible for parole (including sentences of life without parole or death) shall not be scheduled for original hearings.

(4) If the offender is less than 18 years of age at the time of commitment and the offense is eligible for parole, the case shall be routed to the Board as soon as practicable for the determination of the month and year for an original hearing.

[(4)](5) When an offender's prison commitment does not include a homicide offense commitment, an offender is eligible to have an original hearing before the Board as follows:

(a) After the service of fifteen years for first degree felony commitments when the most severe sentence imposed and being served is a sentence greater than 15 years to life, excluding enhancements.

(b) After the service of seven years for first degree felony commitments when the most severe sentence imposed and being served is a sentence of 10 years to life, or 15 years to life, excluding enhancements.

(c) After the service of three years for all other first degree felony commitments.

(d) After the service of eighteen months if the most serious offense of incarceration is a second degree felony sexual offense commitment.

(e) After the service of six months for all other second degree felony commitments.

(f) After the service of twelve months if the most serious offense of incarceration is a third degree felony sexual offense commitment.

(g) After the service of three months for all other third degree felony and class A misdemeanor commitments.

~~(5)~~(6)(a) An offender may request that their original appearance and hearing before the Board be scheduled other than as provided by this rule. An offender's request shall specify the extraordinary circumstances or reasons which give rise to the request. The Board may grant or deny the offender's request in its sole discretion.

(b) The Board may, in its discretion, depart from the schedule as provided by this rule based upon an offender's request due to extraordinary circumstances, when an offender has unadjudicated criminal charges pending at the time a hearing would normally be scheduled, or upon its own motion.

KEY: parole, inmates, hearings

Date of Enactment or Last Substantive Amendment: [May 8, 2014]2015

Notice of Continuation: September 22, 2014

Authorizing, Implemented, or Interpreted Law: 77-27-7

**Public Safety, Criminal Investigations
and Technical Services, Criminal
Identification
R722-380
Firearm Background Check Information**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39091

FILED: 01/23/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is established to outline procedures for inquiry into denial of a firearm purchase, for law enforcement evidence release, and for background checks for National Firearms Act (NFA) firearms.

SUMMARY OF THE RULE OR CHANGE: This rule is established to outline procedures for: 1) inquiry into denial of a firearm purchase; 2) law enforcement evidence release; and 3) background checks for NFA firearms.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 76-10-526(11)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** No aggregate anticipated cost or savings to the state budget. This rule addresses the procedures for: 1) inquiry into denial of a firearm purchase; 2) law enforcement evidence release; and 3) background checks for NFA firearms. This rule will not affect the state budget nor are there any anticipated costs or savings.

◆ **LOCAL GOVERNMENTS:** No aggregate anticipated cost or savings to local government. This rule addresses the procedures for: 1) inquiry into denial of a firearm purchase; 2) law enforcement evidence release; and 3) background checks for NFA firearms. This rule will not affect local government nor are there any anticipated costs or savings.

◆ **SMALL BUSINESSES:** No aggregate anticipated cost or savings to small businesses. This rule addresses the procedures for: 1) inquiry into denial of a firearm purchase; 2) law enforcement evidence release; and 3) background checks for NFA firearms. This rule will not affect small businesses nor are there any anticipated costs or savings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities. This rule addresses the procedures for: 1) inquiry into denial of a firearm purchase; 2) law enforcement evidence release; and 3) background checks for NFA firearms. This rule will not affect persons other than small businesses, businesses, or local government entities nor are there any anticipated costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons as this addresses procedures for: 1) inquiry into denial of a firearm purchase; 2) law enforcement evidence release; and 3) background checks for NFA firearms.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This should not have any particular effect on businesses as this addresses procedures for: 1) inquiry into denial of a firearm purchase; 2) law enforcement evidence release; and 3) background checks for NFA firearms.

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

PUBLIC SAFETY
CRIMINAL INVESTIGATIONS AND TECHNICAL
SERVICES,
CRIMINAL IDENTIFICATION
3888 W 5400 S
TAYLORSVILLE, UT 84118

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Alice Moffat by phone at 801-965-4939, by FAX at 801-965-4944, or by Internet E-mail at aerickso@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2015

AUTHORIZED BY: Alice Moffat, Bureau Chief

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.

R722-380. Firearm Background Check Information.

R722-380-1. Authority.

This rule is authorized by Subsection 76-10-526(11).

R722-380-2. Definitions.

(1) "Bureau" means the Utah Bureau of Criminal Identification within the Department of Public Safety established by Section 53-10-201.

(2) "Firearm dealer" means any firearm dealer who is licensed as defined in Utah Code Ann. Subsection 76-10-501(7).

(3) "NFA firearm" means a National Firearms Act firearm defined in Title 26 Section 5845 of the United States Code.

R722-380-3. Inquiring Into Denial of Firearm Purchase.

(1)(a) An individual who has been denied the purchase of a firearm by the bureau may inquire why he or she was denied such a purchase by submitting a completed Request for Denial/Research Information form.

(b) The individual may have such denial information released to a third party by submitting a completed Third Party Release Form with a completed Request for Denial/Research Information form.

(2)(a) Within a reasonable time after receiving the completed request form, the Bureau shall release denial information regarding why the individual has been denied the purchase of a firearm, which shall be mailed, e-mailed, or faxed to the individual at the address, e-mail address, or fax number indicated on the request form.

R722-380-4. Law Enforcement Evidence Release.

(1)(a) A law enforcement agency seeking to obtain background clearance information from the bureau prior to releasing a firearm from custody must submit a completed Law Enforcement Evidence Release Form by mail or fax.

(b) Upon receipt of a completed Law Enforcement Evidence Release Form, the bureau shall conduct a thorough background investigation to determine whether the individual, to whom the firearm will be released, meets the requirements to possess a firearm established under Utah Code Ann. Section 76-10-503 and Title 18 Section 922 of the United State Code.

(c) Upon completion of the background investigation, the bureau shall notify the law enforcement agency by fax or telephone, at the number indicated on the release form, whether the individual, to whom the firearm will be released, may possess a firearm.

R722-380-5. Procedures on Background Checks for NFA Firearms.

(1)(a) An applicant seeking to transfer or register an NFA firearm according to Title 26 Chapter 53 of the United States Code must complete the Bureau of Alcohol, Tobacco, Firearms, and Explosives Application for Tax Paid Transfer and Registration of Firearm form and submit to a background check by the bureau as provided in Utah Code Ann. Section 76-10-526.

(b) Upon receipt of a request from a firearm dealer to perform the background check, the bureau shall conduct a thorough background investigation as provided in Utah Code Ann. Section 76-10-526.

(c) Once the background check is complete, the Bureau shall provide a transaction number to the firearm dealer.

(2)(a) After the transaction number has been provided by the bureau, the applicant must submit the Application for Tax Paid Transfer and Registration of Firearm to the Chief Law Enforcement Officer within 20 days in order to verify that a background check has been completed by the bureau.

(b) If the Application for Tax Paid Transfer and Registration of Firearm is not submitted to the Chief Law Enforcement Officer within 20 days after the transaction number has been provided, the individual must re-submit to a background check as provided in Section 76-10-503 to obtain a new transaction number from the bureau.

KEY: firearm purchases, firearm releases, firearm denials, firearm background check information

**Date of Enactment or Last Substantive Amendment: 2015
Authorizing, and Implemented or Interpreted Law: 53-10-201;
76-10-526(11); 76-10-526; 76-10-503; 76-10-501**

Transportation, Operations,
Construction
R916-3
DESIGN-BUILD Contracts

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 39100
FILED: 01/30/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendment to Rule R916-3 is needed to update citations to the Utah Procurement Code, which was recently amended, and to improve procedures the Department of Transportation follows when procuring construction projects using Design-Build contracting.

SUMMARY OF THE RULE OR CHANGE: The amendment updates citations to the amended Utah Procurement Code, excludes prospective proposers when they have conflicts of interest, incorporates evaluation criteria expressed in federal regulations, clarifies text in certain subsections, and makes technical and stylistic changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-1-201 and Section 72-2-206 and Subsection 63G-6a-1402(3)(a)

MATERIALS INCORPORATED BY REFERENCES:
 ♦ Adds 23 CFR Part 636, Subpart E, published by U.S. Government Printing Office, 04/01/2011

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** The Department of Transportation anticipates the amendment will lead to savings to the state budget through a reduction in the numbers of protests filed by disappointed prospective contractors due to confusion about the process the Department follows when using the Design-Build contracting method.
 ♦ **LOCAL GOVERNMENTS:** Because this amendment to Rule R916-3 does not require any action by, or provide any direct benefits for local government, the department does not anticipate the amendment will trigger any costs to or savings by local government.
 ♦ **SMALL BUSINESSES:** Because this amendment to Rule R916-3 does not require any action by, or provide any direct benefits for small businesses, the department does not anticipate the amendment will trigger any costs to or savings by small businesses.
 ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because this amendment to Rule R916-3 does not require any action by, or provide any direct benefits for persons other than small businesses, businesses, or local government entities, the department does not anticipate the amendment will trigger any costs to or savings by persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the department is making this amendment to Rule R916-3 to update citations, clarify text, and improve contracting procedures, the department does not anticipate the amendment will trigger any additional costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes to Rule R916-3 are needed to reflect changes caused by amendments to related Utah Procurement Code sections, and to align the rule with current industry practices. The changes should also reduce the likelihood that prospective contractors will protest contract awards due to confusion caused by an outdated rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 TRANSPORTATION
 OPERATIONS, CONSTRUCTION
 CALVIN L RAMPTON COMPLEX
 4501 S 2700 W
 SALT LAKE CITY, UT 84119-5998
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at jimpalmer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/18/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/26/2015

AUTHORIZED BY: Carlos Braceras, Executive Director

R916. Transportation, Operations, Construction.
R916-3. ~~DESIGN-BUILD~~ Design-Build Contracts.
R916-3-1. Purpose.

(1) This rule is to provide guidance under which the Utah Department of Transportation (UDOT) may use the ~~DESIGN-BUILD~~ Design-Build approach to contracting pursuant to Section 63G-~~6-502~~-6a-1402(3)(a). ~~DESIGN-BUILD~~ Design-Build seeks to provide a project delivery method which may result in: a savings of time, cost, and administrative burden; improved quality expectations as to the end product, schedule, and budget; and risk management savings due to lack of duplication of expenses and improved coordination of efforts.

R916-3-2. Authority.

(1) The provisions of this rule are authorized by the following grants of rulemaking authority and provisions of Utah Code: ~~File~~ Subsection 63G-~~Chapter 6~~-6a-1402(3)(a), Title 63G, Chapter 3; and ~~Section~~ Sections 72-1-201 and 72-2-206 of the Utah Transportation Code.

R916-3-3. Policy.

(1) UDOT may use, where determined appropriate by the Executive Director, or designee, the ~~DESIGN-BUILD~~ Design-Build method of project delivery. When ~~DESIGN-BUILD~~ Design-Build is used, UDOT shall enter into a contract with a single entity to provide both engineering/design services, construction services, and/or maintenance services pursuant to a UDOT provided scope of work statement. ~~DESIGN-BUILD~~ Design-Build is not recommended for every project. The use of the ~~DESIGN-BUILD~~ Design-Build method may be determined by the individual needs and merits of the project.

R916-3-4. Pre-qualification.

(1) UDOT may issue a Request for Qualifications [~~RFQ~~] (RFQ), soliciting qualification statements from contractors wishing to submit proposals on a UDOT [~~Design-Build~~] project. The RFQ shall state the minimum and maximum number of highly qualified proposers that will be invited to submit final proposals.

(2) Pre-qualification shall be based on an evaluation of the criteria set forth in the RFQ, including construction experience; design experience; technical competence; capability to perform, including financial, manpower and equipment resources; experience in other [~~Design-Build~~] projects; and past performance.

(3) The field of competing proposers shall be narrowed to the most qualified proposers, not to exceed the number designated in the RFQ. Failure to achieve at least two qualified proposers shall necessitate [~~the resolicitation of~~]re-soliciting the project.

R916-3-5. Preparation of Specifications.

(1) UDOT may use any method of specifying construction items [~~which~~]the Executive Director determines [~~is~~]to be in the best interest of UDOT. Engineering firms who participate [~~d~~] in the preparation of specifications or other information used in [~~the~~]a procurement [~~for a portion (but not all) of the project shall have the right to~~]may not participate as proposers [~~if~~] on such projects if a conflict of interest exists as determined by UDOT.

R916-3-6. Request for Proposals (RFP).

(1) [~~The~~]Pre-qualified proposers shall be invited to submit proposals on [~~the~~]designated [~~Design-Build~~] project pursuant to an RFP. UDOT may elect to ask for initial proposals followed by discussions and may request best and final offers, or may elect to award the contract without discussions or requesting best and final offers. The RFP may ask for proposals based on a [~~stipulated~~]predetermined sum.

(2) UDOT may award a [~~stipulated~~]predetermined fee to the proposers who submit responsive proposals but who are not selected for contract award. The amount of the fee (if any) shall be identified in the RFP.

(3) The RFP shall require separate technical and price proposals, meeting requirements as stated in the RFP. The RFP may require proposals to meet a mandatory technical level, and may include a [~~request~~]provision for submitting alternative [~~proposals~~]technical concepts.

(4) Technical solutions/design concepts contained in proposals shall be considered proprietary information unless a [~~stipulated~~]predetermined fee is [~~paid~~]accepted.

R916-3-7. Evaluation of Proposals and Discussions with Proposers.

(1) UDOT shall evaluate the technical and price proposals separately, in accordance with the evaluation [~~factors~~]criteria set forth in the RFP.

(2) UDOT may offer the proposers the opportunity to participate in presentations and/or discussions regarding their proposals. Discussions, either oral or in writing, may be held with proposers for the purpose of clarification of the proposals and/or to identify deficiencies in initial proposals. If presentations or discussions are held with one proposer, they must be held with all pre-qualified proposers.

(3) If discussions are held, best and final offers will be requested. If best and final offers are requested they will be the basis for award and will be evaluated as stated in the RFP.

(4) UDOT may follow any of the criteria included in 23 CFR 636 Subpart E when conducting discussions with proposers, which is incorporated as part of this Rule R916-3-7.

R916-3-8. Acceptable Bid Security; Performance and Payment Bonds.

(1) The Executive Director, or designee, shall have [~~the right~~]authority to waive the requirement to provide bid security, or may reduce the amount of such security, if he or she determines that the bid security otherwise required by Part 11 of the Utah Procurement Code [~~Sections 63G-6-504 through 507~~]to be unnecessary to protect the State.

(2) The Executive Director, or designee, shall have [~~the right~~]authority to reduce the amount of the payment and performance bonds below the 100% level required by Part 11 of the Utah Procurement Code [~~Sections 63G-6-504 through 507~~], if he or she determines that a 100% bond is unnecessary to protect the State.

(3) Bid security, payment bonds and performance bonds must be provided on the forms included in the RFP.

R916-3-9. Required Contract Clauses.

The [~~Design-Build~~] contract documents shall include the contract clauses set forth in Utah Administrative Code R23-1-60, subject to such modifications as the Executive Director deems advisable. Any modifications shall be supported by a written determination of the Executive Director that describes the circumstances justifying the variations, and notice of any material variation shall be included in the RFP.

R916-3-10. Award and Contract.

(1) The basis for award shall be stated in the RFP. Award may be based on any of the following approaches [~~all~~], all of which shall be deemed to constitute award to the [~~lowest~~]responsive and responsible [~~bidding~~]offeror whose proposal is most advantageous to UDOT as such [~~term is~~]terms are used in Utah Code Section 63G-~~[6-502]~~6a-1402:

([1]a) Award to the responsible proposer offering the lowest priced responsive proposal. If the RFP includes a mandatory technical level, no proposal shall be considered responsive unless it meets that level.

([2]b) Award to the responsible proposer whose proposal is evaluated as providing the best value to UDOT.

([3]c) If the RFP provides for a stipulated sum, award to the responsible proposer whose proposal is evaluated as providing the best value to UDOT.

(2) There is no requirement that a contract be awarded. Following award, a contract shall be executed and notice given to the successful [~~Design-Build~~] proposer to proceed with the work.

KEY: construction, contracts, [~~DESIGN-BUILD~~], highways
Date of Enactment or Last Substantive Amendment:
~~[December 31, 1996]~~2015
Notice of Continuation: August 11, 2011
Authorizing, and Implemented or Interpreted Law: 63G-~~[6-502]~~6a-1402

Transportation, Operations,
Construction
R916-4
Construction Manager/General
Contractor Contracts

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39101

FILED: 01/30/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendment is needed to update citations to the Utah Procurement Code, which was recently amended, and to improve procedures the Department of Transportation follows when procuring construction projects using Construction Manager/General Contractor contracting.

SUMMARY OF THE RULE OR CHANGE: This amendment to Rule R916-4 updates citations to the amended Utah Procurement Code, clarifies text in certain subsections of the rule, and makes technical and stylistic changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-2-206 and Subsection 63G-6a-106(3)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Department of Transportation anticipates savings to the state budget through a reduction in the numbers of protests filed by disappointed prospective contractors due to confusion about the process the Department follows when using the Construction Manager/General Contractor contracting method.

◆ **LOCAL GOVERNMENTS:** Because this amendment to Rule R916-4 does not require any action by, or provide any direct benefits for local government, the department does not anticipate the amendment will trigger any costs to or savings by local government.

◆ **SMALL BUSINESSES:** Because this amendment to Rule R916-4 does not require any action by, or provide any direct benefits for small businesses, the department does not anticipate the amendment will trigger any costs to or savings by small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because this amendment to Rule R916-4 does not require any action by, or provide any direct benefits for persons other than small businesses, businesses, or local government entities, the department does not anticipate the amendment will trigger any costs to or savings by persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the department is making this amendment to Rule R916-4 to update citations, clarify text, and improve contracting procedures, the department does not anticipate the amendment will trigger any additional costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes to Rule R916-4 are needed to reflect changes caused by amendments to related Utah Procurement Code sections, and to align the rule with current industry practices. The changes should also reduce the likelihood that prospective contractors will protest contract awards due to confusion caused by an outdated rule.

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

TRANSPORTATION
OPERATIONS, CONSTRUCTION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at jimpalmer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/18/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/26/2015

AUTHORIZED BY: Carlos Braceras, Executive Director

R916. Transportation, Operations, Construction.

R916-4. Construction Manager/General Contractor Contracts.

R916-4-1. Purpose.

(1) Pursuant to Utah Code Section 63G-~~6-207~~-6a-106(3)(a), this rule establishes the Department's procedures to procure transportation construction under the Construction Manager/General Contractor (CM/GC) approach authorized in Utah Code Section 63G-~~6-501~~-6a-1302. CM/GC contracting seeks to provide[-] a collaborative project delivery method which may result in: A savings of time[-] and cost; improved quality expectations as to the end product, schedule, and budget; and risk management savings through lack of duplication of expenses, and through early, continuous and coordinated efforts.

R916-4-2. Authority.

(1) This rule is authorized by grants of rulemaking authority in [Title 63G, Chapter 6, Sections 63G-6a-106(3)(a) and 63G-6a-1302 of the Utah Procurement Code; Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and Sections 72-1-201(h), 72-2-206, and 72-6-105 of the Utah Transportation Code.]

R916-4-3. Policy.

(1) When the Executive Director or designee determines it appropriate, Department may use CM/GC method of project delivery. CM/GC is not recommended for every project, therefore, the decision to use the method must take into account the factors listed in Utah Code Subsection 63G-6-501(4)(e)6a-1302(3).

R916-4-4. Request for Proposals (RFP).

(1) The Department will issue a request for proposals (RFP) from interested contractors.

(2) The RFP may require separate technical and price proposals, meeting requirements as stated in the RFP.

(3) The RFP may require a minimum mandatory technical level.

R916-4-5. Evaluation Team.

(1) The Department ~~[may]~~shall establish a team for evaluating the technical proposals consisting of ~~[not more]~~no fewer than ~~[7 people]~~5 members.

(2) One member of the team may be ~~[a registered professional engineer]~~an employee of a consulting engineering firm, selected based on recommendation from the American Council of Engineering Companies of Utah (ACEC[-]); and

(3) One member may be ~~[a senior management]~~an employee of a licensed contractor, selected based on recommendation from the Utah Chapter of the Association of General Contractors (AGC[-]).

R916-4-6. Evaluation of Proposals and Discussions with Proposers.

(1) The Department shall evaluate proposals, in accordance with the evaluation ~~[factors]~~criteria set forth in the RFP.

(2) As part of the qualifications specified in the RFP, the Department may require that potential contractors, at ~~[least]~~a minimum, demonstrate their:

- (a) ~~[e]~~Construction experience ~~[in]~~with similar projects;
- (b) financial, manpower and equipment resources available for the project;
- (c) experience ~~[in]~~with other negotiated contracts; and
- (d) preconstruction or design support experience.

(3) The Department may require ~~[that]~~potential contractors to participate in formal interviews as part of the selection process.

R916-4-7. Acceptable Bid Security; Performance and Payment Bonds.

(1) The Executive Director or designee shall have the ~~[right]~~authority to waive the requirement to provide bid security, or may reduce the amount of such security, if he or she determines that the bid security otherwise required by Part 11 of the Utah Procurement Code [Ann. Sections 63G-6-504 through 507] to be unnecessary to protect the State.

(2) The Executive Director or designee may reduce the amount of the payment and performance bonds below the 100% level required by ~~[Sections 63G-6-504 through 507]~~Part 11 of the Utah Procurement Code, if he or she determines that a 100% bond is unnecessary to protect the State.

(3) Bid security, payment bonds and performance bonds must be provided on the forms included in the RFP.

R916-4-8. Required Contract Clauses.

The CM/GC contract documents shall include the contract clauses set forth in Utah Administrative Code Rule R23-1-760, subject to such modifications as the Executive Director or designee believes appropriate. Any modifications shall be supported by a written determination of the Executive Director or designee that describes the circumstances justifying the variations, and notice of any material variation shall be included in the RFP.

R916-4-9. Selection.

The basis for selection shall be stated in the RFP. Selection may be based on any of the following approaches.

(1) By the responsible proposer offering the lowest priced responsive proposal. If the RFP includes a mandatory technical level, no proposal shall be considered responsive unless it meets that level;~~[-or]~~

(2) By the responsible proposer whose proposal is evaluated as providing the best value to Department~~[-];~~

~~_____~~(3) By the responsible proposer whose proposal is evaluated as representing the most qualified proposer; or

~~_____~~(4) Other approaches as determined by the Executive Director or designee, which satisfy the requirements of the Utah Procurement Code.

R916-4-10. Award of Contracts.

(1) The ~~[Contract will be awarded in]~~CM/GC approach consists of the following two contract phases~~[-. The first is for preconstruction].~~

~~_____~~(a) Preconstruction or design services, which may include value engineering, cost estimating, conceptual estimating, constructability reviews, scheduling, and Maintenance of Traffic plans.

~~[(2) The second phase is for construction]~~(b) Construction services~~[-. The second phase, which will be awarded after the plans have been sufficiently developed and a price for construction services has been successfully validated[-] and accepted.~~ In the event that a price is not validated and accepted, the Department ~~[will]~~shall not award the construction phase of the contract. Incremental construction contracts may be awarded after prices are validated and accepted for each contract.

~~_____~~(3) In order to accelerate completion, incremental construction phases may be awarded after prices are validated for each phase.

~~]~~ ~~[(4)]~~(2) The Department [is]shall not be required to [ever] award a contract[-. Following award, however, a-] during either of the contract phases. However, following an award, the Department shall[-be executed and] provide notice [given]of the award to the successful CM/GC proposer followed by a notice to proceed with the work.

KEY: transportation, highways, contracts, construction

Date of Enactment or Last Substantive Amendment: [October 11, 2014]2015

Notice of Continuation: March 11, 2010

Authorizing, and Implemented or Interpreted Law: 63G-[6-502]6a-1302; 63G-[6-207];6a-106(3)(a); 72-1-201

**Workforce Services, Employment
Development
R986-700
Child Care Assistance**

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 39098
FILED: 01/29/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify language, change terms, and change how providers report rates.

SUMMARY OF THE RULE OR CHANGE: The agency is changing the term "subsidy deduction" to "copayment", requiring providers to report rates to the Care About Child Care agency, and clarifying what is already Department practice regarding deductions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-3-310(3)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This applies to federally-funded programs so there are no costs or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** This applies to federally-funded programs so there are no costs or savings to local governments.

♦ **SMALL BUSINESSES:** There will be no costs to small businesses to comply with these changes because this is a federally-funded program.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs to persons other than small businesses, businesses, or local government entities to comply with these changes because there are no costs or fees associated with these proposed changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for this change to anyone, including persons affected by this change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2015

AUTHORIZED BY: Jon Pierpont, Executive Director

R986. Workforce Services, Employment Development.

R986-700. Child Care Assistance.

R986-700-702. General Provisions.

(1) CC is provided to support employment and job search activities.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child by court order and both parents are absent from the home. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children up to the age of 18 years if the child;

(i) meets the requirements of rule R986-700-717, and/or

(ii) is under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" is defined in rule R986-700-717.

(6) The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided by an eligible provider approved by the Department and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) CC will not be paid to a client for the care of his or her own child(ren) when the client is working in a residential setting. CC may be approved where the client is working for an approved child care center, regularly watches children other than her own, and does not have an ownership interest in the child care center. CC will not be paid to a client for the care of his or her own child(ren) if the client is a stockholder, officer, director, partner, manager or member of a corporation, partnership, limited liability partnership or company or similar legal entity providing the CC.

(10) Neither the Department nor the state of Utah is liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(11) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(12) Once eligibility for CC has been established, eligibility must be reviewed at least once every six months. The review is not complete until the client has completed, signed and returned all necessary review forms to the local office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department will reduce or terminate CC even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Care About Child Care agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) The only changes a client must report to the Department within ten days of the change occurring are:

(a) that the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3);

(b) that the client is no longer in an approved training or educational program;

(c) if the client's and/or child's schedule changes so that child care is no longer needed during the hours of approved employment and/or training activities;

(d) that the client does not meet the minimum work requirements of an average of 15 hours per week or 15 and 30 hours per week when two parents are in the household and it is expected to continue;

(e) the client is separated from his or her employment;

(f) a change of address;

(g) any of the following changes in household composition; a parent, stepparent, spouse, or former spouse moves into the home, a child receiving child care moves out of the home, or the client gets married; or

(h) a change in the child care provider, including when care is provided at no cost.

(6) If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days, the decrease will be made effective beginning the next month and sums received in the month in which the change occurred will not be treated as an overpayment. If it is too late to make the change to the next month's CC payment, the client is responsible for repayment even if the 10 days for reporting the change has not expired. If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.

(7) A client is responsible for payment to the Department of any overpayment made in CC.

(8) The Department is authorized to release the following information to the designated provider:

(a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;

(b) ~~information contained on the Form 980;~~

~~(c) the date the child care subsidy was issued;~~

~~(d) the subsidy amount for that provider;~~

~~(e) the [subsidy deduction] copayment amount;~~

~~(f) the date a two party check was mailed to the client;~~

~~(g) a copy of the two party check on a need to know basis;~~

~~(h) the month the client is scheduled for review or reestablishment,~~

~~(i) the date the client's application was received; and~~

~~(j) general information about what additional information and/or verification is needed to approve CC such as the client's work schedule and income.~~

(9) Unused child care funds issued on the client's electronic benefit transfer (EBT) card will be removed from ("aged off") the EBT card 90 days after those funds were deposited onto the EBT card. Aged off funds will no longer be available to the client.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect payment for child care services rendered. Neither the Department nor the state of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers must keep accurate records of subsidized child care payments, time and attendance. The Department has the right to investigate child care providers and audit their records. Time and attendance records for all subsidized clients must be kept for at least one year. If a provider fails to cooperate with a Department investigation or audit, or fails to keep records for one year, the provider will no longer be an approved provider.

(4) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider may be referred for criminal prosecution and will no longer be an approved provider following the procedure outlined in section R986-700-718. This is true even if the funds were authorized under R986-700-718.

(5) If an overpayment is established and it is determined that the provider was at fault in the creation of the overpayment, the provider is responsible for repayment of the overpayment.

(6) Records will be kept by the Department for individuals who are not approved providers and against whom a referral or complaint is received.

(7) All providers, except FFP providers as defined in R986-700-705(1)(b)(ii), are required to report their child care rates to the local Care About Child Care agency.

R986-700-707. [~~Subsidy Deduction~~]C Copayment and Transitional Child Care.

(1) "~~Subsidy deduction~~C Copayment" means a dollar amount which is deducted by the Department from the standard CC subsidy for Employment Support CC. The ~~deduction~~copayment is determined on a sliding scale and the amount of the ~~deduction~~copayment is based on the parent(s) countable earned and unearned income and household size.

(2) The parent is responsible for paying the amount of the ~~subsidy deduction~~copayment directly to the child care provider.

(3) If the ~~subsidy deduction~~copayment exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) [The full monthly subsidy deduction is taken]The Department will deduct the full monthly copayment from the subsidy even if the client receives CC for only part of the month.

(5) There is no ~~subsidy deduction~~copayment during transitional child care. Transitional child care is available during the six months immediately following a FEP or FEPTP termination if the termination was due to increased income and the parent is otherwise eligible for ESCC. The ~~subsidy deduction~~copayment will resume in the seventh month after the termination of FEP or FEPTP. The six month time limit is the same regardless of whether the client receives TCA or not.

(6) A client does not need to fill out a new application for child care during the six month transitional period even if there is a gap in services during those six months.

R986-700-708. FEP CC.

(1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan. FEP CC is not subject to the ~~subsidy deduction~~copayment.

(2) Additional time for travel may be included on a case by case basis when circumstances create a hardship for the client because the required activities necessitate travel of distances taking at least one hour each way.

R986-700-710. Income Limits for ES CC.

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income must be counted to establish eligibility. In some circumstances, determining household composition for a ES CC household is different from determining household composition for a FEP or FEPTP household. ES CC follows the parent and the child, not just the child so, for example, if a parent in the household is ineligible, the entire ES CC household is ineligible. A specified relative may not opt out of the household assistance unit when determining eligibility for CC. The income of the specified relatives needing ES CC in the household must be counted. For ES CC, only the income of the parent/client is counted in determining eligibility regardless of who else lives in the household. If both parents are living in the household, the income of both parents is counted. Recipients of SSI benefits are included in the household assistance unit.

(b) what is counted as income except:

(i) the earned income of a minor child who is not a parent is not counted;

(ii) child support, including in kind child support payments, is counted as unearned income, even if it exceeds the court or ORS ordered amount of child support, if the payments are made directly to the client. If the child support payments are paid to a third party, only the amount up to the court or ORS ordered child support amount is counted; and

(iii) earned and unearned income of SSI recipients is counted with the exception of the SSI benefit.

(c) how to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first \$50 of child support received by the family;

(b) court ordered and verified child support and alimony paid out by the household;

(c) \$100 for each person with countable earned income; and

(d) a \$100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, a percentage of the state median income as determined by the Department. The Department will make adjustments to the percentage of the state median income as funding permits. The percentage currently in use is available at the Department's administrative office.

(4) Charts establishing income limits and the ~~subsidy deduction~~copayment amounts are available at all local Department offices.

(5) An independent living grant paid by DHS to a minor parent is not counted as income.

R986-700-713. Amount of CC Payment.

CC will be paid at the lower of the following levels:

(1) the maximum monthly local market rate as calculated using the Local Market Survey. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet; or

(2) the rate established by the provider for services and, if required, reported to the local Care About Child Care agency; or

(3) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

R986-700-719. Job Search Child Care (JS CC).

(1) JS CC is available to a client who is otherwise eligible for child care but is separated from his or her job and meets the eligibility criteria.

(2) JS CC is available for a maximum of two additional months provided the client:

(a) was employed at least 32 hours per week and was separated from his or her job;

(b) was receiving ES CC or Transitional Child Care (TR CC) in the month of the job separation and;

(c) reports the job loss within 10 days and requests continued child care payments while searching for a job. In that case, the client will be eligible for one additional month of child care. The month of the job loss does not count.

(3) If the client verifies the job loss in a timely manner, as directed by the Department, a second month of CC will be paid while the client looks for a job.

(4) The JS CC extension is only available once in a rolling 12 month period even if the client received only one month of JS CC assistance.

(5) A client is not eligible for JS CC if the client has two or more jobs and is separated from one or more of them but still has one job [~~working 15 hours per week or more~~].

(6) Two parent households are not eligible for JS CC.

(7) [~~JS CC will be paid at the same rate the client was receiving in the month of the job separation unless the client changes his or her child care provider~~] The JS CC copayment will be at the lowest copayment amount required by the Department disregarding all earned income.

(8) A client who is receiving TR CC when the job separation occurs, and meets the requirements of this section, can be eligible for a maximum of two months of JS CC but those two months will count against the six month maximum under TR CC as provided in R986-700-707. If the job separation occurs in the last month of TR CC, the client can be eligible for JS CC which would be in addition to the TR CC.

KEY: child care

Date of Enactment or Last Substantive Amendment: [~~February 1, 2015~~]

Notice of Continuation: September 8, 2010

Authorizing, and Implemented or Interpreted Law: 35A-3-310

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 Division 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.

Transportation, Operations, Traffic and Safety

R920-4

Special Road Use or Event

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 39095

FILED: 01/28/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The United States Court of Appeals, Tenth Circuit, ruled parts of Rule R920-4 unconstitutional in *IMATTER UTAH v. NJORD*, 2014 WL 7240717 (2014). This change is to remove the portions of Rule R920-4 the court ruled unconstitutional.

SUMMARY OF THE RULE OR CHANGE: This rule change allows persons and groups applying for special event permits under this Rule R920-4 shall be exempt from the insurance, waiver and release of damages, and indemnification requirements of Section R920-4-5, if the special event for which application is made is a First Amendment assembly and is for a non-commercial purpose.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-22-15 and Section 41-6a-1111 and Section 72-1-201

EMERGENCY RULE REASON AND JUSTIFICATION:

REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

JUSTIFICATION: In its present form, portions of Rule R920-4 violate the Constitution of the United States and the state of Utah. The rule must be changed to eliminate unlawful requirements that it presently includes.

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The emergency change should not impact the state budget, as it simply removes unconstitutional provisions.

◆ **LOCAL GOVERNMENTS:** The emergency change should not impact local government, as it simply removes unconstitutional provisions.

◆ **SMALL BUSINESSES:** The emergency change should not impact small business, as it simply removes unconstitutional provisions.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The emergency change should not impact persons other than small businesses, businesses, or local government entities, as it simply removes unconstitutional provisions.

COMPLIANCE COSTS FOR AFFECTED PERSONS:
Affected persons should experience a reduction in compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
This emergency rule change is necessary to eliminate aspects of Rule R920-4 that the 10th Circuit Court of Appeals ruled to be unreasonable prior restraints on persons and groups seeking to organize and participate in peaceful First Amendment assemblies on or near State controlled rights of way. I do not anticipate the change will have any fiscal impact on Utah businesses.

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 Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at jimpalmer@utah.gov

EFFECTIVE: 01/29/2015

AUTHORIZED BY: Carlos Braceras, Executive Director

R920. Transportation, Operations, Traffic and Safety.

R920-4. Special Road Use or Event.

R920-4-1. Purpose and Authority.

The purposes of this rule are to ensure public safety and minimize disruption to the traveling public when state controlled rights of way are used for parades, marathons, film related activities, and bicycle races, and to enable special events through a responsible and controlled permitting process. However, persons and groups must be able to organize and participate in peaceful First Amendment assemblies on or near State controlled rights of way free from unreasonable prior restraints. The Department shall work to accomplish the purposes of this rule without placing unreasonable prior restraints on persons and groups seeking to participate in First Amendment assemblies, which are defined in Subsection R920-4-6(1) below. This rule is authorized by Sections 72-1-201 and 41-6a-1111. This rule applies to all highways under the jurisdiction of the Utah Department of Transportation ("Department").

R920-4-2. Permit Required for Special Road Use or Event.

Special Road Use permits shall be required for any use of state highways other than normal traffic movement. A special road use or event shall not occupy the roadway until a permit is issued. Permits may be obtained by completing Department application requirements as specified on Department forms.

R920-4-3. Application Completion Requirements for Special Road Use or Event.

"Application for a Special Event Permit," or "Application for a Permit to Film on State Roads" shall be completed by ~~the~~ applicants seeking ~~a~~ Special Road Use or Event Permits. All applications for permits shall be made a minimum of 15 days prior to the specified activity.

R920-4-4. Special Event Double Booking Conflict Resolution.

Applications for special event permits ~~may~~ shall not be accepted more than a year in advance of the actual event date. All special event permits are time and date stamped. In cases where a double booking type conflict ~~might~~ surface, the Department will encourage any secondary, or subsequent, applicant to review the feasibility of collocating with the original applicant. If collocating proves impracticable, the Department will encourage any secondary, or subsequent, applicant to offer a viable alternative strategy that meets the needs of all applicants, while also ensuring adequate public safety measures remain intact. The Department may also rely on local agency assistance with establishing special event permitting priorities. In all cases, the Department has the authority to exercise the discretion in giving priority consideration to an applicant based on an evaluation of historic use, potential economic benefit, and other relevant factors. In cases where none of the aforementioned conflict resolution strategies prove effective in remedying a continuing dispute between multiple applicants, the Department reserves the right to determine which special event permit will be issued based on the earliest recorded application time and date where the Department has determined the applicant has fully completed all application requirements.

R920-4-5. Minimum Liability Coverage, Waiver and Release of Damages Form, and Indemnification Form Completion Requirements.

The applicant shall obtain and provide proof of liability insurance at time of application naming the "State of Utah, the Department and its employees" as additional insured under the certificate, with a minimum \$1,000,000 coverage per occurrence and \$2,000,000 in aggregate. The applicant shall complete the appropriate "Waiver and Release of Damages" and "Indemnification" forms prior to permit issuance. All event participants shall also complete the "Waiver and Release of Damages" form prior to participating in the permitted event.

R920-4-6. Waiver and Release of Damages Exception.

~~[Participants in a free speech event on state rights of way are not required to sign or submit the "Waiver and Release of Damages" form described in R920-4-5, however the applicant of a free speech event is still required to complete the "Indemnification" form prior to permit issuance.]~~(1) "First Amendment assembly" means a demonstration, rally, parade, march, vigil, picket line, or other similar gathering conducted for the purpose of persons expressing their political, social, religious, or other views.

(2) Persons and groups applying for special event permits under this rule shall be exempt from the insurance, Waiver and Release of Damages, and Indemnification requirements of Section R920-4-5, if

the special event for which application is made is a First Amendment assembly and is for a non-commercial purpose.

R920-4-7. Applicant Record Retention Requirements.

Where multiple participants are involved in the special road use or event, the applicant is responsible for ensuring each event participant completes the appropriate "Waiver and Release of Damages" and "Indemnification" form prior to participating in the event. The originating applicant is the custodian of all signed participant waivers, as specified in R920-4-5, and shall produce these upon demand for inspection and review by the Department at any time within 12 months after the completion of the event. The Department may also require the originating applicant to sign the original forms, as specified in R920-4-5, prior to permit issuance.

R920-4-8. Traffic Control Requirements and Considerations.

All traffic control is the responsibility of the applicant. A traffic control plan, in accordance with R920-1, R930-6 and Barricading and Construction Standard Drawings, shall be provided to, and approved by the District Traffic Engineer, or other authorized Department designee. The applicant shall restore the particular road segment to its original condition, free from litter, etc. An alternate route may be required when traffic volumes are high, active road construction is present, an alternate event is already occupying the road, a safer route can accommodate the event, or the event poses a significant inconvenience to the traveling public. Road closures will require traffic control by Uniformed Peace Officers. The Department may require local police, the sheriff's department, the highway patrol, or the Department's Incident Management Team to inspect and monitor traffic control. All railroad crossings and bridges shall be given special attention. The applicant shall coordinate with the appropriate railroad representatives to ensure the event schedule does not conflict with the operation of the railroad.

R920-4-9. Public Notification Requirements.

As determined by the Region Permit Officer, the applicant shall distribute a news release to all local radio stations, television stations, and newspapers that announce the event and advise residents

of alternate routes and potential delays. The news release shall include the date, times, affected roads, and shall also include an estimate of the anticipated length of delay.

R920-4-10. Contingency Plan and Participant Notification Requirements.

The applicant is required to develop plans for, and notify, each event participant on the following contingencies; emergency plans in the event of an accident or injury, closest hospitals, how to obtain emergency assistance, etc., locations of rest areas, locations of water facilities, trash cleanup plans, and that all participants are required to obey all traffic laws, lights, and signs.

R920-4-11. Event Route Identification and Private Property Use Requirements.

The applicant shall provide a detailed map showing the proposed course and direction of the event. Locations of parking areas, water stations, toilet facilities, and other appropriate information shall also be included on the map. These areas cannot be located within the state right-of-way. The applicant is responsible for obtaining appropriate permission to locate these facilities on private property.

R920-4-12. Adherence to Municipal, County, or other Governmental Agency Permitting Requirements.

The applicant is responsible for obtaining any applicable city, county, or other governmental agency permit. Demonstration of compliance with R920-4-12 may be required prior to the Department issuing any special road use or event permit.

KEY: parades, bicycle, races, films

Date of Enactment or Last Substantive Amendment: January 29, 2015

Notice of Continuation: August 1, 2012

Authorizing, and Implemented or Interpreted Law: 41-6a-1111; 41-22-15; 72-1-201

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <http://www.rules.utah.gov/publicat/code.htm>. The rule text may also be inspected at the agency or the Division of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

Agriculture and Food, Animal Industry **R58-21** Trichomoniasis

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 39086
FILED: 01/21/2015

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 promulgated under authority of Section 4-31-109 which gives the Utah Department of Agriculture and Food the ability to eradicate trichomoniasis in livestock.

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 Utah Cattlemen's Association would like to see an increase in the fine for non-compliance. While the amount of the fine is not dictated by rule, an increase in the proposed fine has been submitted to the legislature.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The disease is still costing producers in the state upwards of \$3,000,000 and the potential loss if this is not controlled could be upwards of \$100,000,000. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
ANIMAL INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Cody James by phone at 801-538-7166, by FAX at 801-538-7169, or by Internet E-mail at codyjames@utah.gov
- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
- ◆ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov
- ◆ Warren Hess by phone at 801-538-4910, by FAX at 801-538-7169, or by Internet E-mail at wjhess@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 01/21/2015

Commerce, Securities **R164-2** Investment Adviser - Unlawful Acts

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 39104
FILED: 02/02/2015

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 61-1-2 describes acts of investment advisers which are deemed to be unlawful, and provides that the Division may, by rule, adopt exemptions from the section's requirements for investment advisory contracts. Section 61-1-24 allows the Division to make rules when necessary to carry out 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 written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule defines the circumstances under which an exception to the prohibition against performance-based fees contained in Section 61-1-2 is permissible. The rule protects the public by ensuring that specific requirements are met before an investment adviser may receive performance-based compensation for investment advisory services. 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 Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Charles Lyons by phone at 801-530-6940, by FAX at 801-530-6980, or by Internet E-mail at clyons@utah.gov
 ♦ Keith Woodwell by phone at 801-530-6606, by FAX at 801-530-6980, or by Internet E-mail at kwoodwell@utah.gov

AUTHORIZED BY: Keith Woodwell, Director

EFFECTIVE: 02/02/2015

Natural Resources, Parks and Recreation
R651-223
 Vessel Accident Reporting

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 39090
 FILED: 01/23/2015

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The rule is required by Section 73-18-13. These provisions help fulfill mandated requirements for vessel accident report to the United States Coast Guard.

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 from interested persons either supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation is mandated by Section 73-18-13 and for boat accident reporting requirements by the United States Coast Guard.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 NATURAL RESOURCES
 PARKS AND RECREATION
 ROOM 116
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

AUTHORIZED BY: Fred Hayes, Director

EFFECTIVE: 01/23/2015

Natural Resources, Parks and Recreation
R651-412
 Curriculum Standards for OHV Education Programs Offered by Non-Division Entities

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 39088
FILED: 01/22/2015

**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 Subsection 41-22-31(1). This rule is required because it allows the Utah State Parks Board to establish off-highway vehicle (OHV) education curriculum standards for appropriate private organizations, as well as public entities.

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 submitted over the last five years that either support or oppose 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 Division seeks public input and values the ability of public participation involved with the "safety, protection of persons and property, and to pursue a safety education program" (according to Section 41-22-1 Policy Declaration) and in addition, this rule meets the needs of an OHV education portion of the OHV program. This rule increases transparency amongst the government entity and private individuals requesting the ability to provide OHV education courses. Therefore, this rule should be continued.

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

NATURAL RESOURCES
PARKS AND RECREATION
ROOM 116
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

AUTHORIZED BY: Fred Hayes, Director

EFFECTIVE: 01/22/2015

**Natural Resources, Parks and
Recreation**

R651-634

**Nonresident OHV User Permits and
Fees**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 39089
FILED: 01/22/2015

**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 41-22-35. This rule is required because it allows the Utah State Parks Board to establish procedures for a non-resident permit and fees.

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 submitted over the last five years that either support or oppose 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 Division seeks public input and values the ability of public participation involved with the off-highway vehicle (OHV) Program and this rule allows us "to develop trails and other facilities for the use of said vehicles," according to Section 41-22-1, Policy Declaration. Without this rule it would reduce the ability of the program to meet the customers' needs due to a reduced amount of available funding for the OHV program. This funding provides access, secures ride opportunities, and assists with trail and facility development. Therefore, this rule should be continued.

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

NATURAL RESOURCES
PARKS AND RECREATION
ROOM 116
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

AUTHORIZED BY: Fred Hayes, Director

EFFECTIVE: 01/22/2015

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF FIVE-YEAR EXPIRATIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). The Division of Administrative Rules (Division) is required to notify agencies of rules due for review at least 180 days prior to the anniversary date. If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR EXTENSION (EXTENSION)** with the Division. However, if the agency fails to file either the **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION** or the **EXTENSION** by the date provide by the Division, the rule expires.

Upon expiration of the rule, the Division files a **NOTICE OF FIVE-YEAR EXPIRATION (EXPIRATION)** to document the action. The Division is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule and it must follow regular rulemaking procedures to replace the rule if it is still needed.

The Division has filed **EXPIRATIONS** for each of the rules listed below which were not reviewed in accordance with Section 63G-3-305. These rules have expired and have been removed from the *Utah Administrative Code*.

The expiration of administrative rules for failure to comply with the five-year review requirement is governed by Subsection 63G-3-305(8).

Heritage and Arts, Arts and Museums

R451-3

Capital Funds Request Prioritization

FIVE-YEAR REVIEW EXPIRATION

DAR FILE NO.: 39096

FILED: 01/28/2015

SUMMARY: The five-year review was not filed by the 01/27/2015 deadline so this rule is expired and removed from the Utah Administrative Code.

EFFECTIVE: 01/28/2015

Heritage and Arts, Library

R458-3

Capital Funds Request Prioritization

FIVE-YEAR REVIEW EXPIRATION

DAR FILE NO.: 39097

FILED: 01/28/2015

SUMMARY: The five-year review was not filed by the 01/27/2015 deadline so this rule is expired and removed from the Utah Administrative Code.

EFFECTIVE: 01/28/2015

End of the Notices of Notices of Five Year Expirations Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Division of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

Administrative Services

Purchasing and General Services

No. 38974 (AMD): R33-1-1. Definitions

Published: 12/15/2014

Effective: 01/28/2015

No. 38975 (AMD): R33-6-101. Competitive Sealed Bidding;
Multiple Stage Bidding; Reverse Auction

Published: 12/15/2014

Effective: 01/28/2015

No. 38976 (AMD): R33-7. Request for Proposals

Published: 12/15/2014

Effective: 01/28/2015

No. 38977 (AMD): R33-12. Terms and Conditions,
Contracts, Change Orders and Costs

Published: 12/15/2014

Effective: 01/28/2015

No. 38978 (AMD): R33-16-401. Protest Officer May Correct
Noncompliance, Errors and Discrepancies

Published: 12/15/2014

Effective: 01/28/2015

Commerce

Occupational and Professional Licensing

No. 38981 (AMD): R156-31b-202. Advisory Peer Education
Committee Created -- Membership - Duties

Published: 12/15/2014

Effective: 01/22/2015

No. 38980 (AMD): R156-31b-609. Standards for Out-of-
State Programs Providing Clinical Experiences in Utah

Published: 12/15/2014

Effective: 01/22/2015

No. 38979 (AMD): R156-60a. Social Worker Licensing Act
Rule

Published: 12/15/2014

Effective: 01/22/2015

No. 38964 (AMD): R156-60d. Substance Use Disorder
Counselor Act Rule

Published: 12/15/2014

Effective: 01/22/2015

Real Estate

No. 38971 (AMD): R162-2e-401. Unprofessional Conduct

Published: 12/15/2014

Effective: 01/28/2015

No. 38972 (AMD): R162-2f-206. Certification of Continuing
Education Course

Published: 12/15/2014

Effective: 01/21/2015

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 38984 (AMD): R414-310-7. Household Composition and
Income Provisions

Published: 12/15/2014

Effective: 02/01/2015

Family Health and Preparedness, Licensing

No. 38954 (AMD): R432-35. Background Screening --
Health Facilities

Published: 12/01/2014

Effective: 01/27/2015

NOTICES OF RULE EFFECTIVE DATES

Natural Resources

Parks and Recreation

No. 38970 (AMD): R651-214. Temporary Registration

Published: 12/15/2014

Effective: 01/22/2015

Forestry, Fire and State Lands

No. 38942 (NEW): R652-160. Department of Natural

Resources Wilderness Rules

Published: 12/01/2014

Effective: 01/27/2015

Public Safety

Peace Officer Standards and Training

No. 38983 (NEW): R728-506. Canine Body Armor

Restricted Account

Published: 12/15/2014

Effective: 01/26/2015

Workforce Services

Administration

No. 38938 (NEW): R982-700. Employment Opportunities

Website

Published: 12/01/2014

Effective: 01/29/2015

Employment Development

No. 38953 (AMD): R986-700-719. Job Search Child Care
(JS CC)

Published: 12/01/2014

Effective: 02/01/2015

No. 38939 (AMD): R986-700-775. High Quality School

Readiness Grant Program

Published: 12/01/2014

Effective: 01/29/2015

End of the Notices of Rule Effective Dates Section

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2015 through February 02, 2015. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to the Division of Administrative Rules (801-538-3764).

A copy of the **RULES INDEX** is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Purchasing and General Services</u>					
R33-1-1	Definitions	38974	AMD	01/28/2015	2014-24/4
R33-6-101	Competitive Sealed Bidding; Multiple Stage Bidding; Reverse Auction	38975	AMD	01/28/2015	2014-24/5
R33-7	Request for Proposals	38976	AMD	01/28/2015	2014-24/6
R33-12	Terms and Conditions, Contracts, Change Orders and Costs	38977	AMD	01/28/2015	2014-24/9
R33-16-401	Protest Officer May Correct Noncompliance, Errors and Discrepancies	38978	AMD	01/28/2015	2014-24/12
R33-26	State Surplus Property	39084	NSC	01/28/2015	Not Printed
AGRICULTURE AND FOOD					
<u>Animal Industry</u>					
R58-7	Livestock Markets, Satellite Video Livestock Auction Market, Livestock Sales, Dealers, and Livestock Market Weighpersons	39075	5YR	01/13/2015	2015-3/67
R58-11	Slaughter of Livestock and Poultry	39073	5YR	01/13/2015	2015-3/67
R58-17	Aquaculture and Aquatic Animal Health	39074	5YR	01/13/2015	2015-3/68
R58-21	Trichomoniasis	39086	5YR	01/21/2015	Not Printed
ALCOHOLIC BEVERAGE CONTROL					
<u>Administration</u>					
R81-4E	Resort Licenses	39059	5YR	01/08/2015	2015-3/69
COMMERCE					
<u>Occupational and Professional Licensing</u>					
R156-17b	Pharmacy Practice Act Rule	39056	5YR	01/05/2015	2015-3/69
R156-31b-202	Advisory Peer Education Committee Created -- Membership - Duties	38981	AMD	01/22/2015	2014-24/13
R156-31b-609	Standards for Out-of-State Programs Providing Clinical Experiences in Utah	38980	AMD	01/22/2015	2014-24/14
R156-60a	Social Worker Licensing Act Rule	38979	AMD	01/22/2015	2014-24/15
R156-60d	Substance Use Disorder Counselor Act Rule	38964	AMD	01/22/2015	2014-24/17
<u>Real Estate</u>					
R162-2e-401	Unprofessional Conduct	38971	AMD	01/28/2015	2014-24/26
R162-2f-206	Certification of Continuing Education Course	38972	AMD	01/21/2015	2014-24/28
<u>Securities</u>					
R164-2	Investment Adviser - Unlawful Acts	39104	5YR	02/02/2015	Not Printed

CORRECTIONS

Administration

R251-303 Offenders' Use of Telephones 39060 5YR 01/08/2015 2015-3/70

EDUCATION

Administration

R277-111 Sharing of Curriculum Materials by Public School Educators 39077 5YR 01/15/2015 2015-3/71

R277-419-9 Provisions for Maintaining Student Membership and Enrollment Documentation and Documentation of Student Education Services Provided by Third Party Vendors 39080 EMR 01/15/2015 2015-3/63

R277-487 Public School Data Confidentiality and Disclosure 38956 AMD 01/07/2015 2014-23/6

Rehabilitation

R280-203 Certification Requirements for Interpreters for the Hearing Impaired 38930 AMD 01/02/2015 2014-22/22

GOVERNOR

Criminal and Juvenile Justice (State Commission on)

R356-1 Procedures for the Calculation and Distribution of Funds to Reimburse County Correctional Facilities Housing State Probationary Inmates or State Parole Inmates 39053 EXT 01/02/2015 2015-3/75

Energy Development (Office of)

R362-3 Energy Efficiency Fund 38931 AMD 01/07/2015 2014-22/24

HEALTH

Family Health and Preparedness, Licensing

R432-35 Background Screening -- Health Facilities 38954 AMD 01/27/2015 2014-23/23

Health Care Financing, Coverage and Reimbursement Policy

R414-11 Podiatric Services 38952 AMD 01/13/2015 2014-23/22

R414-310-7 Household Composition and Income Provisions 38984 AMD 02/01/2015 2014-24/32

HERITAGE AND ARTS

Arts and Museums

R451-3 Capital Funds Request Prioritization 39096 EXD 01/28/2015 Not Printed

Library

R458-3 Capital Funds Request Prioritization 39097 EXD 01/28/2015 Not Printed

HUMAN SERVICES

Substance Abuse and Mental Health

R523-8 Evidence-Based Prevention Registry 38917 NEW 01/06/2015 2014-22/33

INSURANCE

Administration

R590-130-7 Advertisements of Benefits Payable, Losses Covered or Premiums Payable 39029 NSC 01/15/2015 Not Printed

R590-142 Continuing Education Rule 38934 AMD 01/12/2015 2014-23/25

R590-173 Credit For Reinsurance 39030 NSC 01/15/2015 Not Printed

R590-194 Coverage of Dietary Products for Inborn Errors of Amino Acid or Urea Cycle Metabolism 39038 NSC 01/15/2015 Not Printed

R590-226-14 Responses 39031 NSC 01/15/2015 Not Printed

R590-244 Individual and Agency Licensing Requirements 38935 AMD 01/12/2015 2014-23/31

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JUDICIAL CONDUCT COMMISSION

Administration

R595-1	General Provisions	39048	5YR	01/02/2015	2015-3/71
R595-2	Administration	39049	5YR	01/02/2015	2015-3/72
R595-3	Procedure	39050	5YR	01/02/2015	2015-3/72
R595-4	Sanctions	39051	5YR	01/02/2015	2015-3/73

NATURAL RESOURCES

Forestry, Fire and State Lands

R652-160	Department of Natural Resources Wilderness Rules	38942	NEW	01/27/2015	2014-23/36
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Parks and Recreation

R651-214	Temporary Registration	38970	AMD	01/22/2015	2014-24/34
R651-223	Vessel Accident Reporting	39090	5YR	01/23/2015	Not Printed
R651-412	Curriculum Standards for OHV Education Programs Offered by Non-Division Entities	39088	5YR	01/22/2015	Not Printed
R651-634	Nonresident OHV User Permits and Fees	39089	5YR	01/22/2015	Not Printed

Wildlife Resources

R657-69	Turkey Depredation	38949	AMD	01/08/2015	2014-23/39
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PUBLIC SAFETY

Criminal Investigations and Technical Services, Criminal Identification

R722-310	Regulation of Bail Bond Recovery and Enforcement Agents	39057	5YR	01/07/2015	2015-3/73
R722-330	Licensing of Private Investigators	38947	AMD	01/07/2015	2014-23/40
R722-330	Licensing of Private Investigators	39058	5YR	01/07/2015	2015-3/74

Peace Officer Standards and Training

R728-506	Canine Body Armor Restricted Account	38983	NEW	01/26/2015	2014-24/36
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PUBLIC SERVICE COMMISSION

Administration

R746-341-5	Duties of ETCs	38936	AMD	01/07/2015	2014-23/43
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TRANSPORTATION

Operations, Traffic and Safety

R920-4	Special Road Use or Event	39095	EMR	01/29/2015	Not Printed
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WORKFORCE SERVICES

Administration

R982-700	Employment Opportunities Website	38938	NEW	01/29/2015	2014-23/44
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Employment Development

R986-700-719	Job Search Child Care (JS CC)	38953	AMD	02/01/2015	2014-23/45
R986-700-775	High Quality School Readiness Grant Program	38939	AMD	01/29/2015	2014-23/46

RULES INDEX - BY KEYWORD (SUBJECT)

ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
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EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>accidents</u>					
Natural Resources, Parks and Recreation	39090	R651-223	5YR	01/23/2015	Not Printed
<u>administrative proceedings</u>					
Commerce, Real Estate	38971	R162-2e-401	AMD	01/28/2015	2014-24/26
<u>alcoholic beverages</u>					
Alcoholic Beverage Control, Administration	39059	R81-4E	5YR	01/08/2015	2015-3/69
<u>appraisal management company</u>					
Commerce, Real Estate	38971	R162-2e-401	AMD	01/28/2015	2014-24/26
<u>aquaculture</u>					
Agriculture and Food, Animal Industry	39074	R58-17	5YR	01/13/2015	2015-3/68
<u>background screening</u>					
Health, Family Health and Preparedness, Licensing	38954	R432-35	AMD	01/27/2015	2014-23/23
<u>bail bond recovery licenses</u>					
Public Safety, Criminal Investigations and Technical Services, Criminal Identification	39057	R722-310	5YR	01/07/2015	2015-3/73
<u>bicycles</u>					
Transportation, Operations, Traffic and Safety	39095	R920-4	EMR	01/29/2015	Not Printed
<u>boating</u>					
Natural Resources, Parks and Recreation	38970	R651-214	AMD	01/22/2015	2014-24/34
	39090	R651-223	5YR	01/23/2015	Not Printed
<u>bulls</u>					
Agriculture and Food, Animal Industry	39086	R58-21	5YR	01/21/2015	Not Printed
<u>Canine Body Armor Restricted Account</u>					
Public Safety, Peace Officer Standards and Training	38983	R728-506	NEW	01/26/2015	2014-24/36
<u>capital facilities</u>					
Heritage and Arts, Arts and Museums	39096	R451-3	EXD	01/28/2015	Not Printed
Heritage and Arts, Library	39097	R458-3	EXD	01/28/2015	Not Printed
<u>cattle</u>					
Agriculture and Food, Animal Industry	39086	R58-21	5YR	01/21/2015	Not Printed
<u>certification</u>					
Education, Rehabilitation	38930	R280-203	AMD	01/02/2015	2014-22/22
<u>change orders</u>					
Administrative Services, Purchasing and General Services	38977	R33-12	AMD	01/28/2015	2014-24/9

RULES INDEX

<u>child care</u>						
Workforce Services, Employment Development	38953	R986-700-719	AMD	02/01/2015	2014-23/45	
	38939	R986-700-775	AMD	01/29/2015	2014-23/46	
<u>conduct</u>						
Administrative Services, Purchasing and General Services	38978	R33-16-401	AMD	01/28/2015	2014-24/12	
Commerce, Real Estate	38971	R162-2e-401	AMD	01/28/2015	2014-24/26	
<u>confidentiality</u>						
Education, Administration	38956	R277-487	AMD	01/07/2015	2014-23/6	
<u>contracts</u>						
Administrative Services, Purchasing and General Services	38977	R33-12	AMD	01/28/2015	2014-24/9	
<u>controversies</u>						
Administrative Services, Purchasing and General Services	38978	R33-16-401	AMD	01/28/2015	2014-24/12	
<u>corrections</u>						
Corrections, Administration	39060	R251-303	5YR	01/08/2015	2015-3/70	
<u>costs</u>						
Administrative Services, Purchasing and General Services	38977	R33-12	AMD	01/28/2015	2014-24/9	
<u>curriculum materials</u>						
Education, Administration	39077	R277-111	5YR	01/15/2015	2015-3/71	
<u>custody requirements</u>						
Commerce, Securities	39104	R164-2	5YR	02/02/2015	Not Printed	
<u>definitions</u>						
Administrative Services, Purchasing and General Services	38974	R33-1-1	AMD	01/28/2015	2014-24/4	
<u>demonstration</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	38984	R414-310-7	AMD	02/01/2015	2014-24/32	
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